AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

6-22-88
Vol. 53 No. 120
Pages 23379-23602

federal register

Wednesday
June 22, 1988

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months in paper form, or $188.00 per year, or $94.00 for six months in microfiche form, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 53, No. 120
Wednesday, June 22, 1988

ACTION
NOTICES
Foster grandparent and senior companion programs; income eligibility levels, 23429

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
Eastern South Dakota, 23405
Onions grown in Idaho and Oregon, 23404

Agriculture Department
See also Agricultural Marketing Service; Farmers Home Administration; Food and Nutrition Service
NOTICES
Agency information collection activities under OMB review, 23430

Commerce Department
See Export Administration Bureau; International Trade Administration; National Oceanic and Atmospheric Administration

Commission on Merchant Marine and Defense
NOTICES
Meetings, 23437
(2 documents)

Commodity Futures Trading Commission
PROPOSED RULES
Federal speculative position limits; exemptions, 23411

Community Services Office
RULES
Emergency community services homeless grant program, 23568

Defense, Commission on Merchant Marine and
See Commission on Merchant Marine and Defense

Defense Department
See also Defense Intelligence Agency
NOTICES
Committees; establishment, renewal, termination, etc.:
Navy Health Care Advisory Committee, 23438
Meetings:
Base Realignment and Closure Commission, 23438
Education Benefits Board of Actuaries, 23438
Retirement Board of Actuaries, 23438

Defense Intelligence Agency
NOTICES
Senior Executive Service:
Performance Review Committee; membership, 23438

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Great Lakes Wholesale Drugs, Inc., 23462
Martin, Jeffrey, M.D., 23464
Williams, Neveille H., D.D.S., 23465

Economic Regulatory Administration
NOTICES
Consent orders:
Dorchester Master Limited Partnership et al., 23439

Employment Standards Administration
See Wage and Hour Division

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Western Area Power Administration
NOTICES
Meetings:
Innovative Control Technology Advisory Panel, 23439
(2 documents)

Environmental Protection Agency
RULES
Air programs; State authority delegations:
North Carolina, 23390
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one, 23387, 23393
(2 documents)
Cyhexatin, etc., 23394
Diazinon, etc., 23388
Methidathion, 23390
N,N-dimethylpiperidinium chloride, 23385
Quizalofop ethyl, 23386, 23391
(2 documents)
Superfund program:
Citizen awards for information on criminal violations
Correction, 23394
Waste management, solid:
Paper and paper products containing recovered materials; Federal procurement guidelines, 23546
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Connecticut, 23416
Oregon, 23418
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one, 23420
Montmorillonite-type clay treated with polytetrafluoroethylene, 23421
NOTICES
Air quality; prevention of significant deterioration (PSD):
Permit determinations—
Region IX, 23447
Pesticide, food, and feed additive petitions:
Elanco Products Co., 23448
Pesticide programs:
Pesticide registration standards; draft availability, 23449
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 23450, 23451
(2 documents)

Confidential business information and data transfer to contractors, 23449

Export Administration Bureau
See also International Trade Administration
NOTICES
Meetings:
Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee, 23430

Family Support Administration
See Community Services Office

Farmers Home Administration
PROPOSED RULES
Program regulations:
Appraisal of single family residential property, 23406

Federal Communications Commission
RULES
Radio stations; table of assignments:
Indiana, 23396
Kentucky, 23396
Mississippi, 23396
Missouri, 23398
North Carolina, 23397
Texas, 23398
Television stations; table of assignments:
Ohio, 23397
PROPOSED RULES
Radio broadcasting:
Expanded AM band, 23426
Radio stations; table of assignments:
California, 23422, 23428 (2 documents)
Florida, 23423
Georgia, 23423
Hawaii, 23424
Illinois, 23424
Mississippi, 23424
Ohio, 23425
Washington, 23425
Wisconsin, 23425
NOTICES
Agency information collection activities under OMB review, 23451
Meetings:
Advanced Television Service Advisory Committee, 23452
Radio broadcasting:
FM vacant channel applications; universal window filing period, 23452
Rulemaking proceedings; petitions filed, granted, denied, etc., 23452

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Boston Edison, Inc., et al., 23440
Trafalgar Power, Inc., et al., 23442
Natural gas certificate filings:
K N Energy, Inc., et al., 23444
Applications, hearings, determinations, etc.:
KK Appliance Co. et al., 23446

Federal Home Loan Bank Board
NOTICES
Meetings; Sunshine Act, 23483

Federal Reserve System
RULES
Freedom of Information Act; implementation
Correction, 23383

Federal Retirement Thrift Investment Board
RULES
Employee elections to contribute, 23379

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Fort Dodge Laboratories, 23389
PROPOSED RULES
Biological products:
Blood and blood components; current good manufacturing practices, 23414
NOTICES
Biological product licenses:
Biological Resources, Inc., 23453
Food additive petitions:
Bercen, Inc., 23454
Betz Laboratories, Inc., 23454
Dow Chemical Co., 23455
E.I. du Pont de Nemours & Co., 23455
Velsicol Chemical Corp., 23455
Human drugs:
Export applications—
Pneumopent (Pentamidine isethionate for inhalation), 23456
Investigation of drugs in humans; revised clinical guidelines availability, 23456
Patent extension; regulatory review period determinations—
Fibrel, 23457
Meetings:
Advisory committees, panels, etc., 23458

Food and Nutrition Service
RULES
Food stamp programs:
Charitable donations; income exclusion
Correction, 23484

Health and Human Services Department
See also Community Services Office; Food and Drug Administration; Health Resources and Services Administration; Social Security Administration
NOTICES
Meetings:
Secretary's Commission on Nursing, 23452

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements:
Nursing special projects, 23459
Meetings; advisory committees:
August, 23459
July, 23459

Immigration and Naturalization Service
RULES
Immigration:
Inspection of persons applying for admission; Northern Mariana Islands, 23379
Immigration Reform and Control Act; implementation:
Aliens; adjustment of status (legalization program), 23380

Interior Department
See National Park Service; Surface Mining Reclamation and Enforcement Office

International Trade Administration
See also Export Administration Bureau
NOTICES
Antidumping:
Brass sheet and strip from—
Netherlands, 23431
Meetings:
President's Export Council Executive Committee, 23435

Interstate Commerce Commission
RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 23398
Water carriers:
Operations exemption, 23400
NOTICES
Motor carriers:
Finance applications, 23461
Rail carriers:
Cost recovery procedures; adjustment factor, 23461
Passenger train operation—
Atchison, Topeka & Santa Fe Railway Co., 23461

Justice Department
See Drug Enforcement Administration; Immigration and Naturalization Service

Labor Department
See Mine Safety and Health Administration; Wage and Hour Division

Merchant Marine and Defense, Commission on
See Commission on Merchant Marine and Defense

Mine Safety and Health Administration
RULES
Coal mine safety and health:
Underground coal mining—
Underground mining equipment; applicant or third party product testing, 23486
PROPOSED RULES
Multiple-shot blasing units; new testing and approval procedures, 23506

National Labor Relations Board
NOTICES
Organization, functions, and authority delegations, 23467

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 23402
Gulf of Alaska groundfish, 23401, 23402
(2 documents)
NOTICES
Permits
Marine mammals, 23437
Permits:
Experimental fishing, 23436

National Park Service
NOTICES
Environmental statements; availability, etc.:
Chickamauga and Chattanooga National Military Park, GA; U.S. 27 relocation, 23460

National Science Foundation
NOTICES
Agency information collection activities under OMB review, 23467
Meetings:
Polar Programs Advisory Committee, 23467

Nuclear Regulatory Commission
RULES
Retention periods for records
Correction, 23382
PROPOSED RULES
Radioactive material packaging and transportation:
International Atomic Energy Agency compatibility
Correction, 23484
NOTICES
Environmental statements; availability, etc.:
Southern California Edison Co., 23468
Reports; availability, etc.:
EPA groundwater protection standards compliance; draft technical position, 23469
Senior Executive Service:
Performance Review Board; membership, 23470
Applications, hearings, determinations, etc.:
General Public Utilities Nuclear Corp. et al., 23470
Philadelphia Electric Co., 23470

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Power plan amendments:
Columbia River Basin fish and wildlife program and Northwest conservation and electric power plan, 23472

Public Health Service
See Food and Drug Administration; Health Resources and Services Administration

Securities and Exchange Commission
RULES
Securities:
Government Securities Act; implementation—
Form BD revision, etc., 23383
NOTICES
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 23474, 23475
(2 documents)
Applications, hearings, determinations, etc.:
First Fidelity Inc., 23476
MacAndrews & Forbes Holdings Inc. et al., 23477
Mariner Funds Trust, 23477
Public utility holding company filings, 23478
Smith Barney Mortgage Capital Corp., 23479

Small Business Administration
NOTICES
Meetings; regional advisory councils:
Minnesota, 23482

Social Security Administration
PROPOSED RULES
Social security benefits:
Disability determinations; vocational factors consideration
Correction, 23484

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Coal exploration operations; requirements, etc., 23532
Initial and permanent regulatory programs:
Support facilities; definitions, 23522
Permanent program and abandoned mine land reclamation plan submissions:
New Mexico, 23415
Surface coal mining and reclamation operations; coal exploration:
Coal preparation plants not located within mine permit area, 23526

Transportation Department
PROPOSED RULES
Nondiscrimination on the basis of handicap in air travel, 23574

Treasury Department
NOTICES
Agency information collection activities under OMB review, 23482

Wage and Hour Division
RULES
Labor standards on projects or productions assisted by grants from National Endowment for the Arts and Humanities, 23540

Western Area Power Administration
NOTICES
Power rate adjustments:
Boulder Canyon Project, NV, 23446

Separate Parts In This Issue

Part II
Department of Labor, Mine Safety and Health Administration, 23486

Part III
Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 23522

Part IV
Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 23526

Part V
Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 23532

Part VI
Department of Labor, Wage and Hour Division, 23540

Part VII
Environmental Protection Agency, 23546

Part VIII
Department of Health and Human Services, Family Support Administration, 23568

Part IX
Department of Transportation, 23574

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
1600 23379

7 CFR
272 23484
273 23484

Proposed Rules:
958 23404
1076 23405
1809 23406
1922 23406
1945 23406

8 CFR
235 23379
245a 23380

10 CFR
30 23382
34 23382
71 23382
73 23382

Proposed Rules:
71 23484

12 CFR
261 23383

14 CFR

Proposed Rules:
382 23574

17 CFR
249 23383

Proposed Rules:
150 23411

20 CFR

Proposed Rules:
404 23484

21 CFR
193 (4 documents) 23385–23388
520 23389
522 23389
555 23389
561 (4 documents) 23385–23388

Proposed Rules:
606 23414

29 CFR
505 23540

30 CFR
7 23486
18 23486

Proposed Rules:
7 23506
25 23506
701 23522
772 23532
785 23526
815 23532
827 23526
931 23415
942 23532

40 CFR
60 23390
180 (4 documents) 23390–23394
250 23546
303 23394

Proposed Rules:
52 (2 documents) 23416, 23418
180 (2 documents) 23420, 23421

45 CFR
1080 23568

47 CFR
73 (7 documents) 23396–23398

Proposed Rules:
73 (11 documents) 23422–23428

49 CFR
1001 23398
1002 23398
1071 23400
1072 23400

50 CFR
672 (2 documents) 23401, 23402
675 23402

Rules and Regulations

Federal Register
Vol. 53, No. 120
Wednesday, June 22, 1988

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1600

Employee Elections to Contribute to the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Amendment to interim rule.

SUMMARY: On December 2, 1987, the Executive Director of the Federal Retirement Thrift Investment Board published revised interim regulations governing employee elections to contribute to the Thrift Savings Plan (5 CFR Part 1600). Certain provisions of those regulations applied only to employees employed or reemployed during open seasons beginning on or before November 15, 1987. The present amendment extends the applicability of the revised interim regulations to all open seasons beginning on or after May 15, 1988.

DATE: This amendment is effective May 15, 1988. The revised interim regulations, as amended, shall apply to all open seasons beginning on or after May 15, 1988.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 523–6367.

SUPPLEMENTARY INFORMATION: Subsection 1600.3(d) of the revised interim rules published on December 2, 1987 provided that a Federal Employees' Retirement System (FERS) employee who was employed or reemployed during the part of an open season that precedes the election period occurring during the last month of that open season could count that open season as his or her first open season for purposes of eligibility to contribute to the Thrift Savings Plan. Applicability of § 1600.3(d) was limited, however, to open seasons commencing on or before November 15, 1987. The present amendment extends the applicability of § 1600.3(d) to all open seasons commencing on or after May 15, 1988.

Subsection 1600.10(d) is amended to reflect the provisions of Pub. L. 100–202 which exempted the Thrift Savings Plan from the non-discrimination provisions of sections 401(k) and 401(m) of the Internal Revenue Code. See, 26 U.S.C. 7701(j)(2).

Subsection 1600.13(d) of the revised interim rules published on December 2, 1987 provided that a Civil Service Retirement System (CSRS) employee employed or reemployed during the part of the November 15, 1987 to January 31, 1988 open season that preceded the election period occurring during the last calendar month of that open season could count that open season as his or her first open season for purposes of eligibility to contribute to the Thrift Savings Plan. The present amendment makes a similar rule applicable to all open seasons commencing on or after May 15, 1988.

List of Subjects in 5 CFR Part 1600

Employee benefit plans, Government employees, Retirement, Pensions.

Chapter VI of title 5 of the Code of Federal Regulations is hereby amended as follows:

PART 1600—EMPLOYEE ELECTIONS TO CONTRIBUTE TO THE THRIFT SAVINGS PLAN

1. The authority citation for Part 1600 continues to read as follows:

Authority: 5 U.S.C. 8351, 5 U.S.C. 8432(b)(1)(A), 5 U.S.C. 8474 (b)(5) and (c)(1).

2. Section 1600.3 is amended by revising paragraph (d) to read as follows:

§ 1600.3 Eligibility of a Federal Employees' Retirement System Employee to make an election.

* * * * *

(d) For an employee employed or reemployed during any open season, but whose employment or reemployment during such open season is prior to the election period occurring during the last calendar month of such open season, the open season during which the employee was employed or reemployed shall be considered the first open season.

3. Section 1600.10 is amended by revising paragraph (d) to read as follows:

§ 1600.10 Maximum contributions.

* * * * *

(d) Section 402(g) of the Internal Revenue Code places a ceiling on the amount which an employee may save on a tax-deferred basis through plans such as the Thrift Savings Plan. Employee contributions to the Thrift Savings Plan may be restricted or refunded to conform with this limit.

4. Section 1600.13 is amended by revising paragraph (d) to read as follows:

§ 1600.13 Contributions by Civil Service Retirement System employees.

* * * * *

(d) For a CSRS employee employed or reemployed during any open season, but whose employment or reemployment during such open season is prior to the election period occurring during the last calendar month of such open season, the open season during which the employee is employed or reemployed shall be considered the first open season.

* * * * *

Francis X. Cavanaugh,
Executive Director.

[FR Doc. 88–14101 Filed 6–21–88; 8:45 am]
BILLING CODE 6760–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 235

[INS No: 1111–88]

Inspection of Persons Applying for Admission

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule establishes authority to issue an identification card to persons born before November 3, 1986, who received United States citizenship pursuant to Pub. L. 94–241 and Executive Order 12572, which established the Commonwealth of the Northern Mariana Islands. This action is taken in response to a request from the Commonwealth of the Northern Mariana Islands.

DATES: Effective July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cook, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone (202) 633–3320.

SUPPLEMENTARY INFORMATION: On November 3, 1986, the President signed a proclamation implementing Pub. L. 94–241, establishing the Commonwealth of the Northern Mariana Islands (CNMI) in political union with the United States. As a result of this action, 15,000 to 20,000 persons became citizens of the United States. However, a number of inhabitants of the islands did not gain citizenship due to the terminology of Pub. L. 94–241. This problematic situation has created the need for a viable identity document to distinguish the newly proclaimed citizens born before November 3, 1986, since a record of birth in the CNMI before that date is not conclusive evidence of United States citizenship.

Currently, a United States passport is the only document available to these persons to establish citizenship. However, the CNMI Government has pointed out that:

1. Although passport applications are accepted in the CNMI or Guam, they are processed and issued in the United States;

2. A passport is limited in validity for a period of ten years, and is generally associated with travel to foreign countries rather than a document of identification; and

3. The cost for acquiring passports is beyond the financial means of the low income populace of the CNMI.

Accordingly, the CNMI Government requested, and the Service has agreed, to issue an identification document to those persons who acquired citizenship as a result of creation of the Commonwealth. The issuance will be of a limited duration period of two years, which will allow qualified applicants who became citizens through creation of the Commonwealth to obtain a document.

The document will not be available to persons born in the CNMI after November 3, 1986, as their birth record will be evidence of citizenship at birth.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule will facilitate the issuance of identity cards to newly proclaimed citizens of the CNMI pursuant to Pub. L. 94–241.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act, under control number 1115–0151.

List of Subjects in 8 CFR Part 235

Administrative practice and procedures, Citizenship and naturalization, Reporting and recordkeeping.

Accordingly, Chapter 1 of Title 8, Code of Federal Regulations, is amended as follows:

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

1. The authority citation for Part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1225.

2. In Part 235, a new § 235.12 is added to read as follows:

§ 235.12 Northern Mariana identification card.

(a) *General.* A Northern Mariana identification card to identify the holder as a United States citizen, may be issued to the following persons and their children under 18 years of age, who were born on or before November 3, 1986, and were not citizens or nationals of the United States, and did not owe allegiance to any foreign state on that date:

(1) A person in the Northern Mariana Islands (NMI), and as of November 2, 1986, was a citizen of the Trust Territory of the Pacific Islands and was domiciled as of that date in the Commonwealth of the Northern Mariana Islands (CNMI) or the United States, or any territory or possession of the United States; or

(2) A citizen of the Trust Territory of the Pacific Islands on November 2, 1986, who had been domiciled continuously in the NMI for the preceeding five years and who, unless under age, registered to vote in elections for the NMI District legislature or for any municipal election in the NMI prior to January 1, 1975; or

(3) A person domiciled in the NMI on November 2, 1986, who although not a citizen of the Trust Territory of the Pacific Islands on that date, had been continuously domiciled in the NMI beginning prior to January 1, 1974.

(b) *Application.* The Form I–777, Application for Issuance or Replacement of Northern Mariana Card shall be submitted to the Service office in the United States which has jurisdiction over the applicant's residence. The initial card application Form I–89 shall be completed and forwarded to the Immigration Card Facility with the word "MARIANA" block printed or stamped in the upper right-hand corner (side 1). A replacement card application shall be made on Form I–777 for a lost, mutilated, or destroyed card.

(c) *Duration of application period.* The Northern Mariana identification card will be issued during a two year period to end on July 1, 1990. All cards issued are valid indefinitely subject to the provisions of this section. Replacement cards shall continue to be issued upon application on Form I–777.

Dated: May 19, 1988.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 88–14102 Filed 6–21–88; 8:45 am]

BILLING CODE 4410–10–M

---

8 CFR Part 245a

[INS Number: 1050–88]

Adjustment of Status for Certain Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: Section 201 of the Immigration Reform and Control Act of 1986 (IRCA) provides for the legalization of aliens who have been residing illegally in the United States since before January 1, 1982. The Service's implementing regulations at 52 FR 16205 (May 1, 1987) were amended by an interim rule published at 52 FR 43843 (November 17, 1987). This rule was the effect of adopting as final the amendments put forth in the interim rule with additional changes resulting from a review of the comments received and the Service's operational experience with the legalization program.

EFFECTIVE DATE: June 22, 1988.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Deputy Assistant Commissioner, Legalization, (202) 786–3658.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603 was enacted on November 6, 1986. Implementing regulations, published on May 1, 1987, were subsequently amended on November 17, 1987. The Service wishes to thank the many interested parties for their useful comments regarding the November 17, 1987 regulations. Comments were received from a total of 30 commentors. 25 of the 30 respoonded

as part of one of two groups. In addition to adopting as final the amendments put forth in the interim rule with additional changes resulting from a review of the comments the rule also provides for dependent family members of foreign government representatives (certain Class A and G aliens) and dependents of Foreign Students (Class F–2 aliens), to be found eligible if certain conditions are met. The rule also provides for schools to affirm the fact that reports were forwarded to the Service indicating that a student had violated his or her status. The rule also provides for documentation of nomimmigrant reentries of eligible aliens. Additionally, the rule exends the time period allotted for an applicant to submit a brief on a case that is certified. Finally, the rule provides for corrections to certain sections for minor technical reasons or clarification purposes.

Summary of the Final Rule

One group of commentors suggested that schools be permitted to submit an affirmation, in lieu of actual copies of reports, that indicates a school notified the Immigration and Naturalization Service that a student violated his or her nonimmigrant student status prior to January 1, 1982. The rationale provided was that many schools routinely discard records after a certain period of time. This being the case it would not be possible to submit a copy of the actual report supplied to the Service. The Service agrees with the commentors and § 245a.1(d)(4) is being amended accordingly.

Section 245a.2(b)(8) is being amended to provide that the eligiblity of classes of aliens enumerated in § 245a.2(b) (1) through (7) and (9) through (15) shall not be affected by entries to the United States subsequent to January 1, 1982 that were not documented on Service Form I–94, Arrival-Departure Record.

Comments were received that recommended the Service advise all legalization applicants that a waiver of the 45 day single/180 day aggregate rule involving absences from the United States is possible for emergent or extenuating circumstances outside the control of the alien. The Service has addressed this issue previously in the regulations and legalization applicants are provided an opportunity to elaborate the reasons for extended absences. It was also suggested that the Service consider "liberally" and grant as a "matter of course" waivers for section 212(a)(19) cases. The Service cannot adopt such a banket pre-adjudicative position since every case must rest on its own merits.

Section 245a.2(b)(9) is being amended to provide for the documentation of nonimmigrant entries on Service Form I–94, Arrival-Departure Record.

In response to the Service's regulations found in § 245a.2(b)(11) one commentor suggested the Service provide clarification for dependent A or G status aliens. The Service feels additioal guidance has value and therefore, § 245a.2(b)(11) is being amended to address the dependent family members of Foreign Government Representatives (Class A—A–1, A–2) and Representatives of Foreign Governments that are members of international organizations (Class G—G–1, G–2, G–3, G–4). A dependent family member who may be otherwise eligible for legalization, will be considered a member of this class of eligible aliens if the dependent family member was also in A or G status when the principal A or G alien's status terminated or ceased to be recognized by the Department of State.

Comments were received that recommended the Service make provision for a finding of eligiblity for an F–2 status alien who at the time of admission ws given a Service For I–94, Arrival and Departure Record, with a time certain period of admission extending beyond January 1, 1982 if the F–1 principal alien was found eligible for legalization. Since the F–1 alien had to be in an "unlawful" status to be found eligible and the status of an F–2 alien is contingent on that of the F–1 alien, the F–2 alien should also be eligible. The Service concurs with this recommendation and will amend § 245a.2(b)(12) accordingly.

Section 245a.2(d)(4)(iii) is being amended to clarify the conditions under which an affidavit of support can be filed by other family members. The wording will now read "where family circumstances warrant".

Comments were received expressing concern that the Service's regulation (§ 245a.2(n)(1)) providing for the processing of travel documentation at other than a legalization office would discourage aliens from applying for such authorization. The Service feels that aliens will not be discouraged from applying for travel authorization as a result of a district director determining where travel documentation is to be prepared. The confidentiality provisions of the Immigration Reform and Control Act have been well publicized and aliens who have already come forward to apply for temporary residence should be comfortable in returning to apply for travel authorization. Consequently, § 245a.2(n)(1) will not be amended.

The Immigration Reform and Control Act, as a matter of law, gives legalization and SAW applicants the right to administrative appellate review. For an appeal, an applicant has thrity (30) days within which to submit a brief. The Service feels that a like period should be allowed for the submission of a brief when a case is certified to the Administrative Appeals Unit. Section 245a.2(r) is, therefore, being amended to provide for the submission of a brief within thirty (30) days from receipt of a notice of certification of a case to the Administration Appeals Unit.

The Service, after careful internal review and consultation with the Department of Justice, Office of Legal Counsel, concludes that information obtained from applicants under section 245A of the Immigration and Nationality Act may not be used in deportation proceedings. Consequently, § 245a.2(t)(4) is being amended to remove the provision of issuing an Order to Show Cause and Warrant of Arrest if the United States Attorney declines to prosecute a case involving fraud or willful misrepresentation or concealment of a material fact, knowingly providing a false writing or document in making of an application, knowingly making a false statement or representation, or engaging in any other activity prohibited by section 245A(c)(6) of the Act.

Commentors suggested a change in § 245a.3(b)(3) concerning the location of the commission of crimes. The change was suggested in order to conform with the definitions of the terms felony and misdemeanor found in § 245a.1 (o) and (p). The Service concurs and the regulations will be amended accordingly.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

This rule contains information collection requirements which have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The Office of Management and Budget control numbers for these collections are contained in 8 CFR Part 299.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status, Permanent resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 245A—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99-603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

1. The authority citation for Part 245a continues to read as follows:

Authority: Pub. L. 99-603, 100 Stat. 3359; 8 U.S.C. 1101 note.

2. Section 245a.1(d)(4) is revised to read as follows:

§ 245a.1 Definitions.

* * * * *

(d) * * *

(4) The applicant produces documentation from a school approved to enroll foreign students under § 214.3 which establishes that the said school forwarded to the Service a report that clearly indicated the applicant had violated his or her nonimmigrant student status prior to January 1, 1982. A school may submit an affirmation that the school did forward to the Service the aforementioned report and that the school no longer has available copies of the actual documentation sent. In order to be eligible under this part, the applicant must not have been reinstated to nonimmigrant student status.

* * * * *

3. Section 245a.2(b) (8), (9), (11) and (12) are revised to read as follows:

§ 245a.2 Application for temporary residence.

* * * * *

(b) * * *

(8) An alien's eligibility under the categories described in section 245(a)(2)(b) (1) through (7) and (9) through (15) shall not be affected by entries to the United States subsequent to January 1, 1982 that were not documented on Service Form I-94, Arrival-Departure Record.

(9) An allien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant, such entry being documented on Service Form I-94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.

* * * * *

(11) A nonimmigrant who entered the United States for duration of status ("D/S") is one of the following classes, A, A-1, A-2, G, G-1, G-2, G-3 or G-4, whose qualifying employment terminated or who ceased to be recognized by the Department of State as being entitled to such classification prior to January 1, 1982, and who has thereafter continued to reside in the United States in an unlawful status. An alien who was a dependent family member and who may be otherwise eligible for legalization may be considered a member of this class of eligible aliens if the dependent family member was also in A and G status when the principal A or G alien's status terminated or ceased to be recognized by the Department of State.

(12) A nonimmigrant who entered the United States for duration of status ("D/S") in one of the following classes, F, F-1, or F-2, who completed a full course of study, including practical training and whose time period if any to depart the United States after completion of study expired prior to January 1, 1982 and who has remained in the United States in an unlawful status since that time. A dependent F-2 alien otherwise eligible who was admitted into the United States with a specific time period, as opposed to duration of status, documented on Service Form I-94, Arrival-Departure Record that extended beyond January 1, 1982 is considered eligible if the principal F-1 alien is found eligible.

* * * * *

4. Section 245a.2(d)(4)(iii) is revised to read as follows:

§ 245a.2 Application for temporary residence.

* * * * *

(d) * * *

(4) * * *

(iii) Form I-134, Affidavit of Support, completed by a spouse in behalf of the applicant and/or children of the applicant or a parent in behalf of children which guarantees complete or partial financial support. Acceptance of the affidavit of support shall be extended to other family members where family circumstances warrant.

* * * * *

5. Section 245a.2(r) is revised to read as follows:

§ 245a.2 Application for temporary residence.

* * * * *

(r) *Certifications.* The Regional Processing Facility director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) when the case involves an unusually complex or novel question of law or fact. The party affected shall be given notice of such certification and of the right to submit a brief within thirty (30) days from service of the notice.

* * * * *

6. Section 245a.2(t)(4) is revised to read as follows:

§ 245a.2 Application for temporary residence.

* * * * *

(t) * * *

(4) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

* * * * *

7. Section 245a.3(b)(3) is revised to read as follows:

§ 245a.3 Application for adjustment from temporary to permanent resident status.

* * * * *

(b) * * *

(3) Is admissible to the United States as an immigrant, except as otherwise provided in paragraph (f) of this section; and has not been convicted of any felony, or three or more misdemeanors; and

* * * * *

Dated: April 20, 1988.

Alan C. Nelson,

Commissioner.

[FR Doc. 88-14103 Filed 6-21-88; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 34, 71, and 73

Retention Periods for Records; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule appearing in the Federal Register on May 27, 1988 (53 FR 19240) which establishes a definite retention

period for each record that must be maintained under a materials or facilities license or application. This action is necessary to update a cross reference to a redesignated section and to correct several printing errors.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Brenda J. Shelton, Chief, Records and Reports Management Branch, Division of Information Support Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–8132.

SUPPLEMENTARY INFORMATION:

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

§ 30.34 [Corrected]

1. On page 19245, in the seventh line of § 30.34(g), the reference reading "§ 35.14(b)(4) (i) through (iv)" should be corrected to read "§ 35.204".

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

§ 34.4 [Corrected]

2. On page 19246, in the fifth line of § 34.4, the word "or" should be corrected to read "of".

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

§ 71.101 [Corrected]

3. On page 19256, in the fourth line of § 71.101(b), the reference to "77.101" should be corrected to read "§71.101".

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

§ 73.46 [Corrected]

4. On page 19258, in the first line of § 73.46(d)(10), the word "existing" should be corrected to read "exiting".

5. On page 19258, in the second line of § 73.46(h)(1), the word "safeguard" should be corrected to read "safeguards".

Dated at Bethesda, Maryland, this 16th day of June 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.

[FR Doc. 88–14051 Filed 6–21–88; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 261

[Docket No. R-0601]

Rules Regarding Availability of Information; Correction

AGENCY: Board of Governors of the Federal Reserve Systems.

ACTION: Final rule; correction.

SUMMARY: The Board of Governors of the Federal Reserve System is clarifying references to public access to computer tapes contained in its Rules Regarding Availability of Information, which appeared in the **Federal Register** on June 7, 1988 (53 FR 20812).

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division (202/452–3920); Elaine M. Boutilier, Senior Attorney, Legal Division (202/452–2418); Kenneth M. Kinoshita, Attorney, Legal Division (202/452–3721); or for the hearing impaired *only*, Telecommunications Device for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On June 7, 1988 (53 FR 20812), the Board promulgated in the final form its revised Rules Regarding Availability of Information. This rule contained an error concerning the procedure for obtaining access to data files contained on computer tapes which is corrected below.

1. Section 261.5(d)(5), located at the seventh full paragraph in the first column on page 20817 currently reads, "(5) *Computer tapes.* The Board periodically prepares data of various kinds on computer tapes, which are available to the public upon request pursuant to a current schedule of charges." It is revised to read as follows:

§ 261.5 [Corrected]

* * * * *

(d) * * *

(5) *Computer tapes.* The Board periodically prepares data of various kinds on computer tapes, which are available to the public through the National Technical Information Service and may be obtained by the procedure described in § 261.6(c)(3) of this regulation.

By order of the Board of Governors of the Federal Reserve System, June 16, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–13974 Filed 6–21–88; 8:45 am]

BILLING CODE 6210–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34–25806, File No. S7–1–88]

Revision of Form BD

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of form revision.

SUMMARY: The Commission is adopting a revision of Form BD, the form which is filed by an applicant to become registered as a broker-dealer. The purpose of the revision is to provide, on Form BD, that the applicant consents that service of process relating to an application for a protective decree filed by the Securities Investor Protection Corporation may be given to the applicant's contact employee at the address listed on Form BD. In addition, the Commission is adopting a technical revision to Form BD.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Henry E. Flowers, Esq., at (202) 272–2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

In May 1987, the Commission proposed for comment a revision to Form BD,[1] the uniform registration form that is filed by an applicant to become registered as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act"). The proposed revision provided that the applicant consents that service of any civil action brought by or notice of any proceeding before the Commission or any self-regulatory organization ("SRO") in connection with the applicant's broker-dealer activities may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address identified on Form BD, or mailing address if different.

[1] Securities Exchange Act Release No. 24402 (May 7, 1987), 52 FR 17301. *See* 17 CFR 249.501.

The Commission received one comment letter on the proposed revision.[2] The commentator, the Securities Investor Protection Corporation ("SIPC"), requested that the proposed Form BD consent provision be expanded to include language explicitly providing that the applicant broker-dealer consents that service or notice of any application for a protective decree ("application") filed by SIPC may be given in the same manner as provided in the proposed consent, that is, by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address identified on form BD, or mailing address if different.

In January 1988, the Commission adopted the amendment to Form BD providing for consent to service of process for civil, administrative, and SRO actions,[3] and proposed for comment inclusion on Form BD of consent to service of process in connection with SIPC applications.[4]

II. Discussion

SIPC's request arose from the difficulty it has experienced in a number of instances in obtaining adequate service of process in applications for protective decrees for broker-dealers that failed financially. These difficulties have resulted in delays in filing applications or in some cases refusals to entertain such applications by the courts. SIPC, a non-profit membership corporation,[5] created by the Securities Investor Protection Act of 1970 ("SIPA"), files applications for protective decrees in its essential role of providing protection to customers of member broker-dealers that fail financially.[6] If SIPC concludes that a member broker-dealer has failed or is in danger of failing to meet its obligations to customers, and finds conditions suggestive of financial irresponsibility, SIPC, upon notice to the member broker-dealer, files an application for a protective decree in a United States District Court.[7] If the court agrees with SIPC's determination, it will appoint a trustee to oversee the liquidation of the member broker-dealer. SIPC is required to advance the trustee sufficient funds to ensure that customers of the broker-dealer receive return of their funds and securities left with the broker-dealer up to certain limits. SIPC funds are available to satisfy the claims of each customer up to a maximum of $500,000 including up to $100,000 on cash claims (as distinct from claims for securities).

Thus, SIPC's ability to obtain timely service of its applications for protective decrees is important for the protection of customers of broker-dealers that fail financially. SIPC has no simple way of obtaining consent to service of process on its own behalf. Consequently, adding to Form BD a provision providing for consent to service of process on behalf of SIPC is the most feasible method of obtaining this consent.[8]

A. Consent to Service of SIPC Applications

The Commission's revision to Form BD provides that the applicant consents that service of process for an application for a protective decree filed by SIPC may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address identified on Form BD, or mailing address if different. The Commission received one comment letter on the revision. The commentator, SIPC, favored approval of this proposal.[9] The Commission has determined to adopt the revision as proposed, effective August 1, 1988. The Membership of the North American Securities Administrators Association ("NASAA") approved inclusion of the consent provision on the form at NASAA's Annual Spring Meeting in April. New broker-dealers will be required to provide the consent when completing the Form BD initially; existing broker-dealers will be required to provide the consent only when they amend Form BD for some other reason.

B. Technical Amendment Relating to Fiscal Year Information

In addition, the Membership of NASAA Forms Revision Committee has informed the Commission that many states require information concerning an applicant's fiscal year, and believes that Form BD is the most effective means of obtaining this information. Currently, disclosure of such information is not required on Form BD. At its Spring Meeting in April 1988, the NASAA membership approved an amendment to Form BD requiring fiscal year disclosure. In order to accommodate the needs of the various states, the Commission also is amending Item 3 of the form to require an applicant to disclose its fiscal year-end.

The Commission finds, pursuant to section 553(b)(3)(B) of the Administrative Procedure Act, that notice and comment is not necessary for this form amendment because of the minor nature of the change involved, the absence of burdens on broker-dealers completing the form,[10] the amendment's prospective application, and the impracticability of separately publishing for public comment this minor change.

III. Competition Findings

Section 23(a)(2) of the Exchange Act [11] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the revision in light of the standard cited in section 23(a)(2) and believes that adoption of this change will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

IV. Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), Chairman Ruder certified when the revision to Form BD was proposed that this

---

[2] Letter from Theodore H. Focht, President and General Counsel, Securities Investor Protection Corporation to Jonathan G. Katz, Secretary, SEC (June 5, 1987).

[3] Securities Exchange Act Release No. 25285 (January 22, 1988), 53 FR 2484.

[4] Securities Exchange Act Release No. 25286 (January 22, 1988), 53 FR 2854.

[5] SIPC membership is composed of all broker-dealers registered under section 15(b) of the Exchange Act, with some minor exceptions.

[6] SIPC's functions are subject to broad Commission supervision. SIPC must file with the Commission proposed rule changes for approval and proposed by-law changes which become effective thirty days after filing unless disapproved by the Commission. The Commission can require SIPC to adopt, amend, or repeal any by-laws or rules. The Commission may examine SIPC's operations and require SIPC to furnish it with such reports as it considers to be in the public interest. In addition, should SIPC fail to file an application for a protective decree in what the Commission determines to be an appropriate case, the Commission may apply to United States District Court for an order compelling SIPC to file an application for a protective decree. 15 U.S.C. 78ggg(b).

[7] The Commission and SROs provide SIPC's only official channel of information regarding the financial health of its members. It does not receive regular filings, and the SROs serve as collection agents for SIPC-imposed assessments.

[8] The Commission has accommodated SIPC's needs in other settings. For instance, when a broker-dealer files notice of withdrawal from registration as a broker-dealer, such withdrawal becomes effective for SIPA purpose's six months after the effective date of broker-dealer withdrawal to allow SIPC to step in to satisfy any customer claims arising during this period that the broker-dealer is unable to satisfy. Exchange Act Rule 15b6-1(c), 17 CFR 240.15b6-1(c). This rule was basically incorporated in SIPA in 1978.

[9] Letter from Theodore H. Focht, President & General Counsel, SIPC, to Jonathan G. Katz, Secretary, SEC (February 5, 1988).

[10] Broker-dealers are already required to provide this information to the Commission under Rule 17a-5 of the Exchange Act. 17 CFR 240.17a-5.

[11] 15 U.S.C. 78w(a)(2).

revision, if adopted, would not have a significant economic impact on a substantial number of small entities. No comments were received on the certification.

V. Statutory Authority

The Securities and Exchange Commission hereby adopts the revision to Form BD which is referenced in § 249.501a of the CFR, pursuant to its authority under the Exchange Act and particularly section 15(b), 17(a), and 23(a) of the Exchange Act thereof (15 U.S.C. 78*o*(b), 78q(a) and 78w(a)).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Form BD prescribed by § 249.501 is amended by revising the Execution paragraph and item 3 to read as follows:

* * * * *

Execution:

* * * * *

The applicant consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission or any self-regulatory organization in connection with the applicant's broker-dealer activities, or of any application for a protective decree filed by the Securities Investor Protection Corporation, may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address, or mailing address if different, given in Item 1G.

* * * * *

3. Date of formation _____.

(MM/DD/YY)

Applicant's fiscal year ends _____.

(MM/DD)

Place of filing _____ for:

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: June 16, 1988.

[FR Doc. 88-14092 Filed 6-21-88; 8:45 am]

BILLING CODE 8010-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 7H5544/R966; FRL-3402-4]

Tolerances for N,N-Dimethylpiperidinium Chloride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes temporary food additive and feed additive regulations to permit the plant growth regulator *N,N*-dimethylpiperidinium chloride in raisins at 6.0 parts per million (ppm), raisin waste at 26 ppm, and grape pomace (wet and dry) at 3.0 ppm. These regulations to establish the maximum permissible levels for residues of the pesticide in or on the commodities were requested pursuant to a petition by BASF Corp.

DATES: Effective June 22, 1988. These temporary tolerances expire June 30, 1989.

ADDRESS: Written objections, identified by the document control number, [FAP 7H5544/R966], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 27, 1987 (52 FR 42537), in which it was announced that BASF Wyandotte Corp., Chemicals Division, 100 Cherry Hill Rd., Parsippany, NJ 07054, had submitted a food additive petition (FAP 7H5544) proposing to amend 21 CFR 561.197 by establishing a regualtion to permit the residues of the herbicide *N,N*-dimethylpiperidinium chloride in or on raisins at 6.0 parts per million (ppm), raisin waste at 26.0 ppm, and grape pomace, wet and dry, at 3.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

No comments were received in response to the notice of filing.

Subsequently, a review of the notice indicated that the following revision in wording is needed: The word "herbicide" should be replaced with "plant growth regulator," and in addition, the processed food commodity raisins was inadvertently listed under 21 CFR Part 561 instead of 21 CFR Part 193. Because these revisions pose no additional risk to humans, a period of public comment is not necessary.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerances include several actute studies, a 90-day feeding study with rats fed dosages of 0, 5, 15, 50, and 150 milligrams/kilograms (mg/kg) body weight/day with a no-observed-effect level (NOEL) of 50 mg/kg/day; a 90-day feeding study in dogs fed dosages of 0, 2.5, 7.5, 25, and 75 mg/kg/day with a NOEL of 25 mg/kg/day; a 2-year feeding/oncogenicity study in rats fed dosages of 0, 5, 15, 50, 150, and 450 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 450 mg/kg/day (highest dose tested [HDT]) with a systemic NOEL of 50 mg/kg/day; a 2-year feeding/oncogenicity study in mice fed dosages of 0, 15, 45, 150, and 450 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 450 mg/kg/day with a systemic NOEL of 150 mg/kg/day; a teratology study with rats fed dosages of 0, 15.9, 53.9, and 340 mg/kg/day with no teratogenic effects occurring at 340 mg/kg/day (HDT) and a maternal NOEL greater than 340 mg/kg/day; a three-generation reproduction study in rats fed dosages of 0, 15.9, 53.29, and 340 mg/kg/day with no reproductive effects observed at 340 mg/kg/day (HDT) and a NOEL greater than 340 mg/kg/day; and a dominant-lethal mouse mutagenic study, which was negative at 450 mg/kg/day (HDT).

The provisional acceptable daily intake (PADI) based on the 90-day dog feeding study (NOEL of 25 mg/kg/day) and using a thousandfold safety factor is calculated to be 0.03 mg/kg/day. The theoretical maximum residue contribution from existing tolerances is calculated to be 0.000872 mg/kg/day. The current action (including temporary tolerances for the raw agricultural commodity grapes) will utilize 0.84 percent of the PADI. Published tolerances utilize 2.91 percent of the PADI.

Data lacking are mutagenicity studies to assess gene mutation and primary DNA damage, a 1-year feeding study in dogs, a teratology study in rabbits, and metabolism data. These data are required before establishment of permanent tolerances. The available toxicity data are sufficient to support these temporary tolerances.

The pesticide is considered useful for the purposes for which the regulation is sought. The nature of the residue is adequately understood for the purpose of establishing these temporary food/feed additive tolerances. Adequate analytical methodology is available for enforcing the proposed temporary tolerances on grapes and the proposed fractions derived from treated grapes in the Pesticide Analytical Manual, Vol. II (gas chromatography using a nitrogen-specific detector). There are currently no

pending actions against the registration of this chemical. Any secondary residues occurring in meat, milk, poultry, and eggs will be covered by existing tolerances on these commodities.

It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 751 (7 U.S.C. 136 et seq.)). Therefore, these regulations are established as set forth below and expire on June 30, 1989.

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

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

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

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 21 CFR Parts 193 and 561

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

Dated: June 3, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 193—[AMENDED]

1. In part 193:

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

Authority: 21 U.S.C. 348.

b. New § 193.480 is added to read as follows:

§ 193.480 N,N-Dimethylpiperidinium chloride.

(a) A tolerance of 6 parts per million is established for residues of the plant growth regulator *N,N*-dimethylpiperidinium chloride in the processed fraction raisins, resulting from application of the plant regulator to the growing crop groups. Such residues may be present therein only as a result of the application of the plant growth regulator to the growing grapes treated under an experimental use permit that expires June 30, 1989.

(b) Residues in or on raisins not in excess of 6 parts per million resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental use program will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the emergency use permit and food additive tolerance.

(c) BASF Corp. shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

2. In Part 561:

PART 561—[AMENDED]

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

Authority: 21 U.S.C. 348.

b. In § 561.197, the existing text is designated paragraph (a) and new paragraph (b) is added, to read as follows:

§ 561.195 N,N-Dimethylpiperidinium chloride.

* * * * *

(b) A feed additive regulation is established permitting the combined residues of the plant growth regulator *N,N*-dimethylpiperidinium chloride in or on the following feeds resulting from application of the plant growth regulator to grapes in accordance with an experimental use program. The conditions set forth below shall be met.

Feeds	Parts per million	Expiration date
Raisin waste	26.0	06/30/89
Grape pomace (wet and dry)	3.0	06/03/89

(1) Residues in the feed not in excess of the established tolerance resulting from the use described in this paragraph remaining after expiration of the experimental program will not be considered to be actionable if the plant growth regulator applied during the term of and in accordance with the provisions of the experimental use program and feed additive regulation.

(2) The company concerned shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee the Environmental Protection Agency or the Food and Drug Administration.

(3) The temporary tolerances expire June 30, 1989.

[FR Doc. 88-14035 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

21 CFR Parts 193 and 561

[FAP 6H5479/R968; FRL-3402-6]

Tolerances for Quizalofop Ethyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish regulations to permit the combined residues of the herbicide quizalofop ethyl and its metabolite in or on the food commodity soybean flour and the feed commodities soybean hulls, soybean meal, and soybean soapstock. These regulations to establish maximum permissible levels for the combined residues of the herbicide on these commodities were requested pursuant to a petition by E.I. du Pont de Nemours & Co., Inc.

EFFECTIVE DATE: June 22, 1988.

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

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of December 26, 1985 (50 FR 52851), which announced the E.I. du Pont de Nemours & Co., Inc., Barley Mill Plaza, Wilmington, DE 19898, had filed

food/feed additive petition (FAP) 6H5479 proposing to amend 21 CFR Part 193 (food commodity) and 21 CFR Part 561 (feed commodity) by establishing a regulation permitting the combined residues of the herbicide quizalofop (2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoic acid) and quizalofop ethyl (ethyl 2-[4-(6-chloroquinoxalin-2-yloxy)phenoxy]propanoate), all expressed as quizalofop ethyl, in or on the food commodity soybean flour at 0.5 part per million (ppm) and feed commodities soybean hulls at 0.2 ppm, soybean meal at 0.5 ppm, and soybean soapstock at 1.0 ppm.

No comments were received in response to the notice of filing.

The petitioner subsequently amended the petition by submitting a revised Section F proposing tolerances for the combined residues of the herbicide and its metabolites on the food commodity soybean flour at 0.5 ppm and the feed commodities soybean hulls at 0.02 ppm, soybean meal at 0.5 ppm, and soybean soapstock at 1.0 ppm. Because there is no potential increase in risk to humans from the revised proposal, no period of public comment is needed.

The data submitted in the petition and other relevant material have been evaluated and discussed in a related final rule document (PP 5F3252/R969) appearing elsewhere in this issue of the Federal Register and establishing tolerances on soybeans.

The pesticide is considered useful for the purpose for which the regulations are sought. The nature of the residue is adequately understood for the purpose of establishing the food and feed additive regulations. Adequate methodology is available for enforcement purposes and is discussed in the related document.

It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 975 (7 U.S.C. 136 *et seq.*)). Therefore, the regulations are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after the date of publication in the Federal Register, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M Street SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulations deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted these regulations from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

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

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Feed additives, Pesticides and pests.

Dated: June 10, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 193—[AMENDED]

1. Part 193 is amended as follows:

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 193.481, to read as follows:

§ 193.481 Quizalofop ethyl.

A food additive regulation is established to permit the combined residues of the herbicide quizalofop (2-[4-(6-chloroquinoxalin-2-yl oxy) phenoxy]propanoic acid) and quizalofop ethyl (ethyl 2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy] propanoate, all expressed as quizalofop ethyl in or on the food commodity soybean flour at 0.5 part per million (ppm).

PART 561—[AMENDED]

2. Part 561 is amended as follows:

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 561.445, to read as follows:

§ 561.445 Quizalofop ethyl.

A feed additive regulation is established to permit the combined residues of the herbicide quizalofop (2-[4-(6-chloroquinoxalin-2-yl oxy) phenoxy]propanoic acid) and quizalofop ethyl (ethyl 2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy] propanoate, all expressed as quizalofop ethyl, in or on the feed commodities:

Commodities	Parts per million
Soybean hulls	0.02
Soybean meal	0.5
Soybean soapstock	1.0

[FR Doc. 88-14039 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

21 CFR Parts 193 and 561

[PP 7H5537/R970; FRL-3401-8]

Pesticide Tolerances for 2-[1-(Ethoxyimino)butyl]-5-[2-(Ethylthio)propyl]-3-Hydroxy-2-Cyclohexen-1-one

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a regulation to permit the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety, calculated as parent, in or on the food commodities potato flakes and potato granules and the feed commodity processed potato waste (wet and dry). This regulation to establish a maximum permissible level for the combined residues of the herbicide on these commodities was requested pursuant to a petition by the BASF Corp.

EFFECTIVE DATE: June 22, 1988.

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

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 243, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of August 5, 1987 (52 FR 29061),

which announced that the BASF Corp., P.O. Box 181, 100 Cherry Hill Rd., Parsippany, NJ 07054, had submitted a food additive petition proposing to amend 21 CFR Part 193 by establishing a regulation to permit the residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the parent) in or on the processed food commodities potato flakes at 8.0 parts per million (ppm) and potato granules at 8.0 ppm.

No comments were received in response to the notice of filing.

During the review process, it was determined that a feed additive tolerance was necessary. Therefore, the petitioner amended this petition by submitting a revised Section F proposing that a feed additive tolerance be established under 21 CFR 561.430 for the combined residues of the herbicide and metabolites in or on the animal feed item processed potato waste (wet and dry) at 8.0 ppm. This feed item is not consumed by humans, nor does the feed tolerance increase previously established tolerances. Since there is no potential risk to humans from establishment of the feed tolerance, a period of public comment is unnecessary.

The data submitted in the petition and other relevant material have been evaluated and discussed in a related final rule document (PP 7F3529/R971) establishing a tolerance on potatoes.

The petition is considered useful for which the regulation is sought. The nature of the residue is adequately understood for the purpose of establishing the food and feed additive regulations. Adequate analytical methodology is available for enforcement purposes in the *Pesticide Analytical Manual*, Vol. II (gas chromatography using a sulfur-specific flame photometric detector).

It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 751 (7 U.S.C. 136 et seq.)). Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal **Register** of May 4, 1981 (46 FR 24950). (21 U.S.C. 348)

List of Subjects in 40 CFR Part 180

Food additives, Feed additives, Pesticides and pests.

Dated: June 15, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

§ 193.479 [Amended]

b. In § 193.479 *2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one* by adding at the end of the current text the following phrase: "and the food commodities potato flakes and potato granules, at 8.0 parts per million."

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 561.430 by adding and alphabetically inserting in the list of commodities the following entry, to read as follows:

§ 561.430 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one.

* * * * *

Commodity	Parts per million
* * * * *	
Processed potato waste (wet and dry)	8.0
* * * * *	

[FR Doc. 88-14036 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

21 CFR Parts 193 and 561

[OPP-300171A; FRL-3399-8]

Updating of Pesticide Names; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This document clarifies certain information in a final rule that updated the names of several pesticides listed in 21 CFR Parts 193 and 561 to reflect current American National Standards Institute (ANSI) common names. These are merely technical amendments that impose no new regulatory requirements; therefore, advance notice and public comment are unnecessary.

EFFECTIVE DATE: June 22, 1988.

FOR FURTHER INFORMATION CONTACT:

Charles L. Trichilo, Hazard Evaluation Division (TS-769C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 27, 1987 (52 FR 32292), EPA issued a final rule amending 21 CFR Parts 193 and 561 to update the names of three currently listed pesticides by changing them to reflect current American National Standards Institute (ANSI) common names. This document clarifies certain information presented in that document.

For the two regulations in Part 193 and three regulations in Part 561 that were amended by the final rule, only the common name of the pesticide will appear in the heading of the regulation, but both the common name and the chemical name of the pesticide will be included in the text of the regulation. Each regulation discussed in this document is being further amended to include the Chemical Abstracts Service (CAS) registry number for the pesticide and, wherever necessary, by revising the chemical name to be consistent with

the CAS 9th Collective Index of chemical names. Also, §§ 193.430, 561.400, and 561.425 are being reformatted to include a columnar listing of the commodities and tolerances. No new regulatory requirements are being added. The changes being made are merely technical amendments to clarify existing regulations.

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feed, Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: June 9, 1988.

Juanita Wills,

Acting Director, Registration Division Office of Pesticide Programs.

Therefore, the following technical amendments are made to 21 CFR Parts 193 and 561:

1. In Part 193:

PART 193—[AMENDED]

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

Authority: 21 U.S.C. 348.

b. In § 193.142, by revising the introductory text to read as follows:

§ 193.142 Diazinon.

A regulation is established permitting the use of the insecticide diazinon [*O,O*-diethyl *O*-[6-methyl-2-(1-methylethyl)-4-pyrimidinyl] phosphorothioate; CAS Reg. No. 333–41–5] in food-handling establishments in accordance with the following prescribed conditions:

* * * * *

c. Section 193.430 is revised to read as follows:

§ 193.430 Cyhexatin.

Tolerances are established for combined residues of the insecticide cyhexatin [tricyclohexylhydroxystannane; CAS Reg. No. 13121–70–5] and its organotin metabolites (calculated as cyhexatin) in or on the following processed foods when present therein as a result of application of this insecticide to the growing crops:

Foods	Parts per million
Hops, dried	90
Prunes, dried	4

2. In Part 561:

PART 561—[AMENDED]

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

Authority: 21 U.S.C. 348.

b. Section 561.400 is revised to read as follows:

§ 561.400 Cyhexatin.

Tolerances are established for combined residues of the insecticide cyhexatin [tricyclohexylhydroxystannane; CAS Reg. No. 13121–70–5] and its organotin metabolites (calculated as cyhexatin) in or on the following processed foods when present therein as a result of application of the insecticide to the growing crops:

Feeds	Parts per million
Apple pomace, dried	8
Citrus pulp, dried	8

c. In § 561.415, by revising the introductory text to read as follows:

§ 561.415 Diazinon.

A regulation is established permitting the use of the insecticide diazinon [*O,O*-diethyl *O*-[6-methyl-2-(1-methylethyl)-4-pyrimidinyl] phosphorothioate; CAS Reg. No. 333–41–5] in animal feed-handling establishments in accordance with the following prescribed conditions:

* * * * *

d. Section 561.425 is revised to read as follows:

§ 561.425 Dimethipin.

A tolerance is established for residues of the harvest growth regulant dimethipin [2,3-dihydro-5,6-dimethyl-1,4-dithiin 1,1,4,4-tetraoxide; CAS Reg. No. 55290–64–7] in or on the following processed feeds when present therein as a result of application of the harvest growth regulant to the growing crops:

Feeds	Part per million
Cottonseed hulls	0.7

[FR Doc. 88–13809 Filed 6–21–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 522, and 555

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of several new animal drug applications (NADA's) from Parke-Davis, Division of Warner-Lambert Co. to Fort Dodge Laboratories.

EFFECTIVE DATE: June 22, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3442.

SUPPLEMENTARY INFORMATION: Parke-Davis, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950, has informed FDA of a transfer of sponsorship for several NADA's to Fort Dodge Laboratories, Fort Dodge, IA 50501. Fort Dodge Laboratories also informed FDA of the sponsor change. The NADA's affected are:

NADA	Product	Ingredient
10–809	Surital® for Injection	Thiamylal sodium.
45–290	Vetalar® Injection	Ketamine hydrochloride.
55–047	Chloromycetin Palmitate Oral Suspension.	Chloramphenicol palmitate.
55–051	Chloromycetin Tablets.	Chloramphenicol
65–149	Chloromycetin Veterinary Ophthalmic Ointment.	Do.
95–641	Arquel® 5 percent Granulation Packet.	Meclofenamic acid
110–201	Arquel® Tablets	Do.

This sponsor change does not involve any changes in manufacturing facilities, equipment, procedures, or production personnel.

FDA is amending 21 CFR 520.1330, 520.1331, 522.1222a, 522.2424, 555.110a, 555.111, and 555.310c to reflect the change of sponsor.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 522

Animal drugs.

21 CFR Part 555

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine,

Parts 520, 522, and 555 are amended as follows:

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

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

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

§ 520.1330 [Amended].

2. Section 520.1330 *Meclofenamic acid granules* is amended in paragraph (c) by removing No. "000071" and adding in its place No. "000856."

§ 520.1331 [Amended].

3. Section 520.1331 *Meclofenamic acid tablets* is amended in paragraph (b) by removing No. "000071" and adding in its place No. "000856."

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

4. The authority citation for 21 CFR Part 522 continues to read as follows:

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

§ 522.1222a. [Amended].

5. Section 522.1222a *Ketamine hydrochloride injection* is amended in paragraph (c)(2) by removing No. "000071" and adding in its place No. "000856."

§ 522.2424 [Amended].

6. Section 522.2424 *Sodium thiamylal for injection* is amended in paragraph (b) by removing No. "000071" and adding in its place No. "000856."

PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

7. The authority citation for 21 CFR Part 555 continues to read as follows:

Authority: Sec. 512(i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b(i) and (n)); 21 CFR 5.10 and 5.83.

§ 555.110a [Amended].

8. Section 555.110a *Chloramphenicol tablets* is amended in paragraph (c)(1)(ii) by removing No. "000071" and adding in its place No. "000856."

§ 555.111 [Amended].

9. Section 555.111 *Chloramphenicol palmitate oral suspension* is amended in paragraph (c)(2) by removing No. "000071" and adding in its place No. "000856."

§ 555.310c [Amended].

10. Section 555.310c *Chloramphenicol ophthalmic ointment* is amended in paragraph (c)(2) by removing No. "000071" and adding in its palce No. "000856."

Dated: June 15, 1988.

Richard A. Carnevale,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-13976 Filed 6-21-88; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL 3401-1]

Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: On May 2, 1988, the North Carolina Division of Environmental Management requested delegation of authority for the implementation and enforcement of a standard in 40 CFR Part 60 (Standards of Performance for New Stationary Sources) that had been promulgated on September 15, 1987. On June 1, 1988, this standard was delegated to North Carolina.

DATE: The effective date of the delegation is June 1, 1988.

ADDRESS: Copies of the request for delegation of authority and EPA's letter of delegation of authority may be examined during normal business hours at the Agency's regional office, 345 Courtland Street NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standard (identified below) should be submitted to Mr. N. Ogden Gerald, P.E., Chief, Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, North Carolina 27611–7687.

FOR FURTHER INFORMATION CONTACT: Gregg M. Worley of the EPA Region IV Air Programs Branch, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Section 111(c)(1) of the Clean Air Act (CAA) authorizes 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 may enforce a NSPS under State law and in State court, not under section 113(b) of the Clean Air Act in Federal court.

On May 2, 1988, the North Carolina Division of Environmental Management (NCDEM) requested delegation of authority of NSPS for Subpart BBB (Rubber Tire Manufacturing Industry), which was promulgated on September 15, 1987.

After thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for this source category with all the conditions set forth in the delegation letter of November 24, 1976.

I certify, pursuant to 5 U.S.C. 605(b), that this delegation will not have a significant impact on a substantial number of small entities.

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

Authority: Section 111 of the Clean Air Act as amended [42 U.S.C. 7411].

Date: June 9, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88-14034 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP 300186A; FRL-3402-3]

Pesticide Tolerance for Methidathion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends the tolerance for residues of the insecticide methidathion by removing the existing tolerances for residues in or on the raw agricultural commodities grapefruit, lemons, and oranges, and by establishing a tolerance for the crop grouping citrus fruits (except mandarins) and a tolerance for mandarins, thereby consolidating and expanding the existing tolerances and making the citrus tolerance consistent with that set by the Codex Alimentarius Commission.

EFFECTIVE DATE: June 22, 1988.

ADDRESS: Written objections, identified by the document control number, [OPP-300186A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 12, Registration Division (TS-767C), Environmental Protection

Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2386.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of May 4, 1988 (53 FR 15855), in which it proposed the amendment of § 180.298 *Methidathion; tolerances for residues* (40 CFR 180.298) by removing existing tolerances for residues of the raw agricultural commodities grapefruit, lemons, and oranges and by establishing a tolerance for the crop grouping citrus fruits (except mandarins) and a tolerance for mandarins, thereby consolidating and expanding the existing tolerances and making the citrus tolerance consistent with that set by the Codex Alimentarius Commission, which is concerned with the development of international food standards, including tolerances for pesticide residues in food.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data considered in support of the proposed tolerances and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the regulation is established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: June 3, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.298(a) is amended by deleting the entries for grapefruit, lemons, and oranges and by adding new entries for citrus fruits (except mandarins) and mandarins, to read as follows:

§ 180.298 Methidathion; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Citrus fruits (except mandarins)	2.0
* * * * *	
Mandarins	6.0
* * * * *	

[FR Doc. 88–14038 Filed 6–21–88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 5F3252/R969; FRL-3402-5]

Pesticide Tolerance for Quizalofop Ethyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the residues of the herbicide quizalofop ethyl and its metabolites on various raw agricultural commodities (RACs). This regulation was requested by E.I. du Pont de Nemours & Co., Inc., and establishes the maximum permissible level for residues of the herbicide in or on these RACs.

EFFECTIVE DATE: June 22, 1988.

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

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of August 21, 1985 (50 FR 33840), which announced that E.I. du Pont de Nemours & Co., Inc., Walkers Mill Building, Barley Mill Plaza, Wilmington, DE 19898, had filed pesticide petition (PP) 5F3252 proposing to amend 40 CFR Part 180 by establishing tolerances for the residues of the herbicide quizalofop ethyl (2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]-propanoate) and its acid metabolite 2-[4-(6-chloroquinoxalin-2 yl oxy)phenoxy]propanoic acid in or on the commodities cotton and soybean at 0.05 part per million (ppm). In the Federal Register of May 16, 1988 (53 FR 17244), EPA issued a notice that PP5F3252 had been amended to delete the proposal for cotton and to include the establishment of tolerances for quizalop (2-[4-(6-chloroquinoxalin-2-yl-oxy)phenoxy]propanoic acid), quizalofop-ethyl (ethyl 2-[4-(6-chloroquinoxalin-2 yl oxy)phenoxy propanoate), and quizalop-methyl (methyl 2-[4-(6-chloroquinoxalin-2-yl-oxy)phenoxy]propanoate, all expressed as quizalofop ethyl in or on the RACs meat of cattle, goats, hogs, horses, poultry, and sheep at 0.02 pm; fat and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; eggs at 0.02 ppm; milk at 0.01; and milk fat at 0.05 ppm.

No comments were received in response to these notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerances include several acute studies, a 90-day feeding study with rats fed dosages of 0, 2, 6.4, and 64 milligrams/kilogram/day (mg/kg/day) with a no-observed-effect level (NOEL) of 2 mg/kg/day (lowest dose tested [LDT]), a 90-day feeding study in mice fed dosages of 0, 15, 47.4, and 150 mg/kg/day with a NOEL < 15 mg/kg/day (LDT); a 6-month feeding study in dogs fed dosages of 0, 0.625, 2.5, and 10 mg/kg/day with a NOEL of 2.5 mg/kg/day; a 2-year chronic feeding/oncogenic study in rats fed dosages of 0, 0.9, 5, and 20 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to 20 mg/kg/day (highest dose tested [HDT]) and a systemic NOEL of 0.9 mg/kg/day; an 18-month chronic feeding/oncogenicity study with CD–1 mice fed dosages of 0, 0.3, 1.5, 12, and 48 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose

levels up to 12 mg/kg/day and an increased incidence of hepatocellular tumors at the HDT; a 1-year feeding study with dogs fed dosages of 0, 0.625, 2.5, and 10 mg/kg/day with a NOEL of 10 mg/kg/day (HDT); a two-generation reproduction study with rats fed dosages of 0, 1.25, 5, and 20 mg/kg/day with no reproductive effects observed at 20 mg/kg/day (HDT) and a developmental NOEL of 1.25 mg/kg/day and a maternal NOEL of 5 mg/kg/day; a teratology study in rats fed dosages of 0, 30, 100, and 300 mg/kg/day with no teratogenic effects occurring at 300 mg/kg/day (HDT) and a maternal and fetotoxic NOEL of 300 mg/kg/day; a teratology study in rabbits fed dosages of 0, 7, 20, and 60 mg/kg/day with no teratogenic effects occurring at 60 mg/kg/day and a maternal NOEL of 20 mg/kg/day; and mutagenic studies including an unscheduled DNA synthesis (rat)-negative, a chromosomal aberration study in CHO cells-negative, and gene mutation-negative.

Although an increased incidence of hepatocellular adenomas and carcinomas occurred at the highest dose tested in the CD–1 mouse chronic feeding/oncogenic study, the Agency does not consider this chemical to be an oncogen based on an overall weight-of-evidence judgment. This conclusion is based on the following factors:

1. The tumor types (liver adenomas and carcinomas) are common and occur with high and variable spontaneous background rates in male mice.

2. The increase in tumors is of marginal statistical significance and was seen only in the high dose. The incidences of combined hepatocellular adenomas and carcinomas were as follows: Control 7/70 (10%); 2 ppm 10/69 (14%); 10 ppm 7/69 (10%); 80 ppm 8/69 (11%); and 320 ppm 15/70 (21%).

3. The tumors appeared at a dose which exceeded that predicted as an MTD from the 90-day subchronic feeding study. At 320 ppm in the oncogenicity study, only 27/70 male mice survived compared to 41/70 controls and between 34/70 to 40/70 in other treatment groups. Other indications of toxicity at 320 and 80 ppm include increased liver weight, increased alkaline phosphatase, and changes in liver pathology (enlarged hepatocytes, hepatocellular pigmentation, sinusoidal cellular pigmentation, and focally pigmented macrophages).

4. The rat oncogenicity study is considered negative for oncogenic effects.

5. The chemical was not mutagenic in several short-term tests, and no structurally related compounds of toxicological interest were identified in several data base searches.

6. An analysis of the historical control data on combined hepatocellular adenomas and carcinomas from the test lab during the same time period as the study indicated that the combined percentages for the controls were 21%, 19%, 16%, and 13% for four separate studies in male CD–1 mice. Additional control data on six studies from the test lab during prior years showed control values of 17%, 13%, 21%, 16%, 17%, and 18% for the tumors in question. Based on these data, the Agency has concluded that the concurrent control in the study was somewhat lower in response than usual, while the high-dose group was at the upper end of previous control values.

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 0.9 mg/kg/day) and using a hundredfold safety factor is calculated to be 0.009 mg/kg/day. The theoretical maximum residue contribution for these tolerances is calculated to be 0.000216 mg/kg body weight/day, which occupies approximately 2.4 percent of the ADI. There are no published tolerances for this chemical.

A related final rule (FAP 6H5479/R968) appears elsewhere in this issue of the **Federal Register** and establishes tolerances on the food commodity soybean flour and the feed commodities soybean hulls, soybean meal, and soybean soapstock.

No desirable data are lacking.

The pesticide is useful for the purposes of this tolerance rule. The nature of the residue is adequately understood for the purpose of establishing the tolerance. Adequate analytical methodology, high-pressure liquid chromatography using either an ultra violet or fluorescence detector, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: William Grosse, Chief, Information Services Branch, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room. 233, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

There are currently no actions pending against the registration of the chemical. Any secondary residue occurring in meat, milk, poultry, or eggs from this use will be covered by the tolerances.

Based on the above information considered by the Agency, it is concluded that the tolerances established by amending 40 CFR Part 180 will protect the public health, and the tolerances are set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk, Environmental Protection Agency, Room. M–3708 (A–110), 401 M Street SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

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

(Sec. 408(d)(2), 68 Stat. 512, (21 U.S.C. 346a(d)(2)).)

List of Subjects in 40 CFR Part 180

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

Date: June 10, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation continues to read as follows:

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

2. By adding new § 180.441, to read as follows:

§ 180.441 Quizalofop ethyl; tolerances for residues.

(a) Tolerances are established for the combined residues of the herbicide quizalofop (2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoic acid) and

quizalofop ethyl (ethyl-2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoate), all expressed as quizalofop ethyl, in or on the raw agricultural commodity soybeans at 0.05 part per million (ppm).

(b) Tolerances are established for the combined residues of the herbicide quizalofop (2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoic acid), quizalop-ethyl (ethyl-2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoate), and quizalofop-methyl (methyl 2-[4-(6-chloroquinoxalin-2-yl-oxy)phenoxy]propanoate, all expressed as quizalofop ethyl, as follows:

Commodities	Parts per million
Cattle, fat	0.05
Cattle, meat	0.02
Cattle, mbyp	0.05
Eggs	0.02
Goats, fat	0.05
Goats, meat	0.02
Goats, mbyp	0.05
Hogs, fat	0.05
Hogs, meat	0.02
Hogs, mbyp	0.05
Horses, fat	0.05
Horses, meat	0.02
Horses, mbyp	0.05
Milk	0.01
Milk, fat	0.05
Poultry, fat	0.05
Poultry, meat	0.02
Poultry, mbyp	0.05
Sheep, fat	0.05
Sheep, meat	0.02
Sheep, mbyp	0.05

[FR Doc. 88-14040 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7F3529/R971; FRL-3401-9]

Tolerance for 2-[1-(Ethoxyimino) Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexen-1-one

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide 2-[1-ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one (also known as sethoxydim) and its metabolites containing the 2-cyclohexen-1-one moiety, calculated as parent, in or on the raw agricultural commodity (RAC) potatoes at 4.0 parts per million (ppm). This regulation was requested by the BASF Corp. and establishes the maximum permissible level for residues of the herbicide in or on potatoes.

EFFECTIVE DATE: June 22, 1988.

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

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 243, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 5, 1987 (52 FR 29061), which announced that the BASF Corp., P.O. Box 181, 100 Cherry Hill Rd., Parsippany, NJ 07054, had submitted a pesticide petition, PP 7F3529, to EPA proposing to amend 40 CFR 180.412 by establishing a regulation to permit the residues of the herbicide 2-[1-ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the RAC potatoes at 4.0 ppm.

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerances include several acute studies; a 6-month feeding study with dogs fed dosages of 0, 2, 20, and 200 milligrams per kilogram of body weight per day (mg/kg bwt/day) with a no-observed-effect level (NOEL) of 2 mg/kg/day; a 2-year chronic feeding/oncogenicity study in mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no oncogenic effects observed under the conditions on the study at dose levels up to and including 162 mg/kg/day (highest dose tested [HDT]) and a systemic NOEL of 18 mg/kg/day; a 2-year chronic feeding/oncogenicity study with rats fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 18 mg/kg/day (HDT) and a systemic NOEL greater than or equal to 18 mg/kg/day (HDT); a two-generation reproduction study with rats fed 0, 2, 6, 18, and 54 mg/kg/day with no reproductive effects observed at 54 mg/kg/day (HDT) and a systemic NOEL of 18 mg/kg/day; a teratology study in rats fed dosages of 0, 40, 100, and 250 mg/kg/day with no teratogenic effects occurring at 250 mg/kg/day (HDT) and a maternal NOEL of 40 mg/kg/day; a teratology study in rabbits fed dosages of 0, 40, 160, and 480 mg/kg/day with a teratogenic NOEL of 160 mg/kg/day and a meternal NOEL of 160 mg/kg/day; and mutagenic studies including recombinant assays and forward mutations in *B. subtilis*, *E. coli*, and *S. typhimurium* (negative at concentrations of chemical to 100 percent) and a host-mediated assay (mouse) with *S. typhimurium* negative at 2.5 grams (g/kg/day) of chemical.

The acceptable daily intake (ADI), based on the 6-month dog feeding study (NOEL of 2.0 mg/kg/day) and using a hundredfold safety factor, is calculated to be 0.02 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances and unpublished but approved tolerances is 0.019530 mg/kg/day. The current action will contribute 0.004508 mg/kg/day to the TMRC and will utilize 22.5 percent of the ADI. Published tolerances and unpublished but approved tolerances utilize 97.6 percent of the ADI.

A related final rule (FAP 7H5537/R970) appears elsewhere in this issue of the **Federal Register** and establishes tolerances on the feed commodity processed potato waste (wet and dry) and the food commodities potato flakes and potato granules.

Data lacking are a repeat of a rat primary hepatocyte unscheduled DNA synthesis assay on a hydroxylated plant metabolite of the parent compound. The company has been notified of this deficiency and has agreed to repeat the study.

The pesticide is useful for the purpose for which these tolerances are sought. The nature of the residue is adequately understood for the purpose of establishing the tolerances. Adequate analytical methodology (gas chromatography using sulfur-specific flame photometric detection) is available for enforcement purposes. The method is listed in the *Pesticide Analytical Manual* (PAM II) as Method I. There are currently no actions pending against the registration of this chemical. Any secondary residues occurring in meat, milk, poultry, and eggs will be covered by existing tolerances on these commodities.

Based on the above information considered by the Agency, it is concluded that the tolerances established by amending 40 CFR Part 180 will protect the public health, and the tolerances are therefore set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW., Washington, DC 20460. Such

objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950) (Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)).)

List of Subjects in 40 CFR Part 180

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

Dated: June 15, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation continues to read as follows:

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

2. In § 180.412(a), by adding and alphabetically inserting an entry for the following raw agricultural commodity, to read as follows:

§ 180.412 2-[-(Ethoxyimino)butyl]-5-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Potatoes	4.0
* * * * *	

[FR Doc. 88–14037 Filed 6–21–88; 8:45 am]

BILLING CODE 6560–50

40 CFR Part 303

[FRL–3397–6]

Citizen Awards for Information on Criminal Violations Under Superfund; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim-final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) issued an interim-final rule in response to the requirements established by section 109(c) of the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499), published in the **Federal Register** of May 5, 1988 (53 FR 16086). That interim-final rule inadvertently misstated the effective date as being September 2, 1988. This publication error is corrected as set forth below.

DATES: *Effective date:* May 5, 1988. Comments on this interim-final rule must be received on or before September 2, 1988.

ADDRESSES: Commenters must each send an original and two copies of their comments to the Office of Criminal Enforcement Counsel [LE–134X], United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The public docket for this interim-final rule is located in Room NE–114, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Appointments to examine these docket materials may be made in advance by calling (202) 475–9660.

FOR FURTHER INFORMATION CONTACT: Keith A. Onsdorff, Senior Attorney-Adviser, Office of Criminal Enforcement Counsel (LE–134X), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, phone (202) 475–9668.

SUPPLEMENTARY INFORMATION: EPA issued an interim-final rule, which was published in the **Federal Register** of May 5, 1988 (53 FR 16086), in response to the requirements established by section 109(c) of the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499). Codified as CERCLA section 109(d), it authorizes the President to pay an award of up to $10,000 to any individual for information leading to the successful prosecution of any person for a criminal violation of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended. That section also requires the President to prescribe, by regulation, criteria for such an award. By Executive Order No. 12580, the President, on January 23, 1987, delegated to the Administrator of EPA the authority to promulgate the regulation, and thereafter to carry out the Section 109(d) award program. The EPA has promulgated this regulation on an interim-final basis in order to permit the more expeditious protection of the public health and the environment, as directed by Congress for this provision of SARA. Nevertheless, EPA is issuing this rule in interim-final form and will accept public comments on it in developing the final rule.

The rule affected by this correction sets forth who is eligible to file a claim for an award and who within EPA shall make the determination of eligibility for such an award, detailed procedures and requirements for filing a claim, and established the criteria for payment of an award. In addition, that interim-final rule also provided an assurance of confidentiality to those who provide such information on a confidential basis. It also inadvertently misstated that the effective date of the rule and the date of the conclusion of the comment period were both September 2, 1988. In fact, the rule became effective on the date of publication, and the comment period will end on September 2, 1988.

Dated: June 7, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88–14041 Filed 6–21–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[OPP–300170A; FRL–3399–9]

Updating of Pesticide Names; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This document will clarify certain information in a final rule that updated the names of several pesticides listed in 40 CFR Part 180 to reflect current American National Standards Institute (ANSI) common names. These are merely technical amendments that impose no new regulatory requirements; therefore, advance notice and public comment are unnecessary.

EFFECTIVE DATE: June 22, 1988.

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

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

SUPPLEMENTARY INFORMATION: In the Federal Register of August 27, 1987 (52 FR 32306), EPA issued a document amending 40 CFR Part 180 to update the names of 12 currently listed pesticides by changing them to reflect current American National Standards Institute (ANSI) common names.

This document clarifies certain information presented in that document. For the 12 regulations in Part 180 that were amended by the rule, only the common name of the pesticide will appear in the heading of the regulation, but both the common name and the chemical name of the pesticide will be included in the text of the regulation.

Each regulation discussed in this document is being further amended to include the Chemical Abstracts Service (CAS) registry number for the pesticide and, wherever necessary, by revising the chemical name to be consistent with the CAS 9th Collective Index of chemical names. Also, §§ 180.255, 180.295, and 180.327 are being reformatted to include a columnar listing of the commodities and tolerances. No new regulatory requirements are being added. The changes being made are merely technical amendments to clarify existing regulations.

List of Subjects in 40 CFR Part 180

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

Dated: June 9, 1988.

Juanita Wills,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

2. In § 180.144, by revising the introductory text to read as follows:

§ 180.144 Cyhexatin; tolerances for residues.

Tolerances are established for combined residues of the pesticide cyhexatin (tricyclohexylhydroxystannane; CAS Reg. No. 13121–70–5) and its organotin metabolites (calculated as cyhexatin) in or on the following raw agricultural commodities:

* * * * *

3. In § 180.153, by revising the introductory text to read as follows:

§ 180.153 Diazinon; tolerances for residues.

Tolerances are established for residues of the insecticide diazinon (*O,O*-diethyl *O*-[6-methyl-2-(1-methylethyl)-4-pyrimidinyl] phosphorothioate; CAS Reg. No. 333–41–5) in or on the following raw agricultural commodities:

* * * * *

4. Section 180.170 is revised to read as follows:

§ 180.170 Temephos; tolerances for residues.

A tolerance of 0.1 part per million is established for combined negligible residues of the insecticide temephos (*O,O,O',O'*-tetramethyl *O,O'*-(thiodi-4,1-phenylene) phosphorothioate; CAS Reg. No. 3383–96–8) and its metabolite *O,O,O',O'*-tetramethyl *O,O'*-(sulfinyldi-4,1-phenylene) phosphorothioate in or on the raw agricultural commodities citrus fruits.

5. Section 180.250 is revised to read as follows:

§ 180.250 Metobromuron; tolerances for residues.

A tolerance of 0.2 part per million is established for residues of the herbicide metobromuron (*N'*-(4-bromophenyl)-*N*-methoxy-*N*-methylurea; CAS Reg. No. 3060–89–7) in or on the raw agricultural commodity potatoes.

6. Section 180.255 is revised to read as follows:

§ 180.255 Bufencarb; tolerances for residues.

Tolerances are established for residues of the insecticide bufencarb (a mixture consisting of 25 percent 3-(1-ethylpropyl) phenyl methylcarbamate and 75 percent 3-(1-methylbutyl) phenyl methylcarbamate; CAS Reg. No. 8065–36–9) in or on the following raw agricultural commodities, such tolerances to cover residues of both chemical components:

Commodities	Parts per mission
Corn, fodder	0.05 (N)
Corn, forage	.05 (N)
Corn, fresh (inc. sweet K+CWHR)	.05 (N)
Corn, grain	.05 (N)
Rice, grain	.05 (N)
Rice, straw	.05 (N)

7. In § 180.266, by revising the introductory text to read as follows:

§ 180.266 Chloramben; tolerances for residues.

Tolerances are established for residues of the herbicide chloramben (3-amino-2,5-dichlorobenzoic acid; CAS Reg. No. 133–90–4) in or on the following raw agricultural commodities:

* * * * *

8. Section 180.295 is revised to read as follows:

§ 180.295 Crufomate; tolerances for residues.

Tolerances are established for residues of the insecticide crufomate (2-chloro-4-(1,1-dimethylethyl)phenylmethyl methylphosphoramidate; CAS Reg. No. 299–86–5) and its metabolite 2-chloro-4-(1,1-dimethylethyl) phenol (calculated as the parent compound) in or on the following raw agricultural commodities:

Commodities	Parts per million
Cattle, fat	1
Cattle, mbyp	1
Cattle, meat	1
Goats, fat	1
Goats, mbyp	1
Goats, meat	1
Sheep, fat	1
Sheep, mbyp	1
Sheep, meat	1

9. Section 180.308 is revised to read as follows:

§ 180.308 Pirimiphos-ethyl; tolerances for residues.

A tolerance of 0.02 part per million is established for negligible residues of the insecticide pirimiphos-ethyl (*O,O*-diethyl *O*-[2-(diethylamino)-6-methyl-4-pyrimidinyl] phosphorothioate; CAS Reg. No. 23505–41–1) and its oxygen analog diethyl 2-(diethylamino)-6-methyl-4-pyrimidinyl phosphate in or on the raw agricultural commodity bananas.

10. Section 180.327 is revised to read as follows:

§ 180.327 Dinitramine; tolerances for residues.

Tolerances are established for residues of the herbicide dinitramine (N^3, N^3-diethyl-2,4-dinitro-6-(trifluoromethyl)-1,3-benzenediamine; CAS Reg. No. 29091–05–2) in or on the following raw agricultural commodities:

Commodities	Parts per million
Beans, dried	0.05 (N)
Beans, forage	.05 (N)
Beans, garbanzo	.05 (N)
Beans, green	.05 (N)
Beans, lima	.05 (N)

Commodities	Parts per million
Beans, vine hay	.05 (N)
Cotton, forage	.05 (N)
Cottonseed	.05 (N)
Lentils	.05 (N)
Peanuts	.05 (N)
Peanuts, forage	.05 (N)
Peanuts, hulls	.05 (N)
Peanuts, vine hay	.05 (N)
Peas	.05 (N)
Peas, forage	.05 (N)
Soybeans	.05 (N)
Soybeans, forage	.05 (N)
Sunflower forage	.05 (N)
Sunflower seed	.05 (N)

11. In § 180.366, by revising the introductory text to read as follows:

§ 180.366 Octhilinone; tolerances for residues.

Tolerances are established for residues of the fungicide octhilinone (2-octyl-3(2H)-isothiazolone; CAS Reg. No. 26530-20-1) in or on the following raw agricultural commodities derived from plants grown from treated seed:

* * * * *

12. In § 180.406, by revising the introductory text to read as follows:

§ 180.406 Dimethipin; tolerances for residues.

Tolerances are established for residues of the harvest growth regulant dimethipin (2,3-dihydro-5,6-dimethyl-1,4-dithiin 1,1,4,4-tetraoxide; CAS Reg. No. 55290-64-7) in or on the following raw agricultural commodities:

* * * * *

13. In § 180.423, by revising the introductory text to read as follows:

§ 180.423 Fenridazon, potassium salt; tolerances for residues.

Tolerances are established for residues of the hybridizing agent potassium salt of fenridazon (1-(4-chlorophenyl)-1,4-dihydro-6-methyl-4-oxo-3-pyridazinecarboxylic acid, potassium salt; CAS Reg. No. 83588-43-6) in or on the following raw agricultural commodities:

* * * * *

[FR Doc. 88-13810 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-181; RM-5500]

Radio Broadcasting Services; Earl Park, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 251B1 for Channel 252A at Earl Park, Indiana, and modifies the Class A license of Station WIBN(FM), in response to a petition filed by IBN Broadcasting, Inc. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 15, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-181, adopted May 13, 1988, and released June 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Indiana by revising Channel 251B1 for Channel 252A at Earl Park.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14015 Filed 6-21-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-349; RM-5679]

Radio Broadcasting Services; London, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 223A to London, Kentucky, as a second FM service, at the request of Hughes-Moore Associates, Inc. Coordinates for Channel 223A are 37-07-46 and 84-06-00. With this action, this proceeding is terminated.

DATES: Effective July 15, 1988. The window period for filing applications will open on July 18, 1988, and close on August 17, 1988.

ADDRESS: Federal Communication Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-349, adopted April 25, 1988, and released May 31, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), of the Rules is amended for London, Kentucky, by adding Channel 223A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14016 Filed 6-21-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-260; RM-5728]

Radio Broadcasting Services; Olive Branch, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 239A to Olive Branch, Mississippi, as that community's first FM broadcast service in response to a petition filed by J.J. Kirk. There is a site restriction 2.5 kilometers northeast of the community. The coordinates used for the allotment of Channel 239A at Olive Branch are 34-58-51 and 89-48-3. With this action, this proceeding is terminated.

DATES: Effective July 15, 1988; The window period for filing applications will open on July 18, 1988, and close on August 17, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–260, adopted April 29, 1988, and released June 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transportation Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73 [AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Mississippi is amended by adding Channel 239A at Olive Branch.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–13997 Filed 6–21–88; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 86–27; RM–5157; RM–5364]

Radio Broadcasting Services; Belhaven and Wilmington, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the joint request of Winfas of Belhaven, Inc., licensee of Station WJKA, Channel 266C2, Belhaven, North Carolina, and Woolfson Broadcasting Corporation of Wilmington, Inc., licensee of Station WWQQ–FM, Channel 266C2, Wilmington, North Carolina, substitutes Channel 267C2 for Channel 266C2 at Wilmington, North Carolina, and modifies Station WWQQ–FM's license accordingly. By the *Second Report and Order* in this proceeding, the Commission substituted Channel 266C2 for Channel 265A at Wilmington and ordered Winfas to amend its pending application for Station WJKA to specify a non-conflicting transmitter site. This action permits both stations to expand their service areas and provide increased service to the residents in the vicinity of their respective communities without the possible delay occasioned by requiring Station WJKA to amend its pending application to specify a new transmitter site. Channel 267C2 can be allotted to Wilmington in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.8 kilometers (12.9 miles) south to accommodate Woolfson's desired transmitter site. The coordinates for this allotment are North Latitude 34–03–04 and West Longitude 77–57–15. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 15, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 86–27, adopted April 27, 1988, and released June 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for North Carolina, is amended by revising the entry for Wilmington by deleting Channel 266C2 and adding Channel 267C2.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–14017 Filed 6–21–88; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 87–190; RM–5619; RM–6043]

Television Broadcasting Services; London and Xenia, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Randolph H. Millar, allocates Channel 32 to Xenia, Ohio, as the community's first local television service, based on its larger population, and denies the request of Broadcast Media Services, Incorporated, to allocate Channel 32 to London, Ohio, as its first local television service. Channel 32 can be allocated to Xenia in compliance with the Commission's minimum distance separation requirements with a site restriction of 33.4 kilometers (20.7 miles) east. The coordinates for this allotment are North Latitude 39–44–18 and West Longitude 83–32–56. Canadian concurrence in the allotment has been received. Xenia is located within the minumum co-channel separation distance to Cincinnati and Columbus, Ohio. Therefore, in light of the Commission's recent freeze on the filing of applications within certain metropolitan areas, including Cincinnati and Columbus, applications for use of this channel will not be accepted until further notice is given by the Commission. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 15, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–190, adopted April 5, 1988, and released June 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the TV Table of Allotments for Ohio is amended by adding the following entry, Xenia, Channel 32.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14018 Filed 6-21-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-243; RM-5747]

Radio Broadcasting Services; Winfield, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 249C2 for Channel 249A at Winfield, Texas, and modifies the license of Station KLSB(FM) to reflect the higher class co-channel, at the request of Northeast Texas Broadcasting, Inc. A site restriction of 14.0 kilometers (8.7 miles) north of the city is required. The coordinates are 33-17-39 and 95-06-15. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 15, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-243, adopted April 28, 1988, and released June 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas, by removing Channel 249A and adding Channel 249C2 for Winfield.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-13995 Filed 6-21-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-411; RM-5864]

Radio Broadcasting Services; Owensville, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 237C2 for Channel 237A at Owensville, Missouri, as that community's first wide coverage area broadcast service, in response to a petition filed by Owensville Communications Company. We have also authorized the modification of petitioner's permit to specify Channel 237C2 in lieu of Channel 237A. The coordinates for Channel 237C2 at Owensville are 38-15-22 and 91-32-04. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 15, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-411, adopted April 25, 1988, and released June 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Missouri is amended by deleting Channel 237A and adding Channel 237C2 at Owensville, Missouri.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-13996 Filed 6-21-88; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1001 and 1002

[Ex Parte No. 55 (Sub-64)]

ICC FOIA Fee Schedule Revision

AGENCY: Interstate Commerce Commission.

ACTION: Final Rule.

SUMMARY: The Commission adopts final rules implementing the Freedom of Information Reform Act of 1986, Pub. L. No. 99-570, Sections 1801-1804, 100 Stat. 3207-48 (1986), which requires it to promulgate a new uniform schedule of fees and guidelines for determining when fees should be waived or reduced.

EFFECTIVE DATE: The rules are effective July 22, 1988.

FOR FURTHER INFORMATION CONTACT: S. Arnold Smith, (202) 275-7076. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: On April 24, 1987, the Commission published for public comment in the Federal Register at 52 FR 13636 an interim rule revising its fee and waiver regulations for processing Freedom of Information (FOIA) requests, in accordance with the Freedom of Information Reform Act of 1986.

Comments were received from several parties whose principal objections were directed at a fee waiver guidance issued by the Department of Justice to all Federal agencies. The Commission has carefully considered these submissions but believes that its final rule more fully comports with the statute and strikes a reasonable balance between the public and commercial interests of those seeking information from the government. Similarly, the Commission believes that the definitions contained in its final rule, which also evoked comment, are consonant with both the statute and OMB policy guidelines. Accordingly, no substantive changes have been made in the rule, as proposed.

Minor editorial revisions were made in 49 CFR 1001.4 to conform the Commission's FOIA rules to the new fee and waiver provisions contained in 49 CFR 1002.1(f).

This decision will not significantly affect either the quality of the human environment or energy conservation. This decision also will not have a significant impact on a substantial number of small entities.

List of Subjects

49 CFR Part 1001

Freedom of information.

49 CFR Part 1002

Fees, Freedom of information.

Decided: June 15, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1001—INSPECTION OF RECORDS

1. The authority citation for Part 1001 is revised to read:

Authority: 5 U.S.C. 552 and 49 U.S.C. 10321.

2. Section 1001.4 is revised to read as follows:

§ 1001.4 Requests to inspect other records not considered public under 5 U.S.C. 552.

Requests to inspect records other than those now deemed to be of a public nature shall be in writing and addressed to the Freedom of Information Officer. The Freedom of Information Officer shall determine within 10 days of receipt of a request (excepting Saturdays, Sundays, and legal public holidays) whether a requested record will be made available. If the Freedom of Information Officer determines that a request cannot be honored, he must inform the requesting party in writing of this decision and such letter shall contain a detailed explanation of why the requested material cannot be made available and explain to the requesting party his or her right of appeal. If the Freedom of Information Officer rules that such records cannot be made available because they are exempt under the provisions of 5 U.S.C. 552(b), an appeal from such ruling may be addressed to the Chairman. The Chairman's decision shall be administratively final and state the specific exemption(s) contained in 5 U.S.C. 552(b) relied upon for denial. Such an appeal must be filed within 30 days of the date of the Freedom of Information Officer's letter. The Chairman shall act in writing on such appeals within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of any appeal. In unusual circumstances, as set forth in 5 U.S.C. 552(a)(6)(B), the time limit may be extended, by written notice to the person making the particular request, setting forth the reasons for such extension, for no more than 10 working days. If the appeal is denied, the Chairman's order shall notify the requesting party of his or her right to judicial review. Charges shall be made as provided for in § 1002.1(f) of this chapter.

PART 1002—FEES

3. The authority citation for 49 CFR Part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

4. Section 1002.1(f) is revised to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(f) The fees for search, review and copying services for records not considered public under the Freedom of Information Act are as follows:

(1) When records are sought for commercial use, requesters will be assessed the full and reasonable direct costs of document search, review and duplication. A "commercial use" request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(2) When records are not sought for commercial use and a request is made by an educational or noncommercial scientific institution, requesters will be assessed only for the cost of duplication (excluding charges for the first 100 pages). The term "Educational Institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research. The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. They must show that their request is authorized by and under the auspices of a qualifying institution and the records are not sought for a commercial use but, instead, are in furtherance of scholarly or scientific research.

(3) Requesters who are representatives of the news media (persons actively gathering news for an entity that is organized and operated to publish or broadcast news to the public) will be assessed only for the cost of duplication (excluding charges for the first 100 pages) if they can show that their request is not made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered a request for a commercial use.

(4) All other requesters will be assessed fees which recover the full, reasonable direct cost of searching for and duplicating records that are responsive to the request (excluding charges for the first 100 pages of duplication and the first two hours of search time).

(5) All requesters must reasonably describe the records sought.

(6) The search and review hourly fees will be based upon employee grade levels in order to recoup the full, allowable direct costs attributable to their performance of these functions. They are as follows:

GS–1	$5.22
GS–2	5.69
GS–3	6.41
GS–4	7.20
GS–5	8.05
GS–6	8.97
GS–7	9.97
GS–8	11.04
GS–9	12.20
GS–10	13.43
GS–11	14.76
GS–12	17.69
GS–13	21.03
GS–14	24.85
GS–15 and over	29.23

(7) The fee for electrostatic copies shall be $.60 per letter or legal size exposure with a minimum charge of $3.00.

(8) The fee charged for ADP data is set forth in paragraph (e) of this section.

(9) If the cost of collecting any fee would be equal to or greater than the fee itself, it will not be assessed.

(10) A fee may be charged for searches which are not productive and for searches for records or those parts of records which subsequently are determined to be exempt from disclosure.

(11) Interest charges may be assessed on any unpaid bill starting on 31st day following the day on which the billing was sent, at the rate prescribed in Section 3717 of Title 31 U.S.C. and will accrue from the date of the billing. The

Debt Collection Act, including disclosure to consumer reporting agencies and the use of collection agencies, will be utilized to encourage payment where appropriate.

(12) If search charges are likely to exceed $25, the requester will be notified of the estimated fees unless requester willingness to pay whatever fee is assessed has been provided in advance. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester agrees in writing to accept the prospective charges.

(13) An advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed $250. Requesters who have previously failed to pay a fee charged in timely fashion (i.e. within 30 days of the date of billing) may be required first to pay this amount plus any applicable interest (or demonstrate that the fee has been paid) and then make an advance payment of the full amount of the estimated fee before the new or pending request is processed. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) also will not begin until after a requester has complied with this provision.

(14) Documents shall be furnished without any charge or at a charge reduced below the fees set forth above if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The following six factors will be employed in determining when such fees shall be waived or reduced:

(i) The subject of the request: Whether the subject of the requester records concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding";

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(v) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

This fee waiver and reduction provision will be implemented in accordance with guidelines issued by the U.S. Department of Justice on April 2, 1987 and entitled "New FOIA Fee Waiver Policy Guidance." A copy of these guidelines may be inspected or obtained from the ICC's Freedom of Information Office, 12th & Constitution Avenue NW., Room 3132, Washington, DC 20423.

[FR Doc. 88-14007 Filed 6-21-88; 8:45 am]
BILLING CODE 7035-01-M

49 CFR Parts 1071 and 1072

[Ex Parte No. 467]

Exemption of Water Carrier Operations

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: Under the exemption provisions of 49 U.S.C. 10544, the Commission revises 49 CFR Part 1071 and removes 49 CFR Part 1072, to exempt from regulation: Water carrier transportation by small craft; water carrier transportation of passengers between places in the United States through foreign ports; water contract carrier leasing of vessels to private water carriers; and water carrier transportation of property owned by a person owning substantially all of the voting stock of the carrier. Continued regulation of these water carrier operations is unnecessary under the statute and not required by the National Transportation Policy.

The proposed rule (52 FR 13729, April 24, 1987) exempting water carrier transportation of property owned by a person owning substantially all of the voting stock of the carrier has been modified by addition of the words "certificate of exemption" to the heading clearly to reflect that the rule implements the statutory requirements for such a certificate.

Since the Commission received no specific requests to exempt water contract carrier transportation that is noncompetitive with that provided by common carriers because of the inherent nature of the commodities, their need for special equipment, or their shipment in bulk, no additional exemptions have been added to § 1071.2. However, the Commission will consider future requests to reopen this proceeding to expand the scope of that Part. Part 1071 has also been updated to reflect the recodification of the Interstate Commerce Act.

EFFECTIVE DATE: This decision will be effective on July 22, 1988.

FOR FURTHER INFORMATION CONTACT:
Andrew J. Nosacek (202) 275-1712

or

Richard B. Felder (202) 275-7291

[TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the decision write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359, (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).

Regulatory Flexibility

We certify that this action will not have a significant economic impact on a substantial number of small entities. Any impact will be beneficial since small businesses will be relieved from otherwise applicable regulatory requirements.

Energy and Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Parts 1071 and 1072.

Maritime carriers.

Decided: June 14, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Simmons dissented with a separate expression.

Noreta R. McGee,

Secretary.

Title 49, Parts 1071 and 1072 of the Code of Federal Regulations are amended as follows:

1. Part 1071 is revised to read as follows:

PART 1071—EXEMPTION OF WATER CARRIER OPERATIONS

Sec.
1071.1 Vessel leasing.
1071.2 Towage of floating objects.
1071.3 Passenger transportation through foreign ports.
1071.4 Certificate of exemption—transportation of property of a person owning substantially all of the carrier's voting stock.

Authority: 49 U.S.C. 10101, 10321, and 10544, and 5 U.S.C. 553.

1071.1 Vessel leasing.

Leases or charters entered into by contract carriers by water and persons that are not carriers are exempt from Chapter 105, Subchapter III, of Title 49, Subtitle IV, U.S. Code, to the extent the lease or charter is used to transport the person's own property.

1071.2 Towage of floating objects.

Transportation by contract carriers of empty vessels to and from shipyards, floating objects such as derricks, dredges, tanks, caissons, pontoons, and other floating objects, other than logs and pilings in rafts, of varying shapes, sizes, and drafts which are not designed or used for the carrying of passengers and property, is exempt from the requirements of Chapter 105, Subchapter III, of Title 49, Subtitle IV, U.S. Code.

1071.3 Passenger transportation through foreign ports.

Water carriers engaged in transportation of passengers between places in the United States through a foreign port are exempt from the jurisdiction of the Interstate Commerce Commission under Chapter 105, Subchapter III, of title 49, Subtitle IV, U.S. Code.

1071.4 Certificate of exemption—transportation of property of a person owning substantially all of the carrier's voting stock.

A water carrier transporting only the property of a person owning 80 percent or more of the voting stock of the carrier is exempt from the jurisdiction of the Interstate Commerce Commission under Chapter 105, Subchapter III, of Title 49, Subtitle IV, U.S. Code.

PART 1072—[REMOVED]

2. Part 1072 is removed.

[FR Doc. 88-14006 Filed 6-21-88; 8:45am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 71146-8001]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the reapportionment of surplus pollock from domestic annual processing (DAP) to joint venture processing (JVP) under provisions of the Fishery Management Plan for the Groundfish of the Gulf of Alaska (FMP). This action is necessary to make available to joint venture operations pollock determined to be surplus to domestic processing needs. It is intended to assure optimum use of groundfish in the Gulf of Alaska.

DATES: Effective June 17, 1988. Comments will be accepted through July 5, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for each target groundfish species and species group are specified annually. For 1988, TACs were established for each of the target groundfish species and species groups. Those TACs were, in turn, apportioned among regulatory areas and districts and between DAP and JVP.

The initial apportionment between DAP and JVP for 1988 was based on the projected needs of DAP as determined by the Director, Alaska Region (RD), through an October 1987 survey of fishermen and processors. Based on the results of that survey and a recommendation of the North Pacific Fishery Management Council, the Secretary apportioned to DAP in Western/Central Regulatory Area 90,000 mt of pollock (53 FR 890, January 14, 1988). As this amount constituted the entire TAC for pollock, none remained to be apportioned to JVP. Further, a prohibited species catch limit of 100 mt was established for joint venture fisheries since pollock was determined to be fully utilized by U.S. fishermen delivering to U.S. processors.

In early April 1988, the Regional Director again surveyed domestic processors to assess their processing needs. That survey, completed on May 6, indicated that domestic processing needs in 1988 would be about 97,000 mt. The Regional Director, however, in analyzing the survey results, determined that domestic processing needs might be only 68,000 mt. Due to the uncertainty in how much domestic processing needs might actually be, the Regional Director intends to survey domestic processors again during July 1988. Nonetheless, he has determined that domestic processors will not need 500 mt of the current amount of DAP. Under § 672.20(d)(2), the Secretary is reapportioning 500 mt of that surplus to joint venture processing, thereby removing pollock from its previous designation as a prohibited species.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to allow joint venture fishermen to retain pollock as bycatch while fishing for other groundfish species. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice. The Secretary will consider all timely comments and may modify an apportionment that has been made previously and will publish responses to those comments in the **Federal Register** as soon as is practicable.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: June 17, 1988.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

TABLE 1.—GULF OF ALASKA REAPPORTIONMENTS OF POLLOCK BETWEEN DAP AND JVP

[All values are in metric tons]

		Current	This Action	Revised
Pollock (Western/Central)	DAP	90,000	−500	89,500
TAC=90,000	JVP	0	+500	500
Total (TAC=260,936)	DAP	241,286	−500	240,786
	JVP	19,650	+500	20,150

[FR Doc. 88-6-17 Filed 6-17-88; 4:59 pm]
BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 71146-8001]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the portion of the total allowable catch (TAC) of sablefish allocated to trawl gear in the West Yakutat District of the Gulf of Alaska has been taken. Retention of sablefish by trawl vessels fishing in the West Yakutat District of the Eastern Regulatory Area after 12:00 noon on June 18, 1988, is therefore prohibited. This action is necessary to limit the trawl harvest of sablefish in the West Yakutat District to the allocation as established in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: This notice is effective at noon, Alaska Daylight Time, (ADT), June 18, until midnight, Alaska Standard Time (AST) December 31, 1988. Public comments are invited on this closure until July 5, 1988.

ADDRESSES: Comments should be addressed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the Alaska Regional Office, NMFS, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Section 672.2 of the regulations defines the Western, Central and Eastern Regulatory Areas in the Gulf of Alaska. This section also defines the regulatory districts of the Eastern Regulatory area, one of which is the West Yakutat District. Under the procedure set forth at § 672.20(a), 1988 TACs were established for each of the groundfish species, which were then apportioned among the regulatory areas or districts. One of the species is sablefish, for which the 1988 TAC in the West Yakutat District is 4,900 mt (53 FR 890, January 14, 1988).

Section 672.24(b)(1) restricts the trawl catch of sablefish in the Eastern Regulatory Area to 5 percent of the TAC. The Eastern Regulatory Area is divided into two districts, one of which is the West Yakutat District; 5 percent of the TAC in this district is 240 mt. Under § 672.24(b)(3)(ii), if the share of the sablefish TAC assigned to any type of gear for any area or district is reached, further catches of sablefish must be treated as prohibited species by persons using that type of gear for the remainder of the year.

Sablefish have been caught incidentally by vessels using trawl gear while fishing for other groundfish species. The 240 mt amount allocated to trawl gear has been reached. Further catches by trawl gear must be treated as prohibited species after 12:00 noon, ADT, on June 18, 1988 under § 672.24(b)(3)(ii).

This closure will be effective when this notice is filed for public inspection with the Office of the Federal Register. Under § 672.22(b)(2), public comments on this notice may be submitted to the Regional Director at the address above for 15 days following its effective date. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this closure's continued effect, modifying it, or rescinding it.

Classification

Allocation of the sablefish resource between hook-and-line and trawl gear in the West Yakutat District and the continued health of all components of the sablefish fishery will be jeopardized unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. This action is taken under §§ 672.22 and 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: June 17, 1988.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-14086 Filed 6-17-88; 4:53 pm]
BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the joint venture processing (JVP) portion of the domestic annual harvest (DAH) under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). Groundfish are apportioned according to the regulations implementing the FMP. The intent of this action is to assure optimum use of these groundfish by allowing domestic fisheries to proceed without interruption.

DATES: Effective June 17, 1988. Comments will be accepted through July 5, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery

anagement Council (Council) and plemented by rules appearing at 450 FR 611.93 and Part 675. The total lowable catch (TAC) for various oundfish species are apportioned itially among DAH, reserves, and the al allowable level of foreign fishing ALFF]. The reserve amount, in turn, is be apportioned to DAH and/or ALFF during the fishing year, under 50 FR 611.93(c) and 675.20(b). As soon as acticable after April 1, June 1, August nd on such other dates as are cessary the Secretary of Commerce portions to DAH and/or TALFF all or rt of the reserve that he finds will be rvested by U.S. vessels during the mainder of the year, except that part all of the reserve may be withheld if apportionment would adversely ect the conservation of groundfish ources or prohibited species.

The initial specifications of DAP for 8 were based on the projected needs the U.S. processing industry as essed by a mail survey sent by the ector, Alaska Region, NMFS (Regional Director), to fishermen and processors in October 1987. After fifteen percent of the Bering Sea and Aleutian Islands (BSA) total allowable catch (TAC) was placed in the non-specific reserve, as required at 50 CFR 675.20(a)(3), the initial specifications for DAP were determined, and the remaining amounts were provided to joint venture processing (JVP) (53 FR 894, January 14, 1988). No initial specification was provided for TALFF because DAH requirements exceeded the TAC.

On January 14, JVP was supplemented by 804 mt of the non-specific reserve to provide necessary bycatch of Greenland turbot, Pacific Ocean perch, rockfish, sablefish, and squid. On April 14 (53 FR 12772, April 19, 1988), JVP was supplemented by 24,000 mt of the non-specific reserve to provide additional amounts of yellowfin sole, "other flatfish," and Pacific cod in order to allow JVP operations to continue without interruption. At its April meeting, the Council recommended that the Regional Director supplement the JVP for pollock in the Bering Sea by 100,000 mt. On May 5 (53 FR 16552, May 10, 1988), JVP was supplemented by 135,030 mt of the non-specific reserve to provide the recommended amount of pollock and necessary bycatch amounts of Greenland turbot, "other flatfish," Pacific cod, and "other species."

In early April, the Regional Director sent another survey to DAP processors to determine whether the responses to the initial survey were still valid. That survey was completed on May 6. The results of a thorough evaluation of survey returns by NMFS Regional Office staff indicated that for certain species DAP amounts were excess to DAP needs in 1988, while for other species DAP amounts could require supplementation. On May 20 (53 FR 19303, May 25, 1988) JVP was supplemented by 96,000 mt of the non-specific reserve, and DAP was supplemented by 10,000 mt of the non-specific reserve.

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

[All values are in metric tons]

		Current	This action	Revised
ock (Aleutian is. subarea)				
=45,000; ABC=160,000	DAP	4,160		4,160
	JVP	34,090	+6,750	40,840
enland turbot	DAP	9,520		9,520
=11,200; ABC=14,100	JVP	61	+20	81
TAL (TAC=2,000,000)	DAP	802,520		802,520
	JVP	1,163,314	+6,770	1,170,084
	RESERVES	34,166	−6,770	27,396

The following actions are taken by s notice to reapportion groundfish m the non-specific reserve to BSA eries.

the BSA JVP

n the Aleutian Islands subarea, a zen U.S. catcher boats delivering fish ight foreign processors are nducting directed fisheries on pollock; ther six U.S. catcher boats delivering to four foreign processors are nning directed fisheries on Atka ckerel and anticipate high bycatch ounts of pollock. At current and icipated pollock catch rates, the ent JVP of Aleutian Islands subarea ock could be taken by late June. he current DAP catch of Aleutian nds subarea pollock (986 mt) is only ercent of its 4,160 mt DAP quota. In , the DAP catch was only 249 mt, or rcent of its 7,210 mt quota. An NMFS ustry survey indicated that DAP ld possibly require supplementation p to 2,600 mt in 1988. The acceptable ological catch (ABC) of Aleutian Islands subarea pollock is 160,000 mt, so if DAP supplementation is required, additional amounts could be made available from the non-specific reserve without concern about overfishing. Therefore, 6,750 mt of the nonspecific reserve is transferred to the JVP for Aleutian Island subarea pollock.

Joint venture fisheries have encountered unexpectedly high bycatches of Greenland turbot. In order to provide bycatch for ongoing joint venture fisheries, 20 mt of the nonspecific reserve is transferred to the JVP for Greenland turbot.

These apportionments will not result in overfishing of Aleutian Islands subarea pollock or Greenland turbot stocks, as in each case the resulting species TAC is less than its ABC.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit domestic fishermen who otherwise would have to forego substantial amounts of other groundfish species if fishing were closed as a result of achieving previously specified JVP amounts. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: June 17, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-14084 Filed 6-17-88; 5:05 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 120
Wednesday, June 22, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[AMS-FV-88-052 PR]

Onions Grown in Certain Designated Counties in Idaho and Malheur County, OR; Proposed Amendment to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require persons who handle onions under Marketing Order No. 958 to mark containers of U.S. Commercial grade onions with the grade. The rule would also specifically list "U.S. Commercial" as a grade which may be shipped by such handler. These changes are necessary in order to identify shipments of U.S. Commercial grade onions, to improve the marketing of onions, and to clarify the application of current grade requirements.

DATE: Comments must be received by July 22, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: (202) 447–2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 958 [7 CFR Part 958], regulating the handling of onions grown in certain designated counties in Idaho and Malheur County, Oregon. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of Idaho-Eastern Oregon onions subject to regulations under this marketing order, and approximately 360 onion producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000 and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Idaho-Eastern Oregon onions may be classified as small entities.

The handling requirements for Idaho-Eastern Oregon onions are specified in § 958.328 [47 FR 32919 July 30, 1982) as amended at 49 FR 31257 (August 6, 1984) and 50 FR 50157 (December 9, 1985)]. That regulation establishes grade and size requirements for each of the three types of onions grown in the production area—white, red, and all other varieties, principally yellow varieties. Yellow varieties comprise the vast majority of fresh market shipments, accounting for approximately 90 percent of this season's total to date. The remaining 10 percent of fresh movement is divided about evenly between white and red varieties.

For each of the varieties, the regulation establishes that no person may handle any onions which do not meet the minimum grade requirement of U.S. No. 2 as defined in the U.S. Standards for Grades of Onions [7 CFR 51.2830–51.2854, 51.3195–51.3209]. The three grades of onions permissible to ship are, in descending order of quality, U.S. No. 1, U.S. Commercial, and U.S. No. 2.

At its February 17 and March 10 meetings the committee recommended that containers of U.S. Commercial grade onions shipped under the order be so marked. The objective is to ensure that buyers are aware that shipments consist of onions of U.S. Commercial grade quality and not U.S. No. 1 or U.S. No. 2 grade quality. Peeling has been a problem with sweet Spanish (yellow) onions during the 1987–88 shipping season. The outer shins would fall off, exposing the fleshly inner scales. However, except for the lack of outer skins, the onions would normally meet U.S. No. 1 grade requirements. Many of those lots were shipped as U.S. Commercial grade, which is better than U.S. No. 2, the minimum quality required under the order. Shippers believed that by shipping the onions without outer skins under U.S. Commercial grade, a better price would be obtained in the marketplace than for U.S. No. 2 grade.

After several carlots of U.S. Commercial grade onions had been shipped, some shippers complained that such shipments were adversely affecting sales and prices of U.S. No. 1 grade onions.

According to committee records, fewer than 50 loads, about three-tenths of one percent of total shipments, have been marketed as U.S. Commercial grade this season, and only three shippers handled onions of this grade. However, this proposed rule would apply uniformly to all handlers of U.S. Commercial grade onions regulated by Marketing Order No. 958.

Onion disposition reports compiled by the committee for the August 1987 to February 1988 period indicate that of the 13,951 carlots of yellow onions marketed fresh, 13,415 carlots or 96 percent were U.S. No. 1 grade. Similar grade breakdowns for white and red varieties are not compiled.

Under the proposal, containers of U.S. ommercial grade onions would be the ly ones required to be marked. Most ipments of U.S. No. 1 grade onions are eady marked, although this is not uired by the regulation. U.S. No. 2 de onions are readily distinguished m No. 1 grade onions, and comprise ly four percent of the shipments. For se reasons, the committee believes t container marking requirements for grades are unnecessary. Further, the pose of the proposed rule is to ntify shipments of U.S. Commercial de onions, not to discourage such pments. Each grade has its place in marketplace. U.S. No. 1 onions are tomarily shipped for fresh market sumer sales. U.S. Commercial and S. No. 2 grade onions generally go to er outlets for processing into ducts such as onion rings, or pping for fast food outlets, or nufacturing into sauces.

The committee considered several rnatives to the proposed container king requirement. One was changing minimum grade to U.S. No. 1, thus minating both U.S. Commercial and S. No. 2 grades. Another was to uire U.S. Commercial as the imum grade. However, the mittee believes these proposals ld limit the choice buyers have and cause hardship on those growers a high proportion of their crop in lower grades. Other alternatives uded recommending tightening rances for U.S. Commercial grade, making no change in the ulations. All of these were discussed dismissed as unsuitable solutions.

Onions are typically shipped in fiberboard boxes or mesh bags taining 50 pounds. These containers ld be labeled to indicate U.S. mmercial grade with a stencil, rubber mp, or a separate press run during ting. Consequently, the cost to ilers of complying with this posed rule should be minimal.

In addition to the proposed marking uirement, the committee mmended a change in the working the grade requirements for yellow ons. Some confusion exists as to ther U.S. Commercial grade onions be shipped since this grade is not cifically listed in the current grade uirements. The committee therefore mmended adding "U.S. mmercial" after "U.S. No. 2" in agraph (a)(3)(i) of the regulation ch pertains to yellow onions and mmended a similar change in agraph (a)(1) of the regulation taining to white varieties for formity.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in direct competition with the imported commodity. Imports then must meet the quality standards set for the particular area.

In the case of onions, the current import regulation [§ 980.117] specifies that import requirements for onions be based on those requirements in effect for onions grown in certain designated counties in Idaho and Malheur County, Oregon (M.O. 958) from June 1 through March 9 of each marketing year and on those requirements in effect for onions grown in designated counties of south Texas (M.O. 959) for the remainder of the year.

The proposed changes to the grade and size requirements in § 958.328 require no changes in the language of § 980.117 or the present § 958.328(g) *Applicability to imports.*

Further, miscellaneous changes are proposed to the unmarked introductory paragraph in § 958.328. These changes would be made to clarify present requirements and to conform paragraph references to other proposed changes.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received in response to this request for comments will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 958

Marketing agreements and orders, Onions, Idaho, Oregon.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 958 be amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 958 continues to read as follows:

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

2. Section 958.328 *Handling regulation* is hereby amended by revising the unmarked introductory paragraph, by inserting the words "or U.S. Commercial" after the words "U.S. No. 2" in paragraphs (a)(1) (i) and (ii) and (a)(3)(i), and by redesignating paragraphs (b), (c), (d), (e), (f), and (g) as (c), (d), (e), (f), (g), and (h), respectively, and by adding a new paragraph (b), and by revising the first sentence of newly redesignated (g) as follows:

§ 958.328 Handling regulation.

No person shall handle any lot of onions, except braided red onions, unless such onions are at least "moderately cured," as defined in paragraph (g) of this section, and meet the requirements of paragraphs (a), (b), and (c) of this section, or unless such onions are handled in accordance with paragraphs (d) and (e) or (f) of this section.

* * * * *

(b) *Pack.* Onions packed as U.S. Commercial grade shall have the grade marked conspicuously on the container.

* * * * *

(g) *Definitions.* The terms "U.S. No. 1," "U.S. Commercial," and "U.S. No. 2" have the same meaning as defined in the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types), as amended [7 CFR 51.2830–2854], or the United States Standards for Grades of Bermuda-Granex-Grano Type Onions [7 CFR 51.3195–51.3209], whichever is applicable to the particular variety, or variations thereof specified in this section.

* * * * *

Dated: June 16, 1988.

William J. Doyle,

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

[FR Doc. 88–13959 Filed 6–21–88; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 1076

[AMS–88–112]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend portions of the Eastern South Dakota Federal milk order. The provisions relate

to the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the provisions was requested by a cooperative association representing most of the producers supplying the market to prevent uneconomic movements of milk. The proposed suspension would be for the months of August 1988 through February 1989.

DATE: Comments are due on or before July 7, 1988.

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

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Eastern South Dakota marketing area is being considered for August 1988 through February 1989:

In § 1076.13, paragraphs (c) (2) and (3).

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20250–6456, by the 15th day after publication of this notice in the **Federal Register**. The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Land O'Lakes Inc. (LOL), an association of producers that supplies most of the market's fluid milk needs and handles most of the market's reserve milk supplies, requested the suspension. The suspension would remove for August 1988 through February 1989 the limit on the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants.

The order now provides that a cooperative association may divert up to 35 percent of its total member milk received at all pool plants or diverted therefrom during the months of August through February. Similarly, the operator of a pool plant may divert up to 35 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of August through February.

LOL indicates that operation of the 35-percent diversion limit during August through February would mean that at least 65 percent of its milk would have to be delivered to pool plants. LOL estimates, moreover, that only 39 to 50 percent of its milk will be needed at distributing plants. The balance would have to be delivered to pool plants, unloaded, reloaded and then shipped to other plants merely to qualify the milk for pooling. The additional handling and hauling costs would be incurred by LOL with no offsetting benefits to other market participants, according to LOL. In addition, the cooperative states, additional pumpings of milk can be expected to cause deterioration in its quality.

List of Subjects in 7 CFR Part 1076

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1076 continues to read as follows:

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

Signed at Washington, DC, on June 17, 1988.

J. Patrick Boyle,
Administrator.

[FR Doc. 88–14090 Filed 6–21–88; 8:45 am]
BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1809, 1922 and 1945

Appraisal of Single Family Residential Property

AGENCY: Famers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmer Home Administration (FmHA) proposes to amend its appraisal regulations to reflect minor changes in appraisal regulation content. The proposed changes are required to enhance and strengthen the Agency's internal appraisal process and to improve the overall quality of single family housing appraisals. The intented effect of this action is to improve FmHA appraisal regulations regarding the use of comparable sales data and to adopt a new appraisal format common to the real estate lending industry, including other Federal government agencies.

DATES: Comments must be received on or before August 22, 1988.

ADDRESSES: Interested persons are invited to submit comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Neal A. Hayes, Jr., Senior Loan Specialist, Home Ownership Branch, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5344, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250 Telephone (202) 382–1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Department Regulation 1512–1 which implements Executive Order 12291, and has been classified as "nonmajor." This action will result in an annual efect on the economy of less than $100 million and will neither result in a major increase in cost or prices, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. There is no impact on proposed budget levels, and funding allocations will not be affected because of this action.

In accordance with the Regulatory Flexibility Act (Pub. L. 96-354), Vance L. Clark, Administrator, FmHA., has determined that this action will not have a significant economic impact on a substantial number of small entities because the proposed regulation changes primarily affect residential appraisal processing by FmHA staff appraisers.

Subpart C of Part 1922 is amended to incorporate internal management changes which affect the use of comparable sales data, Marshall and Swift "Square Foot Appraisal Form" form number change from AP 1007 to 1007, changes incorporated in Form FmHA 1922-8, currently titled "Residential Appraisal Report" and titled "Uniform Residential Appraisal Report", including minor changes in appraisal regulation content.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410, "Low Income Housing Loans (Section 502 Rural Housing Loans)." For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1922

Loan programs—Hearing and community development, Low and moderate housing, Rural housing.

As proposed in the preamble, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1809—APPRAISALS

1. The authority citation for Part 1809 continues to read as follows:

Authority: U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart A—Appraisal of Farms and Leasehold Interests

§ 1809.2 [Amended]

2. In § 1809.2(b), the last sentence is amended by changing the title of form FmHA 1922-8 from "Residential Appraisal Report" to "Uniform Residential Appraisal Report."

3. The authority citation for Part 1922 is revised to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70

4. Subpart C of Part 1922 is revised to read as follows:

PART 1922—APPRAISAL

Subpart C—Appraisal of Single Family Residential Property

Sec.
1922.101 General.
1922.102 Definition of appraisal terms.
1922.103 [Reserved]
1922.104 Influences on value.
1922.105 Steps preliminary to writing the appraisal.
1922.106 [Reserved]
1922.107 Depreciation.
1922.108 Appraisal of leasehold estate.
1922.109 Writing the appraisal.
1922.110 Final reconciliation/estimated value.
1922.111 Abbreviated appraisal and revising existing appraisals.
1922.112-1922.150 [Reserved]

Exhibit A—Single Family Residential Appraisal Manual
Exhibit A-1—Single Family Residential Appraisal Sequential Analysis
Exhibit B—Single Family Housing Income Approach

Subpart C—Appraisal of Single Family Residential Property

§ 1922.101 General.

This subpart prescribes the policies and procedure for appraisals in connection with making and servicing Single Family Rural Housing (RH) loans on fee simple owned nonfarm and small farm real properties, and on leaseholds on nonfarm and small farm real properties. Property will be appraised for market value. In no case will an appraisal be made without inspecting the property and, when applicable, reviewing all plans and specifications for proposed improvements to the site.

(a) *Appraiser.* Only an employee designated by the State Director or contract appraiser selected by the State Director as authorized by the National Office may appraise a single family housing property.

(b) *Employees authorized to appraise under this subpart.* Employees whose job descriptions contain appraisal responsibilities, after receiving the required training and written delegation from the State Director, are authorized to make appraisals. The employee's immediate supervisor will recommend the employee be designated to make appraisals after determining he or she has:

(1) Inspected at least two properties not previously used by Farmers Home Administration (FmHA) for sales comparison and completed corresponding Forms FmHA 1922-12, "Nonfarm Tract Comparable Sales Data," for those comparables; and

(2) Satisfactorily prepared at least two appraisals on Forms FmHA 1922-8, "Uniform Residential Appraisal Report," and Form 1007, "Square Foot Appraisal Form."

(c) *Appraisal report.* An appraisal report is a supportable, defensible, written report as of a specific date by an appraiser setting forth an estimate of the value of a property, along with documentation supporting the value estimate. The basic principles and method of appraising real estate outlined in this subpart, Exhibit A, Exhibit A-1 and Exhibit B to this subpart (available in any FmHA office) will be followed in making appraisals. Use Form FmHA 1922-8 for all appraisals made under this subpart. Attach a cost calculation sheet, Form 1007, to Form 1922-8 with at least one photograph of existing dwellings. The appraisal report will include market data on comparable sales of similar properties in the sales comparison analysis section. Use three comparable sales if available. A cost calculation based on a residential cost handbook or building valuation manual approved by the National Office is required for all appraisals. Appraisals for loan making purposes will be made on an "as developed" basis. Appraisals for foreclosures, voluntary conveyance, partial release, recapture, etc., will be made on an "as is" basis. Appraisals made in connection with voluntary conveyance and foreclosure may also contain an additional "as developed" value documented in the reconciliation section of Form FmHA 1922-8 if repairs are planned prior to or in connection with sale of the property. When an "as developed" value is documented in the reconciliation section of Form FmHA 1922-8, a list of the repairs and estimated cost of the repairs must be included.

§ 1922.102 Definition of appraisal terms.

(a) *Depreciation.* A decline in market value of dwelling and related facilities from the time improvements were constructed to the time an appraisal is made. Depreciation may result from.

(1) Physical deterioration, such as wear and tear, etc., to a structure and other site improvements that are subject to deterioration.

(2) Functional obsolence, such as inadequacies or overadequacy due to size, design, style, age; changes in taste of the general public; the high cost of

heating and cooling dwellings that cannot economically be made energy efficient, etc.

(3) Location/Economic obsolescence is caused by forces external to the property; such as changes in use, or poorly maintained properties in the neighborhood, decline in area employment, noise or other pollution, a decline in the purchasing power of potential buyers, etc.

(b) *Economic life.* When applied to single family dwellings, the normal time a dwelling is expected to remain suitable as a residence, taking into consideration a normal depreciation rate. This may vary significantly from the remaining physical life of the structure. Economic life minus effective age equals remaining economic life.

(c) *Effective age.* The age of the dwelling taking into account any remodeling or refurbishment that has been accomplished or is planned to take place immediately and deterioration or abuse of the property that will not be included in any planned improvements. Effective ages usually will be less than actual age when significant refurbishment has taken place, or greater than actual age if the property has deteriorated more than typical properties of the same age.

(d) *Final reconciliation/estimated value.* The final estimate of market value after weighing the relative significance, supportability, and reliability of the market data and cost approaches; the most probable price a property should bring, as of a specific date, in a competitive and open market, assuming the buyer and seller are prudent, knowledgeable and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(e) *Reproduction cost.* The estimated cost of reproducing an exact duplicate or replica of a structure using the same materials, construction standards, quality of workmanship, layout, design, and incorporating all the deficiencies and superadequacies (functional obsolescence) of the subject structure. Reproduction cost less the sum of physical depreciation, functional and economic/locational obsolescence equals depreciated cost.

(f) *Depreciated replacement cost.* The calculated cost of replacing a structure of equal utility that conforms to present day standards. Replacement cost may be significantly less than the cost of reproducing an older outdated structure or a new structure that is overbuilt or does not conform to current market standards.

(g) *Living area.* (1) For appraisal purposes, living area will include only finished area as determined by the exterior dimensions of the dwelling.

(2) For dwelling size eligibility determinations, living area is defined differently and is calculated as prescribed in § 1944.16, Subpart 1944, of this chapter.

(h) *Leased fee value.* This is the value of the landlord's rights to the property being leased.

(i) *Leasehold value.* This is the value of the tenant's rights under the lease that can be transferred or sold to another party.

(j) *Residential property.* The site and all improvements to the site, including the dwelling.

(k) *Cost calculation manual.* A manual or handbook published on a national basis, approved by the National Office, that is used to estimate the depreciated replacement cost of single family residential structures and other site improvements.

§ 1922.103 [Reserved]

§ 1922.104 Influences on value.

(a) *Factors to be considered*—(1) *Location.* Location is one of the greatest influences on real property value. A location near railroads, commercial or industrial plants, landfills, cemeteries, airports, etc., or too distant from employment opportunities may adversely affect a residential property value, whereas a location in a quiet residential area near good employment, schools, shoping, public services, etc., may enhance property value.

(2) *Supply and demand.* If the market area has an oversupply of residential properties and/or building sites for sale or depressed economic conditions exist, a negative effect on property value will normally be observed. When the supply of residential properties or suitable building sites is short and/or the general economy is good, a positive effect on residential property values may be observed.

(3) *Replacement cost.* Cost does not directly create or maintain value; however, cost does have an influence on value and will be considered when estimating value of improvements to a site.

(4) *Highest and best use of the site.* The site and the improvements to the site will be valued separately. However, for loan making purposes, the value estimate of the site will not exceed its value as a residential site, based on market data on actual sales of similar residential sites in the area. For other than loan making purposes, when an alternate use of the site indicates a site value greater than the value of the improved site, the higher value will be used.

(5) *Accrued depreciation.* This is a combination of physical deterioration, functional and economic/locational obsolescence.

(6) *Use restrictions.* Easements, rights-of-ways, subdivision covenants, zoning, and deed restrictions, etc., affect value.

(7) *Utilities.* Availability, reliability, quality of utility service and cost to obtain suitable water supply, sewer, gas, electrical and other utility services affect value.

(8) *Taxes and assessments.* Tax rates and other public assessments as compared to rates in other similar neighborhoods in the market area affect value.

(9) *Homogeneity.* Similarities to other properties in the neighborhood; for example, a property overbuilt for the neighborhood in an older or deteriorating neighborhood may have a value less than its replacement cost.

(10) *Site.* Topography, size, shape, drainage, general suitability of the site and site view for residential purposes and site development in addition to the dwelling must be considered in estimating the value of the site.

(11) *Financing.* Terms, availability of funds, interest rates and cost of obtaining long-term loans, including but not limited to FmHA RH loans, have an influence on the value of property.

(12) *Construction.* Living area, room arrangement, garages, porches, built-in equipment, storage, parking facilities, basement, quality of construction, and "value in use" of certain energy efficient and/or solar items affect value. Exhibit A of FmHA Instruction 1922-B (available in any FmHA office) will be used when estimating value in use of any component described in § 1944.16(g)(2) of Subpart A, Part 1944 of this chapter.

(3) *Street Improvements.* Street improvements adjacent to the property and the type of roads leading to the neighborhood affect value.

(b) *Factors not to be considered.* (1) Amount of existing liens or debts secured by the property;

(2) Proposed sale price or bid amount to build the structure;

(3) Amount of FmHA loan requested;

(4) Sex, age, race, national origin, color, religion or handicap(s) of residents of the neighborhood or community; and

(5) Appraisals for voluntary conveyances and foreclosure will not reflect any consideration of a forced sale, unpaid balance of FmHA loan(s), other liens against the property, or cost of acquisition.

§ 1922.105 Steps preliminary to writing the appraisal.

The appraisal will be made only when sufficient information has been developed to enable the appraiser to properly evaluate the property.

(a) *Basic information on property.* As a minimum, the property legal description, address, plat, subdivision and/or neighborhood map, tax information, recording information, and complete plans and specifications of any planned improvements should be obtained by the appraiser prior to beginning the appraisal.

(b) *Analysis information.* The appraiser will consider general economic conditions of the market area and obtain additional information which he or she considers pertinent to the appraisal. The appraiser should examine the community and the neighborhood before inspecting the site.

(1) *Community analysis.* The appraiser needs pertinent information about the history and growth of the community. The collection, analysis and interpretation of community data helps the appraiser to determine the relative competitive position of a property in the total market. A knowledge of how and why the community grew and an understanding of its economic trends enables the appraiser to better understand the factors influencing the value of real property. The community factors to consider include:

(i) Population—increase or decrease;
(ii) Geography i.e., topography, etc.;
(iii) Roads and public transportation service;
(iv) Employment wages and other income sources;
(v) Medical facilities;
(vi) Schools;
(vii) Volume of new construction;
(viii) Number of homes (new and old) being offered for sale in the market area;
(ix) Fire and police protection;
(x) Availability of suitable building sites;
(xi) Shopping facilities; and
(xii) Other financing available in the area.

(2) *Neighborhood analysis.* Neighborhoods are divisions or sections of a community or city which are usually homogeneous in some respect. Neighborhoods customarily pass four stages of life: building, static, declining, and rebuilding. In measuring the desirability of neighborhoods, features such as the number of unoccupied homes, age and condition of nearby properties, etc., should be studied and compared.

(3) *Site analysis.* The importance of location cannot be overemphasized. The location of a community, city, or neighborhood to available job opportunities, places of worship, schools, medical care, shopping, etc., is as important as the location of the property within its own neighborhood. Other factors to consider about the site are:

(i) Frontage;
(ii) Width;
(iii) Depth;
(iv) Shape;
(v) Total usable area;
(vi) Topography;
(vii) Hazards, such as being located in a flood plain, subject to localized flooding, etc.,
(viii) View from the site; and
(ix) Utilities available.

(c) *Inspection of the property.* An inspection of the site and all improvements to the site will be made at such time and under such conditions that the appraiser can adequately evaluate the entire property. In the case of planned improvements, a thorough evaluation of the plans and specifications of the improvements to be made should be completed to determine if the improvements are suitable for the site and any existing improvements.

(1) The appraiser, after locating and identifying the property, must check boundary lines against the plat and legal description. This is essential in order to be certain the improvements to the site are totally on the site and do not encroach on adjoining property.

(2) When inspecting an existing structure, the appraiser will determine the condition of the structure, and estimate depreciation and cost to repair individual items he or she determines need repair or replacement in order for the structure to meet minimum property requirements and FmHA thermal standards. The appraiser will determine the total living area, storage, basement, and parking area by actual measurements made during the inspection of an existing structure; for proposed construction, measurements will be made from the building plans.

(3) If the house is under construction or less than one year old and an individual water or sewage system is involved, include a certification by the builder that the house and any water and waste disposal systems have been or will be built or installed in accordance with the local building codes, plans and specifications. Evidence of approval by health authorities having jurisdiction in the area also will be included. If the house is one year or more old, the appraiser will require approval of individual water and/or sewage systems by health authorities or, in a case where no State or local health authority exists, by a person or firm qualified to determine the adequacy and safety of such systems.

(4) If the inspection reveals the property cannot be made suitable for the FmHA program, an appraisal will not be made.

(5) The date the real property is inspected will be the date placed in the reconciliation section of Form FmHA 1922–8.

(6) Photograph of the property will be attached to Form FmHA 1922–8. Photographs will provide front, rear and side views of the property, including the "street appeal" aspects of the property.

§ 1922.106 [Reserved]

§ 1922.107 Depreciation.

Adjustments to reproduction cost and the sales comparison analysis that reflect a decrease in value of a structure or other improvements to the site due to physical deterioration and/or functional and economic obsolescence will be determined. Land and improvements to the site such as wells, etc., do not depreciate but may change in value.

(a) *Adjustments for depreciation*—(1) *Physical deterioration.* Any deterioration to a structure or other improvement to a site which adversely affects the value of the property is physical depreciation. Since all parts of a structure are not expected to have the same life expectancy, it is necessary to determine the age, suitability and condition of certain major components of the existing structure. Physical depreciation estimates in structures with an effective age over 1 year, will be made unless new construction, by estimating depreciation of the short-lived components of the property separately from the long-lived components of the property. The appraiser, as a minimum, will consider the heating and/or cooling system(s), roof covering, floor covering, and built-in or easily removable appliances as short-lived components and estimate depreciation based on the percent of total economic life which has passed since the component was installed. The appraiser will subtract the replacement cost new of these component items from the replacement cost new of the entire structure; then estimate the physical depreciation of the long lived items in accordance with the depreciation section of the residential cost calculation manual and Exhibit A to this Subpart (available in any FmHA Office). The total short-lived and long-lived depreciation equals total physical depreciation. Short-lived and long-lived depreciation schedules will be completed on all comparable properties.

(Refer to form FmHA 1922–12, reverse side.)

(2) *Functional obsolescence.* Any design or feature of a dwelling that is not acceptable to the typical buyer in the market area will be identified by the appraiser on the inspection visit to an existing dwelling or in the review of plans and specifications of a dwelling to be built. All items affecting the livability and marketability of the property will be recorded in the appraisal report. The appraiser will measure the value difference in the subject property caused by functional obsolescence by comparing properties that have sold that do meet the livability and marketability demands of the typical purchaser. The appraiser must be familiar with the taste and desires of the typical purchaser in the market area in order to support the estimate value loss due to functional obsolescence of a property. Exhibit A to this subpart (available in any FmHA Office) outlines the parts of a property and design items to consider when estimating functional obsolescence.

(3) *Economic obsolescence.* Any factor outside the property boundary that causes real property to be worth less because of its location is an economic obsolescence factor. The community, neighborhood and site analysis will form the basis for making this estimate. The actual dollar ajustment estimate for economic obsolescence will be based on a comparison of sales prices of similar properties in similar and nonsimilar locations. Exhibit A to this subpart (available in any FmHA Office) explains market data extraction of economic obsolescence and sources of economic trend data.

(b) *Accrued depreciation.* The sum of physical depreciation, and functional and economic obsolescence equals accrued depreciation. Accrued depreciation will be entered on Line 29 of Form 1007 and will be documented on the reverse of Form 1007. Accrued depreciation will be reflected in the sales comparison section of Form FmHA 1922–8.

§ 1922.108 Appraisal of leasehold estate.

Prior to making an appraisal for loan making purposes involving a leasehold, the appraiser must determine if the lease complies with the requirements of § 1944.15(a)(5) of Subpart A of Part 1944 of this chapter. The value of the leased fee will not be estimated under this Subpart.

(a) *Property as improved.* Estimate the market value of the property "as improved" as though the property was owned under a good and marketable fee title. Estimate the market value of the site on an "as is" basis as if no improvements exist or are to be made or placed on the site and subtract from "as improved" property value.

(b) *Rent.* Estimate the amount of rent that customarily is paid in the area for similar sites leased under similar terms.

(c) *Lease acquisition cost.* Where a lease acquisition cost is involved, determine the total annual leasehold cost of the site as if vacant. In making this determination the appraiser will consider the amount of annual rent to be paid under the lease plus the annual loan payment required on the portion of the RH loan used to acquire the leasehold site. The sum of these should not exceed the amount an applicant would need to pay on a loan to buy a similar site with fee simple title.

Example: Present market value of the site as if owned with fee simple title is $5000. Amortization factor for 33-year loan at 12% interest with monthly payments is .0102 per $1.00 of loan.

$5000 × .0102 = $51/month

$51 × 12 mos. = $612 (annual payment on the site if owned with fee simple title)

Lease acquisition cost is $2000. Amount of annual rent is $300

$2000 × .0102 = $21/mo. (rounded up to nearest dollar)

$21 × 12 = $252 annual payment on leasehold acquisition fee.

$252 plus $300 (annual rent) equals an annual leasehold cost of $552.

Since the total annual cost of the leasehold interest in the site in this example is less than the annual payment would be on the site as if owned with fee simple title, the $2,000 lease acquisition fee would be reasonable. The lease acquisition "value" will be documented on Form 1007 and would be adjusted downward if the total annual cost of the leasehold exceeded the annual cost of an identical fee simple owned site.

(d) *Security value of leasehold.* The maximum security value of a leasehold interest (recommended market value of the leasehold) which will be documented on Form 1007, including improvements to be made to the leasehold site, will not exceed the market value of the improved property less the "as is" value of the site as if owned with fee simple title, plus the market value of the leasehold site.

Example:

Market value of the property "as improved" as if owned with fee title	$40,000
Less market value fee title owned site "as is"	$5,000
Market value of improvements	$35,000
Acquisition Cost of leasehold site (unimproved)	$2,000
Maximum security value of leasehold property "as improved"	$37,000

Complete Form FmHA 1922–8 with a full explanation as to how the value estimates were arrived at and what factors were considered in estimating the maximum security value for a loan being made on the leasehold.

§ 1922.109 Writing the appraisal.

In order to analyze and evaluate the influence on the value of a property by the factors outlined in this subpart and Exhibit A of this subpart (available in any FmHA Office), the following steps, as a minimum, will be followed by the appraiser.

(a) *Sales comparison approach.* Collecting, verifying and analyzing sales of comparable properties in the market area will provide a basis for completing the sales comparison section on the residential appraisal report of Form 1922–8. Information on each comparable sale will be recorded on Form FmHA 1922–12, after inspecting the property. A photograph of the comparable sale will be attached to Form FmHA 1922–12. Comparable sales less than one year old with nonsubsidized financing from lenders other than FmHA should be used in the market data analysis. A National Office exception may be granted on a quarterly basis, to permit the use of comparable sales financed by FmHA, provided, the State Director certifies in writing that nonsubsidized financed comparable sales are not available within a specific geographic location within the State. Documentation to support a National Office exception request will include a detailed analysis of the real estate market situation from the County Supervisor, District Director and the State Office Single Family Housing Appraisal Trainer. Only "arms length" sales will be used. Market value of the site should be obtained by using comparable sales data for other building sites sold in the area. Dollar adjustments for differences in time, size, and quality will be made first. All adjustments to comparables will be based on paired sales extraction, cost estimates and market surveys of value differences. Written documentation used to support adjustments will be attached to Form FmHA 1922–8. The cost estimates and market survey methods of making adjustments to comparables will be used only when data extracted from paired sales cannot be obtained. Comparable sales closest to the subject are the most desireable and the best indicator of value, but if comparable sales in the immediate area are nonexistent, the distance may be increased to the nearest similar communities where comparable sales have occurred.

(b) *Cost approach.* A residential cost calculation manual approved by the

ational Office will be used in timating the replacement cost of the velling and improvements to the site. e cost calculation will be made in cordance with instructions furnished the handbook or manual and recorded a Form furnished by the cost manual pplier or Form 1007. The cost manual ntains basic cost adjustment tables different qualities of houses. The ality description which best describes house being appraised will be used. crued depreciation will be estimated accordance with Exhibit A (available any FmHA Office) and § 1922.107 of s subpart. Lot or land value will be timated and added to depreciated placement cost of improvements.

(c) *Income approach.* To be used in njunction with inventory property n-program appraisals only. See hibit B (available in any FmHA fice).

922.110 Final reconciliation/estimated ue.

(a) *Indicated value by the sales mparison approach.* The appraiser ll make an estimate of value by the es comparison approach after viewing the similarity of each mparable sale to the subject. The final dicated value by sales comparison proach on Form FmHA 1922–8, will be mpered by the degree of similarity and iance placed on each of the different mparable sales and will not be an erage of the three indicated values.

(b) *Indicated value by cost approach.* e appraiser will enter the value dicated by the cost approach in the st approach section of Form 1922–8.

(c) *Indicated value by the income proach.* The appraiser will enter the ue indicated by the income approach he income approach section of Form 22–8. This approach is to be used in njunction with inventory property n-program appraisals only. See hibit B (available in any FmHA ice).

(d) *Final reconciliation/estimated rket value.* The estimated market ue in the reconciliation section of m FmHA 1922–8 will never exceed higher of the values indicated by the es comparison approach or the cost proach and may exceed the lower of two indicated values only when the praiser includes justifying and pporting documentation in the praisal report.

(e) *Valuation of buildings for urance purposes.* The value of ildings for insurance purposes will be amount indicated on Line 30, Form 7.

§ 1922.111 Abbreviated appraisal and revising existing appraisals.

A complete new appraisal will be made for each property requiring an appraisal except:

(a) *Abbreviated appraisal.* An abbreviated appraisal may be made for property to be built when:

(1) The property being appraised is identical, except for minor differences, with a property appraised not more than 90 days prior to the date of the abbreviated appraisal and is located on an equally desirable site within the same subdivision. A copy of all appraisal documents from the first appraisal, "the master appraisal," will be attached to, and will become a part of Form FmHA 1922–8, for the abbreviated appraisal.

(2) All items on the abbreviated appraisal that differ from the property being appraised, such as property address, legal description, applicant's name and reconciliation/estimated value will be completed along with a narrative explanation of any adjustments made and any differences in final value estimate.

(b) *Revised appraisal.* An existing appraisal may be revised when an accurate estimate of present market value can be determined without making a complete new appraisal and the following conditions exist:

(1) The appraisal being revised is not more than 2 years old;

(2) Adequate narrative documentation is attached to support the revised estimate; and

(3) The appraisal being revised was made using Forms FmHA 1922–8 and 1007.

§§ 1922.112—1992.150 [Reserved]

Exhibit A—Single Family Residential Appraisal Manual

Note: The Exhibit is not published in the Code of Federal Regulations. It is available in any FmHA office.

Exhibit A–1—Single Family Residential Appraisal Sequential Analysis

Note: The Exhibit is not published in the Code of Federal Regulations. It is available in any FmHA office.

Exhibit B—Single Family Housing Income Approach

Note: The Exhibit is not published in the Code of Federal Regulations. It is available in any FmHA office.

PART 1945—EMERGENCY

5. The authority citation for Part 1945 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 C.F.R. 2.23; 7 CFR 2.70

Subpart D—Emergency Loan Policies, Procedures, and Authorizations

§ 1945.175 [Amended]

6. In § 1945.175(c)(1), the first sentence is amended by changing the title of form FmHA 1922–8 from "Residential Appraisal Report" to "Uniform Residential Appraisal Report."

Date: April 26, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–13901 Filed 6–21–88; 8:45 am]

BILLING CODE 3410–07–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Exemption from Federal Speculative Position Limits for Certain Spread Positions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has long established and enforced speculative position limits for futures contracts on various agricultural commodities. The Commission recently revised Federal speculative position limits with respect to both the structure and level of such limits. 52 FR 38914 (October 20, 1987). Recently, the Commission received a petition for rulemaking to restore an exemption from speculative position limits for futures positions which are spread against other futures positions. A similar exception was deleted when the Federal speculative position limits were revised. In addition, the Commission has noted the need for a technical modification of its rules concerning futures/options spreads. Accordingly, the Commission is proposing rules to exempt or provide higher limits for certain futures spread positions and to clarify that futures/options spreads may exceed the futures speculative positions limits only where the position is outside of the spot month.

DATE: Comments must be received by July 22, 1988.

ADDRESS: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581 and should make reference to "Exemption for Spread Positions."

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director, or Paul M. Architzel, Chief Counsel, Division of

Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581, (202) 254-3201 or 254-6990, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

Speculative position limits have been a tool for the regulation of futures markets for over half a century. During this time, the Congress consistently has expressed confidence in the use of speculative position limits as an effective means of preventing unreasonable or unwarranted price fluctuations. Indeed, one purpose of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* (1982) ("Act"), is

> to provide a measure of control over those forms of speculative activity which too often demoralize the markets to the injury of producers and consumers and the exchanges themselves.

H.R. Rep. No. 421, 74th Cong., 1st Sess. 1 (1935).

In this regard, the Congress provided the Commission with the authority to

> fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden.

Section 4a(1) of the Act.

On October 20, 1987, the Commission adopted final rules extensively revising Federal speculative position limits. 52 FR 38914. The Commission, at that time, revised the structure and levels of Federal speculative position limits as part of its overall review of speculative position limit policy. In undertaking this revision, the Commission sought extensive comment from the public, publishing and Advance Notice of Proposed Rulemaking in September 1986. 51 FR 31648. Moreover, it received seventy-nine comments from the public in response to its Notice of Proposed Rulemaking, 52 FR 6812 (March 5, 1987). As adopted, these revisions maintained the current speculative position limit levels for the various delivery months and, in most cases, maintained the current levels for individual, deferred months. The speculative limits for all-months-combined, however, were raised in selected contracts. In addition, certain reporting requirements were modified and other technical changes were adopted.

II. Futures/Futures Spreads

The New York Cotton Exchange (NYCE), by letter dated March 16, 1988, petitioned the Commission to restore an exemption from the speculative position limit for cotton for positions spread between two futures months of that contract. ("NYCE Petition"). Prior to the recent revision of Part 150, Commission Rule 150.2(b) provided that

> the foregoing limits upon position shall not be construed to apply, * * *, except during the delivery month, [to] the net positions in any one future to the extent that they are shown to represent straddles between cotton futures or markets.

17 CFR 150.2(b) (1987).

In deleting the cotton spread exemption, the Commission noted that this particular exemption for spread positions appears to have been added in response to the statutory definition of hedging which pre-existed the 1974 amendments to the Act. 52 FR 38919. The Commission further noted that in light of its determination to amend Commission Rule 1.3(z)(2) to enumerate specifically as bona fide hedging sales and purchases of futures which offset unfixed cash sales and purchases and in light of the increase to cotton speculative position limits, deletion of the spread exemption would have little impact on traders. The Commission received few comments concerning this proposed action. Accordingly, the Commission determined to delete the spreading exemption, noting that it

> carefully considered the potential benefits of inter-month spread positions versus the potential for disruption of the market if such positions become unusually large, especially where such positions are across different crop years, and the fact that the majority of existing spread positions would be accommodated by the proposed increases in the speculative position limits. On the basis of these considerations, the Commission has determined to adopt these proposed amendments as final.

52 FR 38919-38920.

The NYCE in its Petition states that the

> absence of that exception in the new regulations imposes an unnecessary restriction on speculators who are active spreaders. Inter-month straddles in the same crop year are generally less risky than outright positions and constitute net positions of zero. The amended regulations introduce an anomaly in that the cotton trader who spreads his position in one month against equal positions in other month(s) is subject to the same restriction (450 contracts in one month) as is the cotton trader whose positions are concentrated on only one side of the market.

NYCE Petition at p. 1.

The NYCE further maintains that "the active spreader performs a valuable function in the marketplace—he tends to keep the price relationships between nearby and more distant months at rational levels and he provides additional liquidity in the more distant months." *Id.* Accordingly, the NYCE petitioned the Commission to provide that the Federal speculative position limit in cotton may be exceeded to the extent that such positions are:

> straddles between cotton futures of the same crop year and excluding the delivery month, provided, however, that, under this provision, a person may not hold or control more than 1,200 such straddles which consist of positions in excess of the limits set forth in sec. 150.2.

NYCE Petition at p. 2.

The NYCE Petition responds to the concerns raised by the Commission in deleting the exemption by proposing that such higher limits apply only between individual futures months within the same crop year and by limiting the overall number of such spread positions permitted. Further, the higher spread limit would not be applicable during the spot month. Such spread exemptions are routinely permitted under exchange speculative position limits with no perceived adverse effects. Accordingly, the Commission has determined that a spread exemption for positions between futures months, on a one-to-one basis, with limitations of the nature contained in the NYCE Petition is consistent with section 4a of the Act, and generally meets the goals and objectives of the Act.

In proposing this rule, however, the Commission believes that the substance of the exemption is applicable equally to all commodities having Federal speculative position limits and need not be limited to cotton. Further, the Commission believes that such an exemption for spread positions in each trading month should be limited to twice the current speculative position limit level for outright positions in each single month. Of course, the single month speculative position limit remains applicable to any outright positions in that futures month, and any such outright positions must be combined with the spread positions in that month in calculating whether the overall position exceeds twice the single month limit level. In arriving at this configuration of the proposed spread exemption, the Commission has taken into consideration the number of such spread positions which are potentially constrained by the current limits. Further, the Commission believes that this level of exemptions in individual months will assure that such positions will not become unusually large and thereby pose a potential for disruption of the market. Of course, it should be noted that in proposing this level the

ommission has taken into onsideration recent revisions to ndividual speculative position limit evels.

II. Futures/Options Spreads

At the time the Commission stablished a pilot program for the ading of exchange-traded options on tures contracts on domestic gricultural commodities, it proposed an xemption from Federal speculative osition limits for futures/options preads.[1] Such an exemption was ecessary because the Federal peculative position limits were adopted uring a period in which no options on ese contracts were permitted due to a tatutory bar. Since there were no ederal speculative position limits for omestic agricultural option contracts, hen such option contracts were esignated, speculative position limits such option contracts were required nder Commission Rule 1.61, 17 CFR 1 (1987), to be set by the exchanges. order to permit spread positions etween the Federal and exchange-set peculative position limits regarding ese commodities, the Commission empted from Federal speculative osition limits, pursuant to Commission-pproved exchange rules, positions read between the underlying domestic gricultural futures contract and options the futures contract. 49 FR 36825 eptember 20, 1984).

As the Commission explained in dopting these rules, it intended to view carefully exchange rules bsequently submitted for itts pproval. 49 FR 36827. The Commission rther indicated that such exchange les must provide that the exempt read or arbitrage positions be limited futures/option positions on the same ard of trade in the same commodity, hich are, as a totality, offsetting. As e Commission explained, a delta-uivalent system of evaluating futurs/ tion spread positions is an ppropriate means of fulfilling this iterion where there is a "specific, adily enforceable sysem for entifying and monitoring those positions which are delta-neutral." *Id.* Further, the Commission advised that such exchange rules must provide for a limitation on the size of futures positions which can be acquired in connection with a pre-determined or pre-approved futures/option spread or arbitrage exemption. 49 FR 36828.

The Commission also advised that such spreads be confined to cases where both legs pertain to the same delivery month in the underlying futures contract. 49 FR 36827. Subsequently, however, the Commission approved exchange rules which required the legs of such spread positions only to be in the same crop year, rather than in the same delivery month. Although the Commission was persuaded that such rules provided an appropriate level of market protection, while offering traders greater trading flexibility, this relaxation created the possibility that spread positions might be used to enter into futures positions in the spot month that are in excess of spot-month speculative position limits where the option leg of the spread is in a more distant month. [2]

Thus, it has come to the Commission's attention that, based on the above anomaly, certain exchange rules could be interpreted to permit traders to carry or assume a speculative futures position in excess of the Federal spot-month speculative position limit level by entering into a futures/option spread position including the spot-month. Clearly, the Commission and the exchanges did not intend for these futures/option spread exemptions to have such an effect. Indeed, such an outcome is contrary to the fundamental policies and objectives of Federal speculative position limits which specifically provide for lower spot-month limits. While no instances of such spot-month futures/option spread positions in excess of the spot month futures level have occurred, the Commission nevertheless believes that exchange rules should specifically prohibit the use of such spread exemptions for spot-month futures positions. Accordingly, the Commission is clarifying Rule 150.3(b) to provide that such spread or arbitrange positions exempted pursuant to exchange rules are for positions outside of the spot-month.

IV. Related Issues

It should be noted that both revisions regarding futures/futures and futures/options spreads propose to amend Commission Rule 150.3, which governs exemptions from Federal speculative position limits. This rule has previously been proposed to be amended by adding an additional exemption from speculative position limits for positions which have a common owner but which are independently controlled. 53 FR 13290 (April 22, 1988). The comment period on those proposed changes ends on July 21, 1988. The amendments proposed herein further modify Rule 150.3, as proposed to be revised in the April 22, 1988 **Federal Register** notice. Specifically, the Commission is hereby proposing to amend proposed § 150.3(a)(2) relating to futures/options spreads, to insert a new § 150.3(a)(3) relating to futures/futures spreads and to redesignate at § 150.3(a)(4) currently proposed § 150.3(a)(3) relating to an exemption for positions which have a common owner but which are independently controlled.

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") 5 U.S.C. 601 *et seq.* requires that agencies, in proposing rules, consider the impact of these rules on small entities. The Commission has previously determined that "large traders" are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These proposed rules are exemptions from limits on the size of speculative positions which typically may be held by the largest traders in these markets. Accordingly, if promulgated, these rules would have no significant impact on a substantial number of small entities. For the above reasons, and pursuant to section 3(a) of RFA, 5 U.S.C. 605(b) the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission in particular invites comments from any firms or other persons which believe the promulgation of these amendments might have a significant impact upon their activities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission has submitted these proposed rules and their

[1] Exchange-traded commodity options on other n domestic agricultural commodities were ially permitted under a three-year pilot program. FR 54500 (November 3, 1981). Subsequently, a arate pilot program was established for options futures contracts on domestic agricultural mmodities, those commodities enumerated in tion 2(a)(1)(A) of the Act, 7 U.S.C. 2 (1983). This ond pilot program followed the repeal of the tutory bar to such option trading found in section of the Act, 7 U.S.C. 6c (1978). This statutory bar s repealed during the Commission's 1982 uthorization. See, section 206 of the Futures ding Act of 1982, Pub. L. No. 97-444, 96 Stat. 94, 2301 (1983).

[2] Options for the domestic agricultural commodities subject to Federal speculative futures limits expire prior to the first notice day of the underlying future. Accordingly, when spread exemptions for options and futures are confined to the same single month, it would not be possible to use the exemption to exceed the spot month limits, but where such spreads are merely confined to the same crop year, it becomes possible to use these spreads for this purpose

associated information collection requirements to the Office of Management and Budget. The Commission has determined that the proposed rules do not have an impact on the paperwork burden.

Persons wishing to comment on the Commission's information collection submission to OMB should contact Robert Neal, Office of Management and Budget (OMB), Room 30228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to the OMB are available from Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581 (202) 254–9735.

List of Subjects in 17 CFR Part 150

Agricultural commodities, Bona fide hedge positions, Exemption from speculative position limits, Position limits.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, in particular sections 2(a)(1), 2(a)(2), 4a, 4c, and 8a of the Commodity Exchange Act, as amended, 7 U.S.C. 2, 4, 4a, 6a, 6c, and 12a, the Commission hereby proposes to amend Part 150 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 150—LIMITS ON POSITIONS

1. The authority citation for Part 150 continues to read as follows:

Authority: 7 U.S.C. 6a and 12a(5) (1982).

2. Section 150.3 is proposed to be amended by revising paragraph (a)(2), by redesignating paragraph (a)(3) as paragraph (a)(4) and by adding a new paragraph (a)(3) to read as follows:

§ 150.3 Exemptions.

(a) * * *

(2) Spread or arbitrage positions between futures and option contracts traded on the same board of trade in any one commodity, for positions outside of the spot month, which are as a totality offsetting, and upon such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.61 and 1.41 of this chapter;

(3) Spread or arbitrage positions between single months of a futures contract traded on the same board of trade outside of the spot-month, in the same crop year; *provided however*, that such spread or arbitrage positions, when combined with any outright positions in the single month, do not exceed twice the single month positions limit for the futures contract set forth in § 150.2 of this part; or

* * * * *

Issued in Washington, DC, this *20th* day of June, 1988, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–14201 Filed 6–21–88; 8:45 am]

BILLING CODE 6351–01–M

HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 606

[Docket No. 87N–0091]

Current Good Manufacturing Practice Regulations for Certain Blood and Blood Components

AGENCY: Food and Drug Administration; HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reissue the current good manufacturing practice regulations for blood and blood components (blood CGMP's) under the the Medical Device Amendments of 1976. The agency is taking this action to enable enforcement of the blood CGMP's in the manufacture of unlicensed blood products that are device components or device raw materials. The products were subject to the blood CGMP's until the Medical Device Amendments of 1976 broadened the definition of a "device," with the inadvertent effect of removing these products from the applicability of these regulations.

DATE: Comments by August 22, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Biologics Evaluation and Research (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION: FDA is proposing to reissue under section 520(f) of the act the blood CGMP's (21 CFR Part 606) as these regulations apply to blood products that are device components or device raw materials. The blood CGMP's as currently promulgated continue to apply to all blood products other than those that are device components or device raw materials.

Specific regulations (21 CFR 606.3 through 606.170) for the collection, processing, and storage of blood and plasma were promulgated under authority of the Public Health Service Act in the **Federal Register** of November 18, 1975 (40 FR 53532).

The current blood CGMP's were intended to apply to all blood banks, transfusion facilities, plasmapheresis centers, compatibility testing establishments, and any other facility which processes blood and blood components regardless of whether the components are intended for (a) interstate or intrastate commerce or (b) in vitro or in vivo use.

Upon enactment of the Medical Device Amendments of 1976 to the act, the definition of the term "device" in section 201(h) of the act (21 U.S.C. 321(h)) was broadened to include several products, formerly regulated as "drugs." Among such products are human blood and blood components intended for further manufacture into in vitro diagnostics not subject to licensure under the Public Health Service Act (42 U.S.C. 262(d)). These products include blood, plasma, and serum which are intended for further manufacture into products such as clinical chemistry controls and control cells for automated cell counters now regulated as devices under the act.

FDA is now proposing to correct the current anomaly in which compliance with the blood CGMP's is not enforceable under the adulteration provisions in section 501(h) of the act (21 U.S.C. 351(H)) for unlicensed blood products that are device components or device raw materials even though these requirements are necessary to ensure the safety of donors and the safety and effectiveness of manufactured medical device products derived from blood and blood components.

The proposed amendment would reissue under section 520(f) of the act the blood CGMP's as these regulations apply to blood products that are device components or device raw materials. Section 520(f) of the act is the statutory section that currently authorizes CGMP's for medical devices in 21 CFR Part 820.

Regulations under section 520(f) of the act concerning CGMP's for medical devices must be promulgated according to certain procedures. Before issuing regulations under section 520(f) of the act, FDA must provide an opportunity for an advisory committee established under section 520(f) to comment on

proposed current good manufacturing practice requirements and provide opportunity for an oral hearing on such proposed regulations.

On March 21, 1986, in accordance with these procedures, FDA held an open public meeting on the proposed amendment to FDA's regulations on CGMP's for blood and blood components. The Device Good Manufacturing Practicing Advisory Committee unanimously recommended at that meeting that FDA reissue the CGMP regulations for blood and blood components under section 520(f) of the act to apply to blood and blood components used as device components or raw materials for devices. The committee then offered interested persons an open public hearing on the issue. No public comments or presentations were made at the time. A copy of the advisory committee's minutes of this meeting has been placed on file under the docket number identified in the brackets at the heading of this proposed rule and is available from the Dockets Management Branch (address above).

Accordingly, FDA is proposing to reissue the CGMP's for blood and blood components (21 CFR Part 606). Under the proposal, blood products that are device components or device raw materials excluded from the scope of the device CGMP's under § 820.1 would be subject to the blood CGMP's in Part 606. Violations of Part 606 involving such device components or raw materials would thus be subject to enforcement action under section 501(h) of the act.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(10) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

Part 606 of this proposed rule contains collection of information requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0116.

Economic Assessment

The agency has examined the economic consequences of this proposed rule and has determined that it does not require either a regulatory impact analysis as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The proposed rule involves the reissuance of Part 606 of the regulations establishing CGMP's for manufacturers of blood and blood components under section 520(f) of the act. Thus, Part 606 would apply to unlicensed blood products that are device components or device raw materials. The agency believes that virtually all of the manufacturers of in vitro diagnostic products that would be subject to the proposed rule are already in compliance with the blood CGMP's in Part 606. Therefore, the agency has determined that the rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the proposed rule will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

Comments

Interested persons may, on or before August 22, 1988, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 606

Blood, laboratories.

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that the authority citation for 21 CFR Part 606 be revised to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 520(f), 701 (21 U.S.C. 321, 351, 352, 355, 360, 360j(f), 371) and sec. 301 of Pub. L. 87–781; the Public Health Service Act (secs. 351 and 361) (42 U.S.C. 262 and 264)).

Dated: May 27, 1988.

George R. White,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–13975 Filed 6–21–88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendments

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of program amendments submitted by the State of New Mexico to modify the New Mexico Permanent Regulatory Program (hereinafter referred to as the New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments pertain to coal mine waste.

This notice sets forth the times and locations that the New Mexico program and the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments not received on or before 4:00 p.m., [m.d.t.], on July 22, 1988 will not necessarily be considered. If requested, a public hearing on the proposed modifications will be held on July 18, 1988 beginning at 10:00 a.m., at the location shown under "**ADDRESSES.**" Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., [m.d.t.], on July 7, 1988.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Robert H. Hagen at the address listed below. Copies of the New Mexico program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting the OSMRE Albuquerque Field Office.

Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street NW., Washington, DC 20240, Telephone: (202) 343–5492.

New Mexico Energy and Minerals Department, Mining and Minerals Division, 525 Camino de los Marquez, Santa Fe, NM 87501, Telephone: (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, at the address or telephone number listed in "**ADDRESSES.**"

SUPPLEMENTARY INFORMATION: .

I. Background

The Secretary of the Interior conditionally approved the New Mexico program under SMCRA for the regulation of surface coal mining operations on December 31, 1980. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the New Mexico program, can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 931.11, 931.15, and 931.16.

II. Submission of Amendments

By letter dated April 21, 1988, New Mexico submitted proposed amendments on coal mine waste to the New Mexico program for OSMRE's review and approval (Administrative Record No. NM–405). The State proposes to omit subsection (c) concerning compaction requirements from Section 20–85 and current subsection (d) would become subsection (c). The State also proposes to amend 20–92(b) concerning surface drainage to include diversions designed to divert drainage "from the surface of the facility that may cause stability or erosion of the impounding structure." Additionally, runoff design would be revised to plan for a 100-year, 6-hour precipitation event instead of the previous 100-year, 24-hour precipitation event.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is seeking comment on whether the proposed amendments satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If OSMRE finds the amendments in accordance with SMCRA and no less effective than the Federal regulations, they will be approved and become part of the New Mexico program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the OSMRE Albuquerque Field Office will not necessarily be considered and included in the Administrative Record for this proposed rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business July 7, 1988. If no one requests to comment, a public hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those persons scheduled. The hearing will end after all persons who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 931

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

Dated: June 9, 1988.

Raymond L. Lowrie,

Assistant Director Western Field Operations.

[FR Doc. 88–14013 Filed 6–21–88; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–3401–6]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Sikorsky Aircraft Division

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan (SIP) revision submitted by the State of Connecticut. The revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Sikorsky Aircraft Division of the United Technologies Corporation in Stratford, Connecticut. The intended effect of this action is to propose approval of a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan approved by EPA on March 21, 1984 (49 FR 10542).

DATES: Comments must be received on or before July 22, 1988.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2312, JFK Federal Bldg., Boston, MA 02203. Copies of Connecticut's submittal and EPA's Technical Support Document prepared for this revision are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Bldg., 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565–3252; FTS 835–3252.

SUPPLEMENTARY INFORMATION: On December 5, 1986, the Connecticut Department of Environmental Protection (DEP) submitted a proposed State Order as a SIP revision to EPA for parallel processing. On March 17, 1988, the DEP submitted a revised version of the State Order which incorporated previous comments made by EPA. This revision is

State Order No. 8010 which defines VOC control requirements for Sikorsky Aircraft Division in Stratford, Connecticut. These control requirements constitute RACT for this facility as required by subsection 22a–174–20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Subsection 22a–174–20(ee) requires the DEP to determine and impose RACT on all stationary sources with potential VOC emissions of one hundred tons per year (TPY) or more that are not already subject to Connecticut's regulations developed pursuant to the Control Techniques Guideline (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all such RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

Summary of SIP Revision

Sikorsky Aircraft Division (Sikorsky) manufactures approximately 200 helicopters annually. Volatile organic compounds are emitted from degreasing units, a flowcoater which uses a maskant to coat helicopter parts, eleven paint spray booths which coat helicopter parts, large body panels, and whole helicopters, and a dipping pot which is used to coat small helicopter parts.

Final approval of Connecticut's solvent metal cleaning regulation, "Subsection 22a–174–20(*l*)," was granted by EPA on February 1, 1984 (49 FR 3988). Under subdivision 22a–174–20(*l*)(2)(iii) of this regulation, degreasing units installed prior to July 1, 1980 are exempt from meeting RACT. Sikorsky previously had eight degreasing units. Four of those eight degreasing units were installed prior to July 1, 1980 and thus were exempt from meeting RACT under 22a–174–20(*l*). These degreasing units are now being required to meet RACT pursuant to subsection 22a–174–20(ee). In State Order No. 8010, the DEP is requiring as RACT for these degreasing units that Sikorsky demonstrate and maintain compliance with subsection 22a–174–20(*l*) by July 1, 1987. The RACT requirements that are being imposed on these four previously exempt degreasing units will reduce the actual VOC emissions from these units from approximately 167.5 tons/year to 64.2 tons/year. Additionally, the Connecticut DEP is requiring that Sikorsky maintain annual emission caps in tons VOC/year for each of its eight degreasing units.

As RACT for the flowcoater that Sikorsky operates which applies a maskant to helicopter parts, the Connecticut DEP is requiring Sikorsky to install a carbon adsorption/solvent recovery system by December 31, 1987 which demonstrates an 85% overall capture and control system efficiency. Additionally, Sikorsky is required to install a tunnel-like enclosure over the maskant application and drying areas which will facilitate the capture of VOC emissions, and a cover over the maskant reservoir to eliminate evaporative losses when flowcoating is not being performed. Sikorsky will also be required to maintain an annual emission cap in tons VOC/year for the flowcoater. The RACT requirements that are being imposed on the flowcoater will reduce the actual VOC emissions from this process from approximately 16.6 tons/year to 2.49 tons/year.

The Connecticut DEP has determined RACT for each of the eleven paint spray booths that Sikorsky operates depending upon the type of process which occurs in the particular booth. For the two paint spray booths that apply only epoxy and zinc chromate primers (Paint Booths #2 and #2A) the DEP has determined RACT to be the use of coatings which emit less than 2.92 pounds VOC/gallon of coating minus water by December 31, 1987. Additionally, Sikorsky is required to maintain a single annual emission cap in tons VOC/year for these two booths. The RACT requirements that are being imposed on these two booths will reduce the actual VOC emissions from these booths from approximately 55.1 tons/year to 28.1 tons/year.

For two other spray booths (Gear Housings and Paint Shop #1 [Blades]), which also use epoxy and zinc chromate primers but not exclusively, RACT has been determined to be the use of the coatings presently being used in those booths. The Connecticut DEP has set a specific limit in pounds VOC/gallon of coating (minus water) on both of these booths which represents the maximum limit that Sikorsky may use in these booths. Additionally, Sikorsky is required to maintain an annual emission cap in tons VOC/year for each of these two booths.

The DEP believes that this level of control constitutes RACT for these spray booths because Sikorsky has shown that add-on controls are prohibitively expensive.

For the four paint spray booths which use polyurethane topcoats to coat large body panels and whole helicopters (Cell #1, Cell #2, Cell #3, and Cell #4), the Connecticut DEP has set an emission limitation for the polyurethane topcoats of 3.5 pounds of VOC per gallon of coating minus water. Sikorsky is required to meet this limitation by July 1, 1989.

Additionally, the DEP has set interim limitations for the polyurethane topcoats which are to be met before the July 1, 1989 final compliance date. The DEP is requiring that Sikorsky meet a limitation in these booths for these coatings of 5.7 pounds of VOC per gallon of coating minus water by December 31, 1987 and a limitation of 5.0 pounds of VOC per gallon of coating minus water by July 1, 1988. These limitations are consistent with the RACT levels that have been set for aircraft topcoats in other areas of the country.

The DEP believes that these interim levels represent RACT at this point in time for these paint booths since lower VOC-emitting coatings are not presently available for use in all topcoating applications. The polyurethane topcoats necessary for the coating of the helicopters must exhibit certain high performance characteristics. In all cases, the coatings must meet very strict U.S. military performance specifications which demand that the coatings be resistant to biological and chemical attack and stand up to being decontaminated. The various branches of the military are presently conducting research to develop new military specifications which allow the use of lower VOC-emitting topcoats in military aircraft painting. The lower VOC-emitting topcoats being developed and tested all contain less than 3.5 pounds of VOC per gallon of coating minus water. In some limited cases, certain low VOC-emitting topcoats have already been approved by the military and available for use. Aircraft manufacturers generally need some lead time, however, before the full-scale production use of these coatings can be implemented.

The DEP has also set a limitation for the primers being utilized in Cell Nos. 1—4. The DEP is requiring Sikorsky to meet a limitation of 2.92 pounds of VOC per gallon of coating minus water for all of the primers used in these booths after December 31, 1987.

As an alternative to a reformulation effort for these spray booths, Sikorsky has investigated the feasibility of retrofit add-on control equipment. However, due to the very low VOC concentrations in the exhausts streams from these booths, add-on control equipment was found to be prohibitively expensive. Even the cost of a unique technology

which has been specifically designed to process low concentration emission streams was found to be exceedingly high. Sikorsky has also studied methods to increase the transfer efficiency of the spray painting operations. Three approaches were evaluated (electrostatic deposition, automated spraying, and airless spraying).

Sikorsky found that only the airless spraying technique was feasible, and even then only in certain instances. This application technique is presently being used at Sikorsky to apply "dull" topcoats.

For the three remaining paint spray booths (Development Center Paint Booth [Experimental], Small Parts [Bonding] Paint Booth, and Special Prime Paint Booth) and dipping pot which each have documented VOC emmissions of less than 40 pounds/day, the Connecticut DEP has exempted them from subsection 22a-174-20(ee). This particular exemption is provided in subsection 22a-174-20(aa) which was approved by EPA on October 19, 1984 (49 FR 41026). The DEP will require Sikorsky to maintain VOC emissions from each of these booths at 40 pounds VOC/day or less. The DEP will also impose on annual emission caps in tons VOC/year on each booth. No reduction in actual VOC emissions will be achieved from these booths.

Pursuant to a comment made by EPA on January 16, 1987, included in the State Order is a designation of which processes are covered by this non-CTG RACT determination. As was stated in a notice of proposed rulemaking (NPR) which EPA published on November 12, 1981 (46 FR 55716), the coating of metal components used in constructing the interior of an aircraft is subject to the RACT requirements of subsection 22a-174-20(s) which is Connecticut's CTG-equivalent miscellaneous metal parts and products regulation. Since some of the parts coated in Sikorsky's eleven paint spray booths may be used in constructing the interior of the helicopters and may be subject to Connecticut's miscellaneous metal parts and products regulation, the Connecticut DEP has amended State Order No. 8010 such that only the coating of metal panels and components which are exempt from meeting the RACT requirements of subsection 22a-174-20(s) will be covered by this non-CTG RACT determination.

EPA has reviewed the requirements of State Order No. 8010 and its compliance dates, and has determined that they constitute RACT for Sikorsky Aircraft Division.

EPA is proposing to approve DEP's Order as a revision to the Connecticut SIP and is soliciting public comments. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

This revision is being proposed under a procedure called parallel-processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the revision is substantially changed before it is finally adopted by the State of Connecticut, EPA will evaluate these changes and may publish another notice of proposed rulemaking. If no substantial changes are made to the revision, EPA will publish a final rulemaking notice. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the State of Connecticut and submitted for incorporation into the SIP.

Proposed Action

EPA is proposing to approve Connecticut's State Order No. 8010 as a revision to the Connecticut SIP. The provisions of Connecticut's State Order No. 8010 define and impose RACT for Sikorsky Aircraft Division as required by subsection 22a-174-20(ee) of Connecticut's regulations.

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

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

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and Recordkeeping requirements.

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

Date: March 16, 1987.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 88-14042 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3401-7]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this Notice, EPA invites public comments on its proposed approval of amendments to the State of Oregon visibility protection program, submitted by the Oregon Department of Environmental Quality (ODEQ) on March 3, 1987, as a revision to the Oregon State implementation plan (SIP). These amendments were submitted to satisfy the requirements of section 169A (Visibility Protection) of the Clean Air Act (hereinafter referred to as the Act).

DATE: Comments must be postmarked on or before July 22, 1988.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at: Air Programs Branch (10A-87-10), Environmental Protection Agency, 1200 Sixth Avenue, AT-092, Seattle, Washington 98101, State of Oregon, Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, OR 97204.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue AT-092, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue AT-092, Seattle, Washington 98101, Telephone: (206) 442-4253, FTS: 399-4253.

SUPPLEMENTARY INFORMATION:

I. Background

Section 169A of the Act requires visibility protection for mandatory Class I federal areas where EPA has determined visibility is an important value. "Mandatory Class I federal areas" are certain national parks, wilderness areas, and international parks as described in section 162(a) of the Act. The mandatory Class I federal areas where visibility is an important value are identified in EPA regulations at 40 CFR 81.400-437. Section 169A specifically requires EPA to promulgate regulations requiring certain states to amend their SIPs to provide visibility protection. On December 2, 1980, EPA promulgated the required visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 *et seq.* In December 1982, the

Environmental Defense Fund (EDF) filed a citizen suit alleging that EPA failed to perform a nondiscretionary duty under section 110(e) of the Act to promulgate visibility SIPs for states that had failed to submit such SIP revisions to EPA. The EPA and EDF negotiated a settlement agreement for deficient states which the court approved on April 20, 1984. For more information on the settlement agreement, see 49 FR 20647 on May 16, 1984.

The settlement agreement allows EPA and states to implement the visibility regulations in two parts. The first part involves the provisions for visibility monitoring and new source review. The second part requires the implementation of the remaining visibility provisions. On April 10, 1986 (51 FR 12323), EPA approved certain provisions of the Oregon Administrative Rules (OAR) as a revision to the Oregon State implementation plan (SIP) in order to implement visibility monitoring and visibility new source review provisions as required by section 169A of the Act and 40 CFR 51.305 and 40 CFR 51.307 of EPA regulations, respectively. Specifically, EPA approved OAR, Chapter 340, Division 20, Section 047, Subsection 5.2 "VISIBILITY PROTECTION PLAN FOR CLASS I AREAS" (relating to visibility monitoring and new source review) and OAR, Chapter 340, Division 20, Sections 225; 230(1) (e) and (f); 245(3), (5), and (7); and 276 (relating to visibility new source review), as meeting the requirements of 40 CFR Part 51, Subpart P "Protection of Visibility" relating to visibility monitoring and new source review.

II. Discussion

On March 3, 1987, the State of Oregon Department of Environmental Quality (ODEQ) submitted amendments to the Oregon visibility protection plan as a revision to the State of Oregon implementation plan (SIP) in order to implement the remaining provisions of 40 CFR Part 51, Subpart P "Protection of Visibility." These amendments include completely revised OAR 340–20–047, Section 5.2 "VISIBILITY PROTECTION PLAN FOR CLASS I AREAS," OAR 629–43–043 "SMOKE MANAGEMENT PLAN," and Oregon Department of Forestry/Oregon Department of Environmental Quality Interagency Directive 1–4–1–601 "OPERATIONAL GUIDANCE FOR THE OREGON SMOKE MANAGEMENT PROGRAM."

The Oregon "VISIBILITY PROTECTION PLAN FOR CLASS I AREAS" contains the following components:

1. Subsection 5.2 "Visibility Protection for Class I Areas" which explains the purpose of the Plan and identifies the mandatory Class I federal areas covered by the plan and explains how future Class I areas will be treated. This is a revised version of the subsection EPA approved on April 10, 1986.

2. Subsection 5.2.1 "Definitions" which defines many of the terms used in the Plan. This is a revised version of the subsection EPA approved on April 10, 1986.

3. Subsection 5.2.2 "Introduction" which explains the background for the visibility protection program and includes an assessment of visibility impairment in Oregon. This is a revised version of the subsection EPA approved on April 10, 1986.

4. Subsection 5.2.3 "Visibility Monitoring" which describes the Oregon visibility monitoring program. This is a revised version of the subsection EPA approved on April 10, 1986.

5. Subsection 5.2.4 "Procedures for Review, Coordination and Consultation" which describes the process for annual meetings among state and federal agencies involved in the Plan, and the process for periodic review of the strategy and progress in meeting the national visibility goal.

6. Subsection 5.2.5 "Control Strategies" which sets forth the elements of the Oregon visibility protection plan in order to meet the national visibility goal. This subsection includes:

a. Short-term strategies for agricultural field burning and forest prescribed burning (5.2.5.1(A));

b. Long-term strategies for agricultural field burning and forest prescribed burning (5.2.5.1(B));

c. Provisions for protection of integral vistas (5.2.5.2) (no vistas are currently identified);

d. Provisions for requiring best available retrofit technology (5.2.5.3) (not currently required for any source in Oregon);

e. A description of the visibility new source review program and prevention of significant deterioration provisions (5.2.5.4); (This is a revised version of subsection 5.2.4 which EPA approved on April 10, 1986.);

f. Provisions for the maintenance of pollution control equipment (5.2.5.5);

g. Provisions for interstate visibility protection, including field and forestry burning (5.2.5.6); and

h. An assessment of emission reductions due to on-going control programs (5.2.5.7).

7. Appendix A. "Field Burning Smoke Management Plan" (already approved by EPA), Appendix B. "Prescribed Burning Smoke Management Plan" (OAR 629–43–043 "SMOKE MANAGEMENT PLAN," and Directive 1–4–1–601 "OPERATIONAL GUIDANCE FOR THE OREGON SMOKE MANAGEMENT PROGRAM"), and Appendix C. "New Source Review Rule" (already approved by EPA). The "SMOKE MANAGEMENT PLAN" and the "OPERATION GUIDANCE * * *" contain the Oregon Department of Forestry and Oregon Department of Environmental Quality interagency provisions for reducing the impact of forest prescribed burning emissions upon visibility in mandatory Class I federal areas in Oregon and Washington.

The primary elements of the Oregon visibility protection plan which will remedy existing impairment are the short-term and long-term strategies for agricultural field burning and forest prescribed burning. The short-term control strategies are directed at remedy visibility impairment during the peak summer visitation period (July 4 weekend through Labor Day, inclusive) caused by distinct and dispersed plume impacts from agricultural field burning and forest prescribed burning. The strategies will also reduce regional haze impairment caused by these sources. The short-term field burning strategies are based primarily on improvements to the current smoke management program but also include provisions which will result in some emissions reductions. The short-term forest prescribed burning strategies include prohibiting summer prescribed burning in Western Oregon and adding the Class I areas to the current smoke management plan as protected areas.

The long-term strategies for agricultural field burning and forest prescribed burning involve measures to permanently reduce emissions from these activities. The strategies, when fully implemented will reduce average emissions from agricultural field burning by 45% and from forest prescribed burning by 22% from that during the 1982–1984 baseline period.

EPA finds that these revised provisions meet the criteria for visibility protection as promulgated by EPA in 40 CFR Part 51, Subpart P. EPA is therefore proposing to approve these amendments as a revision to the Oregon SIP. Note however, that the Field Burning Smoke Management Plan (Appendix A) and the visibility new source review provisions (specifically, OAR, Chapter 340, Division 20, Sections 225; 230(1) (e) and (f); 245 (3), (5), and (7); and 276, in Appendix C) have already been approved by EPA and are not proposed for re-approval in this action.

III. Summary of Action

EPA is today soliciting public comment on its proposed approval of amendments to the Oregon visibility protection program as a revision to the Oregon SIP to satisfy the requirements of section 169A of the Act. Specifically, EPA is proposing to approve the revised OAR 340-20-047, Section 5.2 "VISIBILITY PROTECTION PLAN FOR CLASS I AREAS," the revised OAR 629-43-043 "SMOKE MANAGEMENT PLAN," and the revised Directive 1-4-1-601 "OPERATIONAL GUIDANCE FOR THE OREGON SMOKE MANAGEMENT PROGRAM."

Interested parties are invited to comment on all aspects of this proposed approval of the State of Oregon visibility protection program. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by July 22, 1988, will be considered in the final rulemaking action taken by EPA.

IV. Administrative Review

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

Under 5 U.S.C. § 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (46 FR 8709).

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

List of Subjects in 40 CFR Part 52

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

Date: September 18, 1987.

Robie G. Russell,

Regional Administrator.

[FR Doc. 88-14043 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 180

[PP 6F3452, PP 8F3577/P453; FRL-3402-8]

Tolerances for 2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexen-1-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one (also known as sethoxydim), calculated as parent, in or on the raw agricultural commodities (RACs) brassica leafy vegetables crop group at 5.0 parts per million (ppm), cucurbit vegetables crop group at 2.0 ppm, celery at 1.0 ppm, head lettuce at 1.0 ppm, leaf lettuce at 2.0 ppm, and spinach at 4.0 ppm. This regulation was requested by the BASF Corp. and proposes to establish the maximum permissible level for residues of the herbicide on these RACs.

DATE: Comments must be received on or before July 22, 1988.

ADDRESS: Submit written comments, bearing the identification number [PP 6F3452, PP 8F3577/P453] by mail to: Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, deliver comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 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: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: 1921 Jefferson Davis Highway, Rm. 245, CM#2, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of January 6, 1988 (53 FR 283), which announced that the BASF Corp., P.O. Box 181, 100 Cherry Hill Rd., Parsippany, NJ 07054, had submitted a pesticide petition, PP 8F3577, to EPA proposing to amend 40 CFR 180.412 by establishing tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the parent) in or on the RACs celery at 1.0 ppm; lettuce, head and leaf, at 1.0 ppm; and spinach at 3.0 ppm.

No comments were received in response to the notice of filing.

The petitioner subsequently amended PP 8F3577 by submitting a revised Section F proposing tolerances of 2.0 ppm for leaf lettuce, 4.0 ppm for spinach, 1.0 ppm for head lettuce, and 1.0 ppm for celery. Originally proposing tolerances or 2.0 ppm for cucurbit vegetables and 9.0 ppm for brassica leafy vegetables, PP 6F3452 was amended by a revised Section F proposing tolerances for cucurbit vegetables of 2.0 and 5.0 ppm for brassica leafy vegetables. Because PP 6F3452 was not filed initially, and because of the potential increase in risk to humans from the increased tolerances for spinach and leaf lettuce, these tolerances are being proposed for 30 days to allow a period for public comment.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerances include several acute studies; a 6-month feeding study with dogs fed dosages of 0, 2, 20, and 200 milligrams per kilogram of body weight per day (mg/kg bwt/day) with a no-observed-effect level (NOEL) of 2 mg/kg/day; a 2-year chronic feeding/oncogenicity study in mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 162 mg/kg/day (highest dose tested [HDT]) and a systemic NOEL of 18 mg/kg/day; a 2-year chronic feeding/oncogenicity study with rats fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 18 mg/kg/day (HDT) and a systemic NOEL greater than or equal to 18 mg/kg/day (HDT); a two-generation reproduction study with rats fed 0, 2, 6, 18, and 54 mg/kg/day with no reproductive effects observed at 54 mg/kg/day (HDT) and a systemic NOEL of 18 mg/kg/day; a teratology study in rats fed dosages of 0, 40, 100, and 250 mg/kg/day with no teratogenic effects occurring at 250 mg/kg/day (HDT) and a maternal NOEL of 40 mg/kg/day; a teratology study in rabbits fed dosages of 0, 40, 160, and 480 mg/kg/day with a teratogenic NOEL of 160 mg/kg/day and a maternal NOEL of 160 mg/kg/day; and mutagenic studies including recombinant assays and forward

mutations in *B. subtilis*, *E. coli*, and *S. typhimurium* (negative at concentrations of chemical to 100 percent) and a host-mediated assay (mouse) with *S. typhimurium* negative at 2.5 grams (g/kg/day) of the chemical.

The acceptable daily intake (ADI), based on the 6-month dog feeding study (NOEL of 2.0 mg/kg/day) and using a hundred-fold safety factor, is calculated to be 0.02 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances and unpublished but approved tolerances is 0.01953 mg/kg/day. The current action will contribute 0.002062 mg/kg/day to the TMRC and will utilize 10.3 percent of the ADI. Published tolerances and unpublished but approved tolerances utilize 97.6 percent of the ADI.

Data lacking are the repeat of a rat primary hepatocyte unscheduled DNA synthesis assay on a hydroxylated plant metabolite of the parent compound. The company has been notified of this deficiency and agreed to repeat the study.

The pesticide is useful for the purposes for which these tolerances are sought. The nature of the residues is adequately understood for the purpose of establishing the tolerances. Adequate analytical methodology (gas chromatography using sulfur-specific flame photometric detection) is available for enforcement purposes. The method is listed in Pesticide Analytical Method (PAM II) as Method I. There are currently no actions pending against the registration of this chemical. Because there are no animal feed items associated with these RACs, no residues are expected in animal products from the proposed uses.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR Part 180 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

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

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 6F3452, PP 8F3577/P453]. All written comments filed in response to this proposed rule will be available in the Product Manager's office, Registration Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)).)

List of Subjects in 40 CFR Part 180

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

Dated: June 15, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

2. In § 180.412(a), by adding and alphabetically inserting entries for the following raw agricultural commodities, to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Brassica leafy vegetables	5.0
* * * * *	
Celery	1.0
* * * * *	
Cucurbit vegetables	2.0
* * * * *	
Lettuce, head	1.0
Lettuce, leaf	2.0
* * * * *	
Spinach	4.0
* * * * *	

[FR Doc. 88-14044 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300189; FRL-3402-7]

Montmorillonite-type Clay Treated With Polytetrafluoroethylene

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that montmorillonite-type clay treated with tetrafluoropolyethylene (PTFE; CAS Reg. No. 9002-84-0) be exempted from the requirement of a tolerance when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest. This proposed regulation was requested by Jellinek, Schwartz, Connolly and Freshman, Inc., on behalf of Edward Lowe Industries, Inc.

DATE: Written comments, identified by the document control number [OPP-300189], must be received on or before July 7, 1988.

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

In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluded legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Lynn M. Bradley, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 716, CM # 2, 1921

Jefferson Davis Highway, Arlington, VA 22202, (703)–557–7700.

SUPPLEMENTARY INFORMATION: At the request of Jellinek, Schwartz, Connolly and Freshman, Inc., on behalf of Edward Lowe Industries, Inc., the Administrator proposes to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for montmorillonite-type clay treated with polytetrafluoroethylene when used as a carrier in pesticide formulations applied to growing crops and raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Montmorillonite-type clay treated with polytetrafluoroethylene (PTFE; CAS Reg. No. 9002–84–0).

Name and address of requestor. Jellinek, Schwartz, Connolly, and Freshman, Inc., 1350 New York Ave., NW., Suite 400, Washington, DC 20005.

Bases for approval of montmorillonite-type clay treated with polytetrafluoroethylene 1. Montmorillonite-type clay treated with polytetrafluoroethylene is not expected to result in residues in crops or to be bioavailable by reason of its high molecular weight, chemical inertness, solid form, and insoluble nature.

2. Polytetrafluoroethylene is cleared under 40 CFR 180.1001(e) as a component of a plastic slow-release tag.

3. Polytetrafluoroethylene is cleared under 21 CFR 177.1550 for use as articles or components of articles intended to contact food.

4. Montmorillonite-type clay is cleared under 40 CFR 180.1001(c) as a solid diluent or carrier in pesticide formulations intended for use on growing crops or raw agricultural commodities after harvest. Montmorillonite clay is on EPA's List 4 (minimal risk) of inert ingredients.

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no additional test data will be required to support this regulation. Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the proposed amendments to 40 CFR Part 180 will protect the public health. It is therefore proposed that the regulations be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, that contains this inert ingredient may request within 15 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number [OPP–300189]. All written comments filed in response to this proposal will be available for inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: June 14, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
*	*	*
Montmorillonite-type clay treated with polytetrafluoroethylene (PTFE; CAS Reg. No. 9002–84–0).	PTFE content not greater than 0.5% (w/w) of clay.	Carrier.
*	*	*

* * * * *

[FR Doc. 88–14045 Filed 6–21–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–235, RM–6279]

Radio Broadcasting Services; Corcoran, Kernville & Mendota, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Radio Corcoran, Inc., proposing the substitution of FM

Channel 272B1 for Channel 272A at Corcoran, California, and modification of its permit for Station KLCZ(FM) Channel 272A), accordingly, to provide that community with its first wide coverage area FM service. Additionally, petitioner requests channel substitutions at Kernville and Mendota, California, to accommodate its proposal.

DATES: Comments must be filed on or before July 22, 1988, and reply comments on or before August 8, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Nancy L. Wolf, Esq., Dow, Lohnes & Albertson, 1255–23d St. NW., Washington, DC 20037

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–235, adopted April 25, 1988, and released May 31, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commissoin consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–14019 Filed 6–21–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–222, RM–6259]

Radio Broadcasting Services; Mexico Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Robert G. Kerrigan seeking to substitute Channel 257C2 for Channel 257A at Mexico Beach, Florida, and to modify the construction permit for Station WMOA(FM) to specify the Class C2 channel.

DATES: Comments must be filed on or before July 22, 1988, and reply comments on or before August 8, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arthur B. Belendiuk, 1920 N. Street NW., Suite 510, Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–222, adopted April 25, 1988, and released May 31, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–14020 Filed 6–21–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–223, RM–5918]

Radio Broadcasting Services; Waynesboro, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Clifford Jones, which seeks to allot Channel 296A to Wayesboro, Georgia, as its second FM service. Channel 296A will require a 2.2 kilometers (1.4 miles) north site restriction. The restricted site coordinates are 33–06–41 and 82–01–04.

DATES: Comments must be filed on or before July 22, 1988, and reply comments on or before August 8, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence J. Bernard, Jr., Ward and Mendelsohn, P.C., 1100 17th Street NW., Suite 900, Washington, DC 20036, (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–223, adopted April 25, 1987, and released May 31, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room. 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14021 Filed 6-21-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-220, RM-6220]

Radio Broadcasting Services; Hilo, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Irving A. Uram, which seeks to substitute Channel 224C1 for Channel 224A at Hilo, Hawaii and to modify his construction permit (BPH841228MH) to specify the new channel at coordinates 19-43-51 and 155-04-11.

DATES: Comments must be filed on or before July 22, 1988, and reply comments on or before August 8, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis J. Kelly, Cordon and Kelly, 1920 N. Street, NW., Washington, DC 20036, (Counsel for the Petitioner).

FOR FURTHER INFORMATON CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-220, adopted April 25, 1988, and released May 31, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14022 Filed 6-21-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-236, RM-5725]

Radio Broadcasting Services; Carthage, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bryan Broadcasting, Inc., licensee of Station WCAZ-FM, Carthage, Illinois, which seeks to substitute Channel 221B1 for Channel 221A, and to modify its Class A license to specify the Class B1 channel, at coordinates 40-18-01 and 91-11-54.

DATES: Comments must be filed on or before July 22, 1988, and reply comments on or before August 8, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., 1359 Black Meadow Road, Spotsylvania, Virginia 22553 (Attorney for petitioner).

FOR FURTHER INFORMATON CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-236, adopted April 29, 1988, and released May 31, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14023 Filed 6-21-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-234, RM-6197]

Radio Broadcasting Services; Aberdeen, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Tenn-Tom Broadcasting Corporation, proposing the substitution of FM Channel 287A for Channel 288A at Aberdeen, Mississippi, and modification of its license for Channel 288A to specify operation on Channel 287A. The coordinates for Channel 287A at Aberdeen are 33-48-32 and 88-32-33.

DATES: Comments must be filed on or before July 22, 1988, and reply comments on or before August 8, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Tenn-Tom Broadcasting Corporation, Jim Buffington, President, P.O. Drawer 1240, Aberdeen, Mississippi 39730.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-234, adopted April 28, 1988, and released May 31, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14024 Filed 6-21-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-409, RM-5940]

Radio Broadcasting Services; Middleport, OH

AGENCY: Federal Communications Commission.

ACTION: Denial of proposed rule.

SUMMARY: The Commission denies the request of Radio Mid-Pom, Inc., licensee of Station WMPO-FM, Channel 221A, Middleport, Ohio, proposing the substitution of Channel 221B1 for its Class A channel and the modification of its license to specify the higher powered channel. Petitioner failed to adequately demonstrate that Channel 221B1 at Middleport could comply with the Commission's Rules which require that a station provide the entire community with 70 dBu service (§ 73.315). With this action, this proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-409, adopted April 28, 1988, and released June 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14025 Filed 6-21-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-281; RM-5847]

Radio Broadcasting Services; Chelan, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Northcentral Broadcasting, Co., licensee of Stations KOZI-FM and AM, Chelan, Washington, requesting the substitution of Channel 228C2 for Channel 228A at Chelan, because from the required site restriction, 28.8 kilometers east of the community, a city-grade signal cannot be provided. Therefore, the proposal is technically deficient since a 70 dBu signal cannot be placed over the entire community, in accordance with § 73.315(a) of the Commission's Rules. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-281, adopted April 28, 1988, and released June 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14026 Filed 6-21-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-270, RM-6348]

Radio Broadcasting Services; Waupun, WI, et al.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Coursolle Broadcasting of Wisconsin, Inc., licensee of Station WGGQ(FM), Channel 257A, Waupun, Wisconsin, proposing the substitution of Channel 258C2 for Channel 257A and modification of its license to specify operation on the higher class channel. A site restriction of 27.8 kilometers (17.2 miles) northwest of the city is required, at coordinates 43-51-15 and 88-53-30. In addition, in order to accomplish the Waupun substitution channel substitutions must be made at New Holstein, Wisconsin (Channel 226A for 258A) and Mayville, Wisconsin (Channel 254A for 259A). The coordinates specified in the petition for Channel 226A at New Holstein are 44-02-30 and 88-09-30 and for Channel 254A at Mayville are 43-30-23 and 88-25-02. The channel substitutions will require each party to relocate their current transmitter site.

DATES: Comments must be filed on or before July 25, 1988, and reply comments on or before August 9, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Eugene T. Smith, Esquire, Attorney at Law, 715 G Street SE., Washington, DC 20003 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-270, adopted May 13, 1988, and

released June 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–14027 Filed 6–21–88; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[Gen. Docket No. 84–467; FCC 88–72]

Radio Broadcasting Services; Expanded Band (1605–1705 kHz)

AGENCY: Federal Communications Commission.

ACTION: Fourth notice of inquiry.

SUMMARY: In response to the upcoming Second Session of the Administrative Radio Conference (RARC–88) on the use of the expanded AM band from 1605 kHz to 1705 kHz, the Commission adopted the *Fourth Notice of Inquiry*. The inquiry was commenced in order to develop a record for the domestic implementation of broadcasting in the 1605–1705 kHz band. This will foster the earliest possible introduction of broadcasting in the expanded band and thus be in keeping with the Commission's commitment to use this newly available broadcast spectrum promptly and efficiently.

DATES: Comments may be filed with the Secretary of the Commission no later than July 11, 1988; and reply comments no later than July 26, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Policy and Rules Division, Mass Media Bureau (202) 254–3394; and John Boursy, Audio Services Division, Mass Media Bureau (202) 634–6315.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Notice of Inquiry*, in Gen. Docket No. 84–467, FCC 88–72, adopted February 25, 1988, and released June 3, 1988.

The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this *Fourth Notice of Inquiry* may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Summary of the Fourth Notice of Inquiry

1. In order to develop a record for the domestic implementation of broadcasting in the 1605–1705 kHz band, the Commission adopts this *Fourth Notice of Inquiry*. This inquiry is commenced now rather than waiting until the completion of the Second Session of RARC–88, which is to take place in Rio de Janeiro, Bazil, from May 23 through June 9, 1988, to foster the earliest possible introduction of broadcasting in the expanded band. Through the record developed in response to this *Notice*, it is likely that the Commission will be able to formulate specific rulemaking proposals in line with the results of RARC–88. Deferring inquiry on domestic issues until the Second Session is concluded could only delay this process. Finally, discussing these issues now will send a clear signal to receiver manufacturers that the Commission intends to move expeditiously on this matter, a step which should encourage the early design and production of new receivers.

2. In considering domestic implementation of the expanded band, there are a large number of specific issues that must be analyzed. However, there is one central issue whose determination will affect many other interrelated issues. The basic question is whether we should use a regulatory scheme that is quite similar to that which applies to the existing AM band, or whether we should adopt a fundamentally different regulatory scheme. Also, as a third option, it is possible to adopt a new regulatory scheme for some of the expanded band channels and to use the more traditional scheme for the remaining expanded band channels. Thus, we are led to consider a national licensing approach under which, if adopted, licensees could be granted a nationwide license to operate on a particular frequency in the expanded AM band. Under such a plan, licensees would be free to construct and operate as few or as many AM operations as they wished. For example, licensees mighty choose to construct a small number of 10 kW operations spaced relatively far apart throughout the country, or a larger number of 250 watt or 1 kW operations located in a larger number of places. Moreover, the licensee could decide how close to locate operations to each other, since the licensee, not the Commission, would determine the acceptable level of interference between its own operations conducted on the same frequency. Licensees would have an economic incentive to choose that combination of operations that generated the largest advertising revenues or operation profits and hence would likely be the combination of operations that provided the most valuable set of services to consumers or listeners.

3. We are aware that this proposal represents a substantial departure from the regulatory approach that we have used with respect to the existing AM band. However, we believe that there are a number of factors that may support its use. First, we note that there are currently a large number of radio stations licensed in the U.S. yet AM stations have not been doing as well as FM stations when comparisons are made based upon station profits, revenues, station sales prices or audience ratings. Hence, it may be desirable to consider a new approach that might well encourage further growth of the AM band, and especially the use of the expanded AM band to provide those services most valued by listeners. In considering which licensing approach to apply, we must also consider section 307(b) of the Communications Act. We solicit comment as to whether section 307(b) requires us to make detailed, individualized determinations with respect to every radio facility we authorize. In this regard, we request comment on the applicability of this statutory provision to the proposed national licensing scheme.

4. Licensees might find that there are a variety of advantages from obtaining a national license—advantages which would redound to the benefit of listeners. In particular, there may be

efficiency advantages in the acquisition and distribution of programs as well as in the purchasing of radio advertisements by national licensees. To the extent that such efficiencies allow a station to operate at lower costs, not only the station but also its listeners are likely to benefit. Also, we believe that the concept of nationwide licensing of the expanded AM band may provide a spur to the development of receivers capable of receiving the signals on the full expanded AM band.

5. Although a national licensee might choose to assume full responsibility for establishing all the stations on a channel, it also might prefer to play a coordinating role, allowing others a role in station operation. We need to consider whether to allow operation by other entities which is coordinated through the national licensee or other steps to promote optimum use. If the "national licensing" approach is adopted, in whole or in part, as the procedure to govern the licensing of the expanded band, criteria will need to be developed for establishing basic qualifications of a national licensee. This may be of particular importance if there are mutually exclusive applications. Thus, we need to address what financial, legal and technical criteria should be utilized for establishing the eligibility of an applicant to be a national licensee. Also related to eligibility critieria is the question of what to do with those Travelers Information Stations currently operating on 1610 kHz once broadcasting has been implemented on the expanded AM band.

6. If the Commission were to adopt the national licensing plan on all of the expanded band channels, there would be no need to adopt many of the technical rules necessary if a traditional licensing approach is adopted. Provisions concerning such matters as domestic co-channel interference would not be required. However, if any or all expanded band channels are licensed in the traditional mode, technical rules providing for station classes, protected contours and concerning other like matters will be necessary.

7. In regard to technical standards, the Commission has proposed to treat the expanded band as an extension of the existing AM band rather than as a separate part of the spectrum. We believe that this would foster the early development of transmitters and receivers for the expanded band and therefore aid its prompt and effective use. Many of the fundamental parameters are those adopted at the First Session of the Expanded Band Conference and which are expected to be incorporated in the Technical Annex to the Agreement to be adopted at the Second Session. Under these circumstances, we do not believe that it is desirable or practical to vary them domestically. However, certain parameters can be varied domestically, providing that there is no conflict with international requirements.

8. When the expanded band becomes available for broadcast use it can be treated as new spectrum. We wish to adopt processing procedures which will ensure that it is used effectively and efficiently. Subsidiary concerns include treating applicants fairly and ensuring that Commission resources are not overwhelmed by an avalanche of applications. We have every expectation that these goals can be fulfilled.

9. Internationally, the U.S. supported the allotment approach to the expanded band usage rather than the assignment method. Region 2 countries agreed, and at the First Session of the Expanded Band Conference, the allotment planning method was adopted. Under an assignment plan, an assignment for each station is entered into the plan with a specific location, power and other pertinent characteristics, whereas an allotment plan makes designated frequencies available for use anywhere within a specified area. At this stage in the proceeding, it is appropriate to inquire into whether an allotment system or assignment system should govern the domestic implementation of the expanded band, assuming that national licensing is not adopted on at least some channels.

10. The primary benefit of the allotment approach is organized planning for the future. The allotment approach allows consideration of the spectrum as a whole, rather than looking at it on a case-by-case basis. With assignments, the spectrum could be filled up quickly on a first-come, first-serve basis, meeting short-term needs, but with little or no regard for long-term requirements. What may appear to be efficient and desirable in individual cases may turn out to have an adverse impact on overall spectrum use. The allotment approach might also be a worthwhile alternative to national licensing. Allotments could be made for a large area, such as a region, rather than for individual communites, thereby permitting more than one station to be established in an allotment area. This could provide some of the same efficiencies of service and other positive traits of national licensing while being more limited in its reach.

11. Desirable as the allotment approach may seem at first impression, there are significant problems with its implementation. First, it is difficult to develop a method of predicting future needs. Also, the many technical variables in AM broadcast make allotments difficult to work with. Many of the benefits of the assignment approach resolve the deficiences of the allotment approach. When the actual antenna site, conductivities, and directional antenna pattern can be adjusted precisely in an individual case, it is often possible to squeeze in a station where the allotment approach would preclude it. Also to be considered is whether "national licensing" is consistent with one or both of these planning methods.

12. The subject of negotiating interference rights should be considered by commenters. Where there are opportunities for *new* AM stations, and these are limited, the current interference standards place severe additional restrictions on commencement of such service and may well limit service to areas with newly developed population centers. Likewise, the rigid application of interference limitations may prevent opportunities for expanded band licensees to obtain greater interference protection so as to more effectively compete with other stations and it can necessitate unnecessary levels of protection against interference in areas not actually being served. As it would be impossible, as well as inappropriate to attempt to administratively remedy such interference situations, we wish to examine the relative advantages of allowing the matter of interference protection to be resolved through private agreements between affected broadcasters.

13. Regardless of the procedure utilized by the Commission to implement the expanded band, those wishing to operate expanded band stations will be required to file an application. We tentatively believe that a processing system consisting first of a one-time filing period, to be followed by a "first come first served" procedure would meet the objectives of essential fairness and reduce any potential processing delays. Also, to avoid administrative delay in processing applications, we believe it advisable to explore the imposition of a cap on the number of applications any one entity may file in this newly available broadcast spectrum.

14. In mutually exclusive application situations where different communities of license are involved, to meet section

307(b)'s requirements, a comparative hearing is held to determine which proposed community of license has a greater need for the broadcast outlet. In order to determine this, a detailed examination is made as to the need of each applicant's proposed service area for additional reception and transmission services. Once it has been determined which mutually exclusive proposal would result in the most effective use of that frequency, a section 307(b) preference is given to the applicant proposing that community. This preference can be dispositive of a comparative hearing. In view of the many AM stations (4,867) already operating, we question whether we should apply this traditional approach to section 307(b) to the licensing of stations in the expanded band. Should section 307(b) be applied in a different way considering today's marketplace with its abundance of services? For example, we might consider regions of the country rather than individual communities with regard to licensing on the expanded AM band.

15. Selecting among mutually exclusive applicants for new broadcast stations has posed a continuing problem for the Commission. Comparative hearings, in which applicants are evaluated by numerous complicated criteria, are lengthy and expensive. As the Commission is commited to prompt and effective use of the expanded band, the question arises as to whether some procedure other than oral comparative hearings can be utilized for selecting licensees for stations in the expanded band. Specifically, should the Commission consider alternatives to an oral hearing such as a paper hearing or a lottery procedure pursuant to section 309(i) of the Communications Act?

16. The goal of the Commission is a more dynamic and robust AM service fully responsive to the needs of the listening public. Yet, the state of AM broadcasting today is problematic. In terms of revenues/profits, audience/ratings and station sale prices, AM broadcasting has declined, while its FM aural broadcasting counterpart has grown. We need to keep the current state of AM broadcasting in mind when developing the various aspects of the regulatory scheme for the expanded band. This is particularly important in the area of multiple ownership. Rather than impose the same regulatory constraints that have restricted broadcasters in the 535–1605 kHz band, we recognize the possibility that our multiple ownership regulations could adversely inhibit the establishment of stations in the expanded AM band and thereby limit service to the public. Indeed, if the Commission were to adopt the proposal for nationwide licensing within all or part of the expanded AM band, it seems that it would not be appropriate to apply the 12 station limit (§ 73.3555(d)(1)) to such national licensees. Only by allowing these licensees the freedom to locate as many or as few stations as they wished anywhere throughout the U.S. would they truly have the ability to decide for themselves what appeared to be the most efficient distribution of those stations.

17. Even if we decide not to adopt a national licensing scheme, we believe it would still be appropriate to consider a temporary waiver of the national ownership rules for some period of time, such as five years, with respect to AM stations operating in the expanded band. Because we wish to encourage entry into that band, we believe it may be desirable to place a few limitations on entry as possible. Considering the large numbers of AM and FM stations which operate throughout the country, the possibility that even a nationally licensed entity could exert any significant amount of market power in any local radio market or even throughout the country seems remote. Furthermore, there seems to be even less reason to be concerned if individual rather than national licensing is the procedure adopted.

Authority Citation

18. Authority for the action taken is contained in sections 4(i), 303(r), 307(b) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 307(b) and 403.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-13994 Filed 6-21-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-237, RM-6130]

Radio Broadcasting Services; Joshua Tree, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Craig L. Fox, seeing the allotment of Channel 221A to Joshua Tree, California, as that community's first local broadcast service.

DATES: Comments must be filed on or before July 22, 1988, and reply comments on or before August 8, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Craig L. Fox, 1213 Madison Street, Syracuse, NY 13210–2027.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–237, adopted April 29, 1988, and released May 31, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14014 Filed 6-21-88; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 53, No. 120
Wednesday, June 22, 1988

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.

ACTION

Foster Grandparent and Senior Companion Programs; Income Eligibility Levels

AGENCY: ACTION.

ACTION: Notice of revision of income eligibility levels for Foster Grandparent and Senior Companion Programs.

SUMMARY: This notice revises the schedules of income eligibility levels for participation in the Foster Grandparent and Senior Companion Programs published in the Federal Register, January 20, 1988 (53 FR 1502). Because data used for determining FGP and SCP income eligibility levels is available at different times during the year, ACTION has determined that it will issue these guidelines twice a year so as to reflect the most current information and to assure the widest base of potential applicants.

The revised schedule is based on changes in the Poverty Income Guidelines from the Department of Health and Human Services (DHHS), effective February 12, 1988 (53 FR 4214) and supplemental Security Income (SSI) guidelines published by the Social Security Administration, January 1987. This revision adopts as the income eligibility level for each state the higher amount of either: (a) 125 percent of the DHHS Poverty Income Guidelines, or (b) 100 percent of the DHHS Poverty Income Guidelines plus the 1987 amount of each state supplemented federal SSI, rounded to the next highest multiple of $5.00. When the Social Security Administration publishes the annual state supplements to the Federal SSI, ACTION will revise its income eligibility guidelines for those states with SSI supplements above 125 percent of the DHHS Poverty Income Guidelines.

Any person whose income is not more than 100 percentum of the DHHS poverty income guideline for her/his specific household unit status shall be given special consideration for participation in the Foster Grandparent and Senior Companion Programs.

EFFECTIVE DATE: June 22, 1988.

FOR FURTHER INFORMATION CONTACT: Rey Tejada, Program Officer, Foster Grandparent Program/Senior Companion Program, 806 Connecticut Avenue NW., M–1006, Washington, DC 20525 or telephone (202) 634–9349.

SUPPLEMENTARY INFORMATION: These ACTION programs are authorized pursuant to section 211 and 213 of the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, 87 Stat. 394. The income eligibility levels are determined by the currently applicable guideline published by DHHS pursuant to sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty income guidelines to be adjusted for Consumer Price Index changes.

Schedule of Income Eligibility Levels: Foster Grandparent and Senior Companion Programs.

For household units for all states, the District of Columbia, Puerto Rico, and the Virgin Islands (except Alaska, California, Connecticut, Hawaii, Massachusetts, Missouri, New Jersey and Wisconsin).

FGP/SCP Income Eligibility Guidelines Based on 125% of DHHS Poverty Income Guidelines

For Household Units of—							
One	Two	Three	Four	Five	Six	Seven	Eight
$7,215	9,665	12,115	14,565	17,015	19,465	21,915	24,365

For the following States receiving SSI state supplements:

State	For Household Units of—							
	One	Two	Three	Four	Five	Six	Seven	Eight
AK	10,880	14,595	16,965	19,305	21,705	24,055	26,445	28,815
CA	9,275	16,780	18,740	20,700	22,660	24,620	26,580	28,540
CT	7,525	9,665	12,115	14,565	17,015	19,465	21,915	24,365
HI	10,705	14,765	17,125	19,485	21,845	24,215	26,565	28,925
MA	7,215	10,155	12,115	14,565	17,015	19,465	21,915	24,365
MO	7,430	11,045	13,005	14,965	17,015	19,465	21,915	24,365
NJ	7,570	13,155	22,515	24,475	26,435	28,395	30,355	32,315
WI	7,215	9,710	12,115	14,565	17,015	19,465	21,915	24,365

For household units with more than eight members add to each additional household member (over eight):

Alaska $2,450
Hawaii $3,250
All Others $1,960

All of the income eligibility levels presented here are calculated from the

base DHHS Poverty Income Guidelines now in effect. The Guidelines are:

Size of family unit	For all states (except Alaska and Hawaii) and the District of Columbia	For Alaska	For Hawa
1	$5,770	$7,210	$6,65
2	7,730	9,660	8,90
3	9,690	12,110	11,15
4	11,650	14,560	13,40
5	13,610	17,010	15,65
6	15,570	19,460	17,90
7	17,530	21,910	20,15
8	19,490	24,360	22,40

Signed in Washington, DC on June 16, 1988.
Donna M. Alvarado,
Director of ACTION.
[FR Doc. 88-14029 Filed 6-21-88; 8:45 am]
BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by the Office of Management and Budget

June 17, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of tht total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- *Agricultural Marketing Service*

Domestic Dates Produced or Packed in Riverside County, California.

Marketing Order 987.

Committee Report Forms.

Recordkeeping; On occasion; Monthly; Annually.

Businesses or other for-profit; 426 responses; 201 hours; not applicable under 3504(h).

Virginia M. Olson (202) 447-5057.

- *Foreign Agricultural Service*

Buyer Alert Notice.

FAS 964.

On occasion.

Farms; Businesses or other for-profit; Small businesses or organizations; 5,000 responses; 850 hours; not applicable under 3504(h).

Phillip Letarte (202) 447-7103.

New

- *Agricultural Marketing Service*

Decision and Order on Proposed Marketing Order for Strawberries.

Grown in Flordia.

One-time referendum.

Farms; 150 responses; 25 hours; not applicable under 3504(h).

Tom Tichenor (202) 475-3930.

Reinstatement

- *Farmers Home Administration*

7 CFR 1944-J, Section 504 Rural Housing Loans and Grants.

On occasion.

Individuals or households; 16,300 responses; 1,304 hours; not applicable under 3504(h).

Jack Holston (202) 382-9736.

Larry K. Roberson,
Acting Departmental Clearance Officer.
[FR Doc. 88-14089 Filed 6-21-88; 8:45 am]
BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held July 12, 1988 at 9:30 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer peripherals and related test equipment or technology.

Agenda

General Session:

1. Introduction of Members and Visitors.
2. Introduction of Invited Guests.
3. Presentation of Papers or Comments by the Public.
4. Progress Report on Public Rule-Making and G-COM/GFW Recommendations.
5. Procedures for Publication of Regulations.
6. Review of Various Committee Recommendations to the Department of Commerce.
7. A Discussion of Joint Ventures with Bloc Countries.
8. Note 14—Original Equipment Manufacturing Sales of Peripheral Devices.
9. Computer Control Updates (1565).

Executive Session

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

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Ruth D. Fitts, Technical Support Staff, Office of Technology & Policy Analysis, Room 4086, 14th & Constitution Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

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

Date: June 16, 1988.

Betty A. Ferrell,

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

[FR Doc. 88–14087 Filed 6–21–88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-421-701]

Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have determined that brass sheet and strip from The Netherlands are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine within 54 days of publication of this notice whether these imports are materially injuring, or are threatening material injury, to a United States industry.

EFFECTIVE DATE: June 22, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas Moir or Rick Herring, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14 Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–5050 or (202) 377–0187.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that brass sheet and strip from the Netherlands are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On February 2, 1988, we made an affirmative preliminary determination (53 FR 3612, February 8, 1988). The following events have occurred since the publication of that notice.

On February 17, 1988, Metallverken Nederland B.V. (MN), the respondent in this case, requested that the Department extend the period for its final determination until June 15, 1988. In accordance with section 735(a)(2)(A) of the Act, the Department granted this request, and postponed its final determination until not later than June 15, 1988 (53 FR 7771, March 10, 1988).

Questionnaire responses from MN were verified in The Netherlands from March 14–18, in Sweden from March 21–23, and in Glendale Heights, Illinois from April 11–15, 1988.

On May 11, 1988, the Department held a public hearing. Interested parties also submitted comments for the record in their pre-hearing briefs of May 5, 1988, and in their post-hearing briefs of May 19, 1988.

Scope of Investigation

The products covered by this investigation are brass sheet and strip, other than leaded brass and tin brass sheet and strip, currently provided for under the *TSUSA* item numbers 612.3960, 612.3982, and 612.3986, and currently classifiable under HS item numbers 7409.21.00.50, 7409.21.00.75, 7409.29.00.50, and 7409.29.00.75.

The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by this investigation.

The physical dimensions of the products covered by the investigation are brass sheet and strip of solid rectangular cross section over 0.006 inches (0.15 milimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound on reels (traverse wound) and cut-to-length products are included.

Period of Investigation

The period of investigation is February 1, 1987 through July 31, 1987.

Such or Similar Comparsions

We have determined that all of the brass sheet and strip under investigation constitute the same class or kind of merchandise and that differences between types of brass within the scope of investigation are not significant enough to warrant separate "such or similar" categories. Therefore, the brass sheet and strip under investigation were considered one "such or similar" category.

In order to select the most similar products, we made comparisions of merchandise based on grade (chemical composition), gauge, width, coating (tinned or non-tinned), temper and packed form (coil or traverse-wound).

For merchandise where there were no identical products with which to compare a product sold to the United States, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of brass sheet and strip from The Netherlands to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below.

United States Price

Purchase Price

As provided in section 772(b) of the Act, we used the purchase price to represent the United States price for sales of brass sheet and strip made by MN through related and unrelated sales agents in the United States to an unrelated purchaser prior to importation of the merchandise into the United

States. The Department determined that purchase price and not exporter's sales price was the most appropriate indicator of United States price based on the following elements.

1. The merchandise was purchased or agreed to be purchased prior to the date of importation from the manufacturer or producer of the merchandise for exportation to the United States.

2. The related and unrelated selling agents located in the United States acted only as processors of sales-related documentation and as communication links with the unrelated U.S. buyers.

3. Rather than entering into the inventory of the related or unrelated selling agents, the merchandise in question was shipped directly from the manufacturer to the unrelated buyers. Thus, it did not give rise to storage and associated costs on the part of the selling agents or create flexibility in marketing for the exporter.

4. Direct shipments from the manufacturer to the unrelated buyers were the customary commercial channel for sales of this merchandise between the parties involved.

We calculated purchase price based on the packed, delivered, duty paid prices to unrelated customers in the United States. We made deductions from purchase price, where appropriate, for point-to-point freight, point-to-point insurance, U.S. brokerage and handling, and U.S. duty in accordance with section 772(d)(2) of the Act. We also deducted year-end rebates.

Exporter's Sales Price

Where the brass sheet and strip were imported into the United States by a related importer before being sold to the first unrelated party, we treated such sales as exporter's sales price sales.

To calculate exporter's sales price, we used the packed, delivered or ex-works, duty paid prices of brass sheet and strip to unrelated purchasers in the United States. We made deductions, where appropriate, for point-to-point freight, point-to-point insurance, U.S. duty, and U.S. brokerage and handling.

We made deductions under § 353.10(e)(2) of our regualtions for direct and indirect selling expenses incurred by or for the exporter in selling brass sheet and strip in the United States. Indirect selling expenses were comprised of indirect selling expenses incurred outside the United States, indirect selling expenses of the related reseller in the United States, and inventory carrying costs. Where appropriate, U.S. credit, U.S. warranty, and U.S. warehousing expenses were deducted as direct selling expenses. Pursuant to § 353.10(e)(1) of our regulations, we also deducted, where appropriate, commissions paid to unrelated parties. The total of the indirect expenses and commissions formed the cap for the allowable home market indirect selling expenses offset under § 353.15(c) of our regulations.

For exporter's sales price sales involving further manufacturing, pursuant to § 353.10(e)(3) of our regulations, we deducted all value added to the subject merchandise in the United States plus a proportional amount of the profit or loss on the U.S. sale that was attributable to further manufacturing.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on the packed, delivered or ex-works prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight and insurance, warranty expenses, credit expenses, and quantity discounts actually granted. Where appropriate, we made additions to the home market price for quantity and scraps extras.

In order to adjust for differences in packing between the U.S. and home markets, we deducted the home market packing cost from the foreign market value and added U.S. packing costs.

We made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act.

Where U.S. price was based on purchase price, we made adjustments under § 353.15 of our regulations for differnces in credit and warranty expenses in the United States and home market. We offset commission paid on U.S. purchase price sales with indirect selling expenses in the home market, in accordance with § 353.15(c) of our regulations.

Where U.S. price was based on exporter's sales price, we deducted indirect selling expenses in the home market to offset United States selling expenses, in accordance with § 353.15(c) of our regulations. Respondent made a claim for technical services. We treated these technical service expenses as indirect selling expenses because they were non-variable in nature and, thus did not qualify as direct selling expenses.

Currency Conversion

For comparisons involving purchase price transactions, we used the official exchange rates in effect on the dates of sale, in accordance with § 353.56(a)(1) of the Commerce Regulations. For comparison involving exporters's sales price transactions, we used the official exchange rates in effect on the dates of sale, in accordance with section 733(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(a) of the Act, we verified the information used in reaching the final determination in this investigation. We used standard verification procedures including examination of all relevant accounting records and source documentation.

Interested Party Comments

Comment 1: The respondent states that the Department should make a metal price adjustment to take into account the effect of dramatic metal price fluctuations on sales made during the period of investigation. It alleges that differences in metal fixing dates (and thus differences in metal cost) constitute differences in circumstances of sale which result in price differentials, bear a direct relationship to the sales which are under consideration, and readily quantifiable.

Petitioners claim that making a circumstance of sale adjustment to account for variations in metal value would be contrary to the statute, statutory intent and the Department's regulations.

DOC Position: We recognize that this investigation differs from the previous brass investigations (where the Department did not make an adjustment for metal value) in that the metal portion of total price hs been subject to dramatic fluctuations throughout 1987 (roughly 70% over the entire year as measured by London Metal Exchange prices). Moreover, we have verified that the metal portion of price is a pass-though and that the metal fixing date is chosen by the customer and, thus, is beyond MN's control. Therefore, in order to minimize the distortions form day-to-day changes in the prices of copper and zinc (as determined by different metal fixing dates), we have created separate foreign market values to correspond to the following periods (as defined by the metal fixing date): February 1 through June 30, 1987, July 1 through October 31, 1987, and November 1 through December 31, 1987. In all cases, a U.S. sale with a metal fixing date in a certain period was compared to a foreign market value comprised of home market sales with a metal fixing

date within the same period. These periods were chosen, because within each period, metal prices were relatively stable.

Comment 2: The respondent argues that the Department should allow two types of quantity adjustments in this investigation. One such adjustment is based on additional costs it claims it incurs for producing small order sizes in the home market. Another adjustment is based on quantity discounts that are given on large order sizes in the home market.

Pettioners urge the Department to reject both of the respondent's quantity adjustment claims because MN has not shown a clear correlation between price difference and the quanitites sold nor demonstrated that it sells its product in larger quantities in the United States than in the home market.

DOC Position: In our view, the controlling requirement of § 353.14 is that, to be eligible for a quantity-based adjustment, a respondent must demonstrate a clear and direct correlation between price differences and quantities sold or costs incurred. This requirement applies equally to an allowance for quantity differences under the six month rule (§ 353.14(b)(1)) or the cost justification requirement (§ 353.14(b)(2)). Under § 353.14(b)(1) (The six month rule), it is not sufficient that, during the period of investigation, the respondent merely granted discounts of at least the same magnitude with respect to 20 percent or more of such or similar merchandise sold in the ordinary course of trade in the market used to establish foreign market value, the exporter must also demonstrate, using evidence such as a price list or quantity discount schedule, that it gave discounts on a uniform basis and that such discounts were available to substantially all home market customers. With regard to a cost-based adjustment, the exporter must demonstrate that the discounts are warranted on the basis of savings which are specifically attributable to the production of the different quantities involved.

In this case, we have verified that MN gives discounts based on quantities purchased by the two home market customers with which it has long-term contracts. The quantity discount schedules and quantity extra schedules contained in those contracts are the most accurate means by which to measure any possible link between quantities produced or costs incurred and prices.

We have determined that these quantity discount schedules do not meet the requirements of § 353.14. This is because the schedules are not uniform. Not only do the schedules apply only to these two home market customers, but the schedules in the relevant contracts do not contain the same discounts.

Given the facts in this case, it is our view that the discounts are part of MN's negotiations on a customer-specific basis. They are neither uniform nor available to all home market customers. Moreover, because of the lack of uniformity and availability of these quantity discount and extra schedules, MN has failed to establish that the higher slitting costs it incurs in producing smaller orders are reflected in these schedules. Accordingly, we have disallowed MN's claim for an adjustment for differences in quantities.

Comment 3: The respondent alleges that the use of "best information available" to estimate labor and overhead for packing in the preliminary determination duplicated costs already accounted for, thus resulting in double counting.

Petitioners state that the same amount for the labor and overhead portion of packing used by the Department in its preliminary determination should be used in the final determination. This factor was based on petitioners' knowledge of these labor and overhead costs.

DOC Position: We have verified that labor and overhead expenses associated with the U.S. subsidiary's (MINC's) packing costs were fully absorbed costs accounted for in MINC's further manufacturing expenses. Therefore, for U.S. sales made through MINC, we have not used "best information available" to determine labor and overhead associated with MINC's packing costs. However, given that MN was unable to account separately for labor and overhead relating to packing from MN to the customer (in direct sales to both U.S. and home market customers), we have continued to use the "best information available" in calculating that portion of packing costs in our final determination.

Comment 4: The respondent states that certain scrap transformation sales which were excluded from the Department's analysis for the preliminary determination should be included in the final determination because they constitute sales of such or similar merchandise in the home market. The price of these sales was based only on the fabrication portion of total price. MN suggests that because the same customer also purchases brass from MN on a non-scrap transformation basis, the metal prices in those sales could be used to establish an imputed metal price for the scrap transformation sales.

Petitioners state that these scrap transformation sales should not be used for comparison purposes because they are similar to tolled sales in that the metal portion of the price was based on the scrap credit pool rather than on a separate mechanism for determining metal price.

DOC Position: We disagree with petitioners in that the scrap transformation sales at issue are not tolled sales. Nevertheless, under the terms of the relevant contract, the metal portion of price for non-transformation sales can be fixed from several months prior to shipment up to the shipment date. Because metal can be fixed over such a long period of time, sales to this customer where the metal price component is fixed cannot be used to accurately impute a metal price for sales to this customer where there is no fixed metal price. Accordingly, we have not used these sales for purposes of making our product comparisons.

Comment 5: Petitioners state that MN's home market scrap handling expenses should not be allowed for the final determination because such expenses are fixed expenses that relate to the future use of the scrap and cannot be tied directly to sales of brass destined solely for the home market as opposed to the U.S. market.

The respondent states that petitioners' position is based on an erroneous assumption that scrap is used to make copper and bronze, as well as brass. Moreover, MN states that the scrap handling costs are at least as directly related to the sales under consideration as are warranty costs, and are incurred specifically because of a term of sale provided in certain orders, namely scrap return.

DOC Position: We agree with the petitioners that scrap handling expenses as reported cannot be tied directly to the sales made during the period of investigation. However, during verification, MN was able to demonstrate that scrap return provisions are a term of sale included in home market contracts negotiated both before and during the period of investigation. Therefore, we consider actual scrap handling expenses incurred during the period on material sold prior to the period as a reasonable proxy for scrap handling expenses incurred on products actually sold during the period. Because these expenses are non-variable and would have been incurred regardless of whether a sale had been made, we view them as indirect selling expenses, and have treated them accordingly. We have reallocated half of these expenses (to represent the six month period of

investigation) over the total shipments made during the period of investigation pursuant to these contracts. We view such a reallocation as more accurate and reasonable than MN's method of allocating yearly scrap handling expenses over total scrap returned during the year.

Comment 6: Petitioners have stated that tinning should be elevated to the primary echelon of criteria when matching home market and U.S. sales, and thus, brass products that are tinned in The Netherlands and then exported to the United States should be compared with the home market product that is most similar to the merchandise sold in the home market (i.e., tinned).

The respondent states that tinned sales to the home market were not made in sufficient quantity to provide an adequate basis for comparison with exports of tinned material to the United States. Further, MN argues that U.S. tinned and home market tinned sales are not comparable because U.S. tinned material is made by a different tinning process than home market tinned sales.

DOC Position: We agree with the petitioners that U.S. tinned sales should be compared with home market tinned sales whenever possible. We feel that the quantity of home market tinned sales is sufficient to provide an adequate comparison with exports of tinned material to the United States. Moreover, during verification, MN was unable to demonstrate that it incurred different tinning costs in producing the tinned product for the U.S. market as opposed to the home market. Accordingly, using the criteria mentioned in the "Such or Similar Comparisons" section of this notice, we have attempted to match U.S. tinned sales with comparable home market tinned sales whenever possible.

Comment 7: Petitioner's state that MN's claimed difference in merchandise adjustment for differences in coil size for U.S. and home market customers should be rejected because this adjustment is based on estimates of slitting time and take-off time.

The respondent rebuts petitioner's arguments by stating that MN has provided information concerning slitting time and take-offs at verification, and that the information in the verification report does not support MN's conclusions that the average coil supplied to the U.S. is larger than the average home market coil size.

DOC Position: We agree with the petitioners. Although MN was able to demonstrate that the average coil size for U.S. radiator strip customers was larger than that for home market customers, it did not provide any documentation to substantiate the reported slitting times and number of take-offs.

Comment 8: Petitioners allege that MN's claimed difference in merchandise adjustment for home market double annealed strip should be rejected because MN has stated that certain U.S. customers also require double annealed material. Petitioners state that MN should be penalized for not properly identifying all sales to which this adjustment applies.

DOC Position: During verification, MN was able to demonstrate that it did sell double annealed material in both the United States and the home market during the period of investigation, and that the verfified difference in merchandise adjustment for double annealed strip applies equally to U.S. and home market sales. Moreover, such material was reported in the U.S. sales listings (and computer tapes) used in the Department's preliminary determination.

Comment 9: Petitioners state that the "general sales factor" portion of MN's indirect selling expenses claim should not be included as part of MN's home market selling expenses because this factor is derived by dividing the budgeted costs for sales to the rest of the world (excluding the home market) by total sales of all products.

DOC Position: We disagree with the petitioners. Expenses verified as part of this "general expense factor" were indirect selling expenses related to sales in all markets.

Comment 10: Petitioners state that Metallverken A.B.'s interest rate should be used on ESP sales because MINC did not actually have any short-term borrowing during the period of investigation and because MINC has listed substantial parent company loans on its financial statements.

The respondent alleges that petitioners' argument is inconsistent with the rationale for imputed interest adjustments, because imputed interest as applied by the Department is theoretical interest and does not depend upon the amount, or even existence, of actual borrowings.

DOC Position: During verification, MN was able to demonstrate that its related U.S. subsidiary (MINC) was the entity which was responsible for extending credit on ESP sales. For the ESP sales verified, we found no evidence to suggest that the payment from MINC to MN for material sold to a particular U.S. ESP customer was dependent upon MINC first being paid by the customer. Moreover, the Department verified that MINC had an established line of credit with a U.S. bank. Finally, during verification, we found no evidence to suggest that the parent company loans listed in MINC's financial statements were used for financing its U.S. sales. Accordingly, we have used MINC's short-term borrowing rate to derive ESP credit costs.

Comment 11: Petitioners state that for sales made on a consignment basis, the Department should consider the period from shipment by MN to payment by the customer as a direct, post-sale credit expense.

DOC Position: We have verified that U.S. consignment sales are made under long-term contracts where the terms of sale are agreed upon before the merchandise is sent to the purchaser's warehouse and where the purchaser must accept and pay for all material ordered for consignment. Consistent with our decision in the final determination of *Brass Sheet and Strip from the Federal Republic of Germany* (52 FR 822, January 9, 1987), we consider the period from shipment to payment on consignment sales as a post-sale direct credit expense.

Comment 12: Petitioners state that for blanket order sales, the credit cost of carrying the merchandise from the time MINC receives the shipment until payment is made by the customer should be treated as a direct selling expense.

DOC Position: We verified that this merchandise is distinct from regular stock in that it is produced to the customer's specifications and the customer is committed to accept and pay for all material covered by this order. As such, we view this as a post-sale warehousing service extended by MINC to this customer that is similar to a consignment agreement. Thus, for U.S. sales made pursuant to this blanket order, we have treated the time between when the merchandise enters MINC's warehouse and the time when payment is made as a post-sale direct credit expense.

Comment 13: Petitioners state that the Department should make an adjustment for the post-sale cost of physically warehousing material on MINC blanket order sales.

DOC Position: We agree with petitioners, and have made an adjustment for the post-sale cost of physically warehousing material using the verified warehousing costs submitted as part of MN's further manufacturing expenses.

Comment 14: Petitioners state that the department's verification demonstrated that MN incurred technical service expenses on U.S. sales, although virtually no technical service expenses were incurred on home market sales.

Thus, a deduction should be made to U.S. price for this direct selling expense, although no adjustment should be made to home market sales for technical services.

The respondent contends that technical service expenses are not directly related to particular sales and, therefore, do not constitute deductible direct selling expenses.

DOC Position: We verified that the technical service expenses claimed are non-variable and would have been incurred regardless of whether any particular sale would have been made. Therefore, we have treated these expenses in both markets as indirect selling expenses.

Comment 15: Petitioners state that the verification report does not indicate whether there was a written agreement acknowledging that MN or MINC would accept returned materials. They allege that warranty claims are not valid without such an agreement because otherwise acceptance of returned materials could simply be a goodwill gesture on the part of the seller. Petitioners also state that the Department should not deduct MN mill credits from MINC's warranty costs because these credits were nevertheless a selling expense incurred by the company as a whole.

The respondent states that the mill credits issued by MN to MINC already are treated in the verification report as MN warranty costs and, thus, were correctly deducted in calculating MINC's warranty cost in the verification report.

DOC Position: Petitioners are incorrect that warranty claims must be stipulated in writing. We verified that it is MN's standard company practice to accept back defective merchandise and that MN incurs a verifiable cost for doing so. Moreover, we also verified that the mill credits issued by MN to MINC are included as part of MN's warranty costs.

Comment 16: The respondent has stated that during verification it advised the Department that there were no unallocated line items recorded outside the period of investigation related to sales during the period. MINC normally allocates one-time payments over the entire year. However, MINC's treatment of directors' fees and other taxes was an exception to this general rule. The respondent states that while these expenses were expensed during the period of investigation, it would be fair and nondistorting to spread directors' fees, payroll taxes, and other taxes over a twelve-month period.

Petitioners allege that acceptance of MN's position would be inconsistent with generally accepted accounting principles and the total amount of directors' fees, payroll taxes, and other taxes should be included in calculating MINC's U.S. selling expenses and general and administrative expenses.

DOC Position: We view fully absorbed selling expenses as expenses that are indirectly related to the sales included in the period of investigation. Thus, we have included director's fees, payroll taxes, and a portion of other taxes as part of MINC's selling expenses. However, we view that portion of other taxes that is a penalty and fee for incorporation in 1979 as an organizational expense. Because organizational expenses are amortized over a five year period, this portion of other taxes would have been expensed prior to the period of investigation and, thus, would have no effect on the current costs.

Comment 17: Petitioners state that best information available should be used in estimating freight expenses from MINC to its outside tinner on material tinned in the United States because neither MINC nor the verification report indicate who incurs such freight charges. In this instance, petitioners state that the best information available is the freight cost reported by MINC on its ESP sales transactions.

The respondent states that this material was transported by MINC truck. The cost of MINC's trucking department was treated as an overhead cost and, in calculating MINC's distribution expense, was allocated over all brass delivered to customers by MINC truck.

DOC Position: We agree with the respondent. We verified that all brass delivered by MINC truck (including that sent to the outside tinner) was used in deriving MINC's distribution expenses.

Comment 18: Petitioners state that MN's reported profit calculation on further manufacturing should be rejected for the final determination because the basis for this calculation was a transfer price between related parties.

DOC Position: MN has not established that the transfer price between MN and MINC is an arm's length price. Accordingly, we have derived a methodology for allocating the total profit on further manufactured sales to that portion of the profit represented by the value added in the United States.

Continuation of Suspension of Liquidation

In accordance with sections 733(d) and 735(c) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of brass sheet and strip from The Netherlands that are entered or withdrawn from warehouse, for consumption, on or after February 8, 1988, the date of publication of our preliminary determination. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of brass sheet and strip from The Netherlands exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Metallverken Nederland, B.V.	16.99
All others	16.99

This continuation of suspension of liquidation covers imports of brass sheet and strip meeting the definition outlined in the "Scope of Investigation" section of this notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs offices to assess an antidumping duty on brass sheet and strip from the Netherlands entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds U.S. price

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

June 15, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-13964 Filed 6-21-88; 8:45 am]

BILLING CODE 3510-05-M

President's Export Council Executive Committee; Closed Meeting

A meeting of the President's Export Council Executive Committee will be held July 6, 1988, at The Union League

Club, 38 East 37th Street, New York. The Council's purpose is to advise the President on matters relating to U.S. export trade.

Executive Committee Meeting—Closed Session: 5:50 p.m.–6:30 p.m. Discussion of matters properly classified under Executive Order 12356, dealing with GATT negotiations, relations with our trading partners, trade negotiating strategies, and other classified issues.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information or copies of the minutes, contact Annette Richard (202) 377–1125.

Date: June 15, 1988.

Henry P. Misisco,

Director, Office of Planning and Coordination.

[FR Doc. 88–14011; Filed 6–21–88; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Pacific Coast Groundfish Fishery

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

ACTION: Notice of experimental fishing application and request for comment.

SUMMARY: This notice acknowledges receipt of an application on behalf of three vessels requesting experimental fishing permits (EFPs) and announces a public comment period as required in the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP). The applicants propose to delay sorting mid-water trawl catches of Pacific whiting and disposing of species prohibited in trawl catches until the catches are delivered to a dockside facility. An EFP allows a fishing practice that otherwise would be prohibited by Federal regulations.

DATE: Comments on the application must be received by July 22, 1988.

ADDRESS: E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Svein Fougner (Chief, Fisheries Management and Analysis Branch), 213–514–6660.

SUPPLEMENTARY INFORMATION: The FMP is implemented by regulations appearing at 50 CFR Part 663. The FMP specifies at § 663.10 that EFPs may be issued to authorize fishing which otherwise would be prohibited.

An application has been received for EFPs to allow three mid-water trawl vessels to delay sorting and discarding prohibited species from their catch directed on Pacific whiting. By delaying sorting until delievery of the fish to port, the applicant expects to shorten the time before the whiting on the vessel is placed in refrigerated seawater. Rapid refrigeration is necessary to maintain product quality because Pacific whiting deteriorate rapidly after death.

The regulations at § 663.7(i) prohibit the retention of any species of salmonid caught in trawl nets, among other types of gear. The normal practice of groundfish trawl vessels is to sort the catch from each tow before storing the groundfish in the hold. Species and sizes of fish that are not marketable are discarded during this sorting. Prohibited species also are returned to the sea during this sorting, although most if not all are dead at this time. Any salmonid taken in a trawl and placed in the hold (not returned to the sea immediately) is considered to be retained in violation of § 663.7(i).

Domestic vessels that deliver whiting to foreign-flag processing vessels (joint ventures) are not affected by this prohibition on retention of salmonids because the catch is not brought on board the fishing vessel. Instead, the codend of the trawl net is taken directly on board the processing vessel, which is responsible for sorting the fish on the deck and discarding any prohibited species.

The incidence of salmon caught by U.S. mid-water trawlers fishing for Pacific whiting and delivered to foreign processing vessels has been monitored carefully. During the 1987 season, it was reported that joint ventures discarded 8,531 salmon while catching 106,800 metric tons of whiting. This incidental take of 0.08 salmon per metric ton of whiting will vary seasonally and geographically, but represents the best documented information available on incidental take of salmon in this fishery. It should be noted that 1987 was a year of relatively high salmon abundance along most of the coast.

The application for the three vessels currently being considered is summarized below and is available for public review at the Regional Director's office during the public comment period (see **ADDRESS**). Copies of the applications have been sent to the U.S. Coast Guard and the fishery management agencies of Oregon, Washington, California, and Idaho along with information on current utilization, a citation of the regulation prohibiting the activity, and relevant biological information. The Pacific Fishery Management Council will discuss this application at its July 12–14, 1988, meeting at the Red Lion Inn—Columbia River, 1401 N. Hayden Island Drive, Portland, Oregon. The decision to grant or deny the EFPs will be based on the information in the application, the willingness of the applicants to comply with the conditions of the EFPs, information provided at the July Council meeting, and comments received during the public comment period as well as the criteria specified in § 663.10(c)(3).

(1) *Purpose and Significance.* The purpose of this experiment is to demonstrate that the quality of Pacific whiting improves when refrigeration is not delayed due to sorting each tow on board the vessel to discard prohibited species. The applicants have stated that one impediment to further development of a wholly domestic whiting fishery is that the flesh deteriorates rapidly after death. It is important that vessels make short tows and refrigerate the catch with minimum delay. If the catch must be sorted on deck to remove any incidental catch of salmon, whiting quality will suffer from excess handling and delayed refrigeration. Poor quality seriously impairs product acceptability in the market and may account for the relatively small amount of fish processed in shoreside facilities. The landings will provide samples of whiting which can be analyzed for quality differences, and the experiment will provide information for comparing the costs and benefits of at-sea sorting and dockside sorting. This information will be useful in considering possible amendments to the FMP.

(2) *Vessels.* The applicant has requested an EFP for each of three vessels, ranging from 72 to 120 feet in length, from 670 to 134 net tons, and from 95 to 198 gross tons. All vessels are currently registered in California and are homeported at Eureka, California.

(3) *Species.* The vessels will target on Pacific whiting and plan to take approximately 3,000 mt in 1988. They expect incidental catches of salmon and rockfish. They anticipate catching, on average, less than one salmon per 10 mt of whiting, based on the experience of the joint venture operations as well as their own experience in recent years. The whiting catch would be sold to a local, shore-based processor. Incidental catches of rockfish would be sold to local processors as well, subject to any existing trip limits. Incidentally caught salmon would be sorted from the catch

by the processor and would be turned over to enforcement agents. Confiscated salmon could be sold by the enforcement agency or could be donated to charitable organizations.

(4) *Time.* The operation would take place from the time of recipt of the EFPs (likely in August if the EFPs are granted) through October.

(5) *Gear.* Each vessel fish principally within a 60-mile radius of the entrance to Humboldt Bay, California.

(6) *Gear.* Each vessel would use a mid-water rope trawl with a minimum mesh size of three inches in the codend, which is legal gear for this specifes under the current regulations.

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

Dated: June 16, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-13957 Filed 6-21-88; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Marine Mammals: Issuance of Permit; Dolphin Biology Research Associates (P319A)

On April 19, 1988, Notice was published in the **Federal Register** (53 FR 12802) that an application had been filed with the National Marine Fisheries Service by the Dolphin Biology Research Associates for a Scientific Research Permit to take Atlantic bottlenose dolphins by potential harassment.

Notice is hereby given that on June 14, 1988, the National Marine Fisheries Service issued a Scientific Research Permit as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), to Dr. Randall S. Wells, Dolphin Biology Research Associates subject to certain conditions set forth therein.

The Permit is available for review in the following offices: Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Ave., Suite 805, Washington, DC; and

Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: June 14, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-14055 Filed 6-21-88; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Open Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces the following meeting:

Date and Time: Monday, July 18, 1988; Beginning 2:00 p.m.

Place: Center for Naval Analyses auditorium, First Floor, 4401 Ford Avenue, Alexandria, Virginia.

Type of Meeting: Open.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302-0268, Telephone (202) 756-0411.

Purpose of Meeting: To receive and consider statements on the subject of "Maintaining, Modernizing, and Strengthening the Shipbuilding, Ship Repair, and Shipyard Supplier Industrial Base," to include consideration of ways to facilitate or promote construction and repair of commercial ships in United States shipyards, issues of shipyard costs and efficiency, foreign shipyard subsidies and practices, shipbuilding and repair industrial base matters, and related issues. Individuals or organizations desiring to present oral testimony must notify the Executive Director in writing by July 8, 1988, and must provide 40 copies of written testimony no later than July 13. Witnesses will be allowed a maximum of 15 minutes to summarize their written testimony, may be included on panels, and may be asked to respond to questions from the Commissioners. Questions about the nature and content of testimony, scheduling, due dates, and related matters should be directed to Mr. Mark D. Schaeffer of the Commission's staff.

SUPPLEMENTARY INFORMATION: Other interested persons are invited to submit written statements about the merchant marine and the shipping required to implement United States defense policy. Written statements should be received by the close of business on July 13, 1988. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. All submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88-14105 Filed 6-21-88; 8:45 am]

BILLING CODE 3820-01-M

Open Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces the following meeting:

Date and Time: Wednesday, July 20, 1988; Beginning 9:00 a.m.

Place: Center for Naval Analyses auditorium, First Floor, 4401 Ford Avenue, Alexandria, Virginia.

Type of Meeting: Open.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302-0268, Telephone (202) 756-0411.

Purpose of Meeting: To receive and consider statements on the subject of "Providing Cargo and Access to Cargo for the United States Merchant Marine," to include consideration of such topics as cargo reservation programs, both current and proposed; government sealift procurement policies; efforts to expand United States foreign trade; policies or legislation designed to seek a "level playing field" in international trade and maritime matters; the UNCTAD liner code; offshore ship registries; and related issues. Individuals or organizations desiring to present oral testimony must notify the Executive Director in writing by July 8, 1988, and must provide 40 copies of written testimony no later than July 15.

Witnesses will be allowed a maximum of 15 minutes to summarize their written testimony, may be included on panels, and may be asked to respond to questions from the Commissioners. Questions about the nature and content of testimony, scheduling, due dates, and related matters should be directed to Lieutenant Colonel Ky L. Thompson, USMC, of the Commission's staff.

SUPPLEMENTARY INFORMATION: Other interested persons are invited to submit written statements about the merchant marine and the shipping required to implement United States defense policy. Written statements should be received by the close of business on July 15, 1988. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. All submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88-14106 Filed 6-21-88; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Navy Health Care Advisory Committee

ACTION: Renewal of the Secretary of the Navy Health Care Advisory Committee.

SUMMARY: Under the provisions of Pub. L. 92-463, "Federal Advisory Committee Act," notice is hereby given that the Secretary of the Navy Health Care Advisory Committee has been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law and has been renewed effective June 17, 1988.

This Committee serves the Secretary of the Navy and other Navy officials by providing an external, independent source of expert knowledge, experience, and judgment in health care management and administration. The Committee will explore and recommend alternatives for the improvement of policy implementation, health care planning, and resource allocation.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 17, 1988.

[FR Doc. 88-14081 Filed 6-21-88; 8:45 am]

BILLING CODE 3810-01-M

Commission on Base Realignment and Closure; Meeting

ACTION: Notice of Business Meeting and Public Hearing.

SUMMARY: The Defense Secretary's Commission on Base Realignment and Closure will hold a business meeting at 9:00 a.m., July 7, 1988 in the Dirksen Senate Office Building, Room 628. This will immediately be followed by a hearing to take public testimony on the socio-economic impacts of realignments and closures and community support issues.

FOR FURTHER INFORMATION: Please contact: Russel Milnes, (202) 653-0180, address: Defense Secretary's Commission on Base Realignment and Closure, 1825 K Street, NW, Suite 310, Washington, DC, 20006.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 17, 1988.

[FR Doc. 88-14082 Filed 6-21-88; 8:45 am]

BILLING CODE 3810-01-M

Education Benefits Board of Actuaries

AGENCY: Department of Defense Education Benefits Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of Chapter 101, title 10, United States Code (10 U.S.C. 2006(e) et seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the GI Bill and determine per capita normal costs to be implemented by DoD in FY 89. Persons desiring to attend the DoD Education Board of Actuaries meeting must notify Ms. Dorothy Hemby at 696-6336 by August 19, 1988. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: August 26, 1988, 9:00 a.m. to 1:00 p.m.

ADDRESS: Room 1E801 (#7), the Pentagon (River Entrance).

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Chief Actuary, DoD Office of the Actuary, 4th Floor, 1600 Wilson Boulevard, Arlington, Virginia 22209-2593, (202) 696-5869.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 17, 1988.

[FR Doc. 88-14003 Filed 6-21-88; 8:45 am]

BILLING CODE 3810-01-M

Retirement Board of Actuaries

AGENCY: Department of Defense Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of chapter 74, title 10, United States Code (10 U.S. 1461 et. seq.). The Board shall: (1) Review the September 30, 1987 valuation results; (2) determine actuarial assumptions for the September 30, 1988 valuation; and (3) authorize the October 1, 1988 unfunded liability payment. Persons desiring to attend the DoD Retirement Board of Actuaries meeting must notify Ms. Dorothy Hemby at (202) 696-6336 by August 19, 1988. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: August 25, 1988, 1:30 p.m. to 5:00 p.m..

ADDRESS: Room 1E801 (#7), the Pentagon (River Entrance).

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Chief Actuary, DoD Office of the Actuary, 4th Floor, 1600 Wilson Boulevard, Arlington, Virginia 22209-2593, (202) 696-5869.

L.M. Bynum,

Liaison Officer.

June 17, 1988.

[FR Doc. 88-14004 Filed 6-21-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency

Membership of the DIA Performance Review Committee

AGENCY: Defense Intelligence Agency, (DoD).

ACTION: Notice of membership of the DIA Performance Review Committee (PRC).

SUMMARY: This notice announces the appointment of the PRC of the Defense Intelligence Agency. The PRC's jurisdiction includes the entire Defense Intelligence Senior Executive Service (DISES). Publication of PRC membership is required by 10 U.S.C. 1601(a)(4).

The PRC provides fair and impartial review of Defense Intelligence Senior Executive performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Intelligence Agency.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Curriden, Human Resources Manager, Policy and Programs Division, Directorate for Human Resources, Defense Intelligence

Agency, Washington, DC 20340, (202) 373–2685.

Primary Members:

Mr. Gordon F. Negus, Executive Director (Chairman)
Maj. Gen. Frank B. Horton III, USAF, Deputy Director for Foreign Intelligence
MG Charles F. Scanlon, USA, Deputy Director for Attaches and Operations
BG Henry F. Drewfs, USA, Assistant Deputy Director for Estimates
Mr. A. Denis Clift, Deputy Director for External Relations
Mr. Joseph V. Heller, Vice Deputy Director for Operations, Plans, and Training
Mr. Michael F. Munson, Deputy Director for Resources.

Alternate Members

Brig. Gen. Walter C. Hersman, Assistant Deputy Director for Command Support and Plans
Dr. Wynfred Joshua, Defense Intelligence Officer for European and Soviet Political/Military Affairs
Mr. Charles W. Roades, Vice Deputy Director for Attaches and Operations
Mr. Steven T. Schanzer, Deputy Director for Information Systems
Mr. Richard B. Walker, Assistant Deputy Director for DoDIIS Management

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 16, 1988.

[FR Doc. 88–14005 Filed 6–21–88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Office of Environment, Safety and Health

Innovative Control Technology Advsiory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Commercialization Incentives Subcommittee of the Innovative Control Technology Advisory Panel.

Date and Time: July 12, 1988—1:00 p.m.–4:00 p.m.

Place: Madison Hotel, 15th & M Streets, NW., Washington, DC 20005, Mount Vernon A Room.

Contact: Sandy Guill, Department of Energy, Environment, Safety and Health (EH–22), 1000 Independence Avenue, SW., Washington, DC 20585, Telephone 202/586–4628.

Purpose of The Parent Board: To advise the Secretary of Energy and provide recommendations concerning innovative control technologies that will broaden cost-effective and efficient options for controlling precursor emissions associated with acid deposition.

Purpose of Panel: The Commercialization Incentives Subcommittee is a subgroup of ICTAP and reports to the parent board. This study will provide advice and recommendations to the Secretary on actions States could take to provide incentives for the demonstration and deployment of advised clean coal technologies.

Tentative Agenda:

1:00 Discussion and Presentations Regarding Issues Associated with the State Preference Issue
3:50 Public Comment (10 minute rule)
4:00 Adjourn.

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sandy Guill at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of The Meeting: Available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 16, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–14108 Filed 6–21–88; 8:45 am]

BILLING CODE 6450-01-M

Office of Innovative Control Technology Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Innovative Control Technology Advisory Panel.

Date and Time: July 13, 1988—9:00 a.m.–4:00 p.m.

Place: Madison Hotel, 15th & M Streets NW., Washington, DC 20005, Dolly Madison Room.

Contact: Sandy Guill, Department of Energy, Environment, Safety and Health (EH–22), 1000 Independence Avenue SW., Washington, DC 20585, Telephone: 202/586–4628.

Purpose of the Panel: To advise the Secretary of Energy on how to best achieve DOE's expanded innovative clean coal technologies program's objectives of reducing costs and improving efficiency by expanding emissions control options beyond those now available.

Tentative Agenda: Briefings and discussions of:

- DOE Clean Coal Solicitation
- Working Group on "Technology Status Review and Evaluation"
- Working Group on "Incentives for the Demonstration and Deployment of Clean Coal Technologies"
- Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sandy Guill at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 16, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–14107 Filed 6–21–88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Final Consent Order with Dorchester Master Limited Partnership, et al.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order..

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Dorchester Master Limited Partnership

(DMLP), successor by purchase of assets to Dorchester Gas Corporation (Dorchester); Damson Oil Corporation (Damson); and Doram Energy, Inc. (Doram), shall be made final as proposed. This Consent Order resolves matters relating to compliance by DMLP, Dorchester, Damson and Doram with the federal petroleum price and allocation regulations administered and enforced by DOE during the period August 19, 1973 through January 27, 1981. The Consent Order requires DMLP and its general partner, Doram, to pay the minimum sum of $11 million plus interest as well as an additional contingent amount of $54 million based on specific percentages of DMLP's annual adjusted net income for the next seven years. Persons claiming to have been harmed by the alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the DMLP and Doram Consent Order final was made after a full review of written comments from the public.

FOR FURTHER INFORMATION CONTACT: Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–8900.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments Received
III. Analysis of Comment
IV. Decision

I. Introduction

On April 18, 1988, ERA issued a Notice announcing a proposed Consent Order between DOE and Dorchester Master Limited Partnership (DMLP), successor in interest to Dorchester Gas Corporation (Dorchester), and Damson Oil Corporation (Damson), the general partner of DMLP, which would resolve matters relating to compliance with the federal petroleum price and allocation regulations during the period August 19, 1973 through January 27, 1981. The proposed Consent Order, which requires DMLP and Doram to pay DOE $11 million plus interest as well as an additional contingent amount of $54 million based on specific percentages of DMLP's annual adjusted net income for the next seven years is for the settlement of DMLP's and Doram's potential liability for $54.2 million in alleged overcharges excluding interest. The April 18 Notice described the bases for ERA's preliminary view that the settlement was favorable to the government and in the public interest. The **Federal Register** notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement and whether the settlement should be made final.

II. Comments Received

One written comment was received after the 30-day written comment period had expired. The comment, which was on behalf of the State of California, was considered in determining whether to make the proposed Consent Order with DMLP and Doram final.

III. Analysis of Comment

The April 18 Notice solicited written comments to enable the ERA to receive information from the public relevant to the decision as to whether the proposed Consent Order should be finalized as proposed, modified or rejected. To ensure public understanding of the bases for the proposed settlement, the April 18 Notice provided information regarding DMLP's and Doram's possible liability, and the considerations that went into the government's preliminary agreement to the proposed terms.

ERA received one written comment that arrived after the written comment period had closed. Nevertheless, it was considered in making the decision as to whether the proposed Consent Order should be made final. The one comment received urged that a distribution of settlement proceeds should be the subject of a proceeding pursuant to 10 CFR Part 205, Subpart V (Subpart V). The distribution of settlement proceeds will be made pursuant to the final Stripper Well Settlement Agreement in *In re: The Dept. of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.), and the DOE Modified Restitutionary Policy (51 *F.R.* 27899, Aug. 4, 1986), which calls for the implementation of the Subpart V procedures.

Upon consideration of the comment received and addressed herein, and inasmuch as there were no other bases preferred for rejecting or modifying the settlement as proposed, the Department has determined that it is in the best interest of the public to make the proposed Consent Order final without change.

IV. Decision

By this notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between DMLP, its general partner Doram, and DOE is made a final order of the Department of Energy, effective upon the date of publication of this Notice in the **Federal Register**.

Issued in Washington, DC on June 15, 1988.

Jerry F. Thompson,

Acting Deputy Administrator, Economic Regulatory Administration.

[FR Doc. 88–13935 Filed 6–21–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–457–000, et al.]

Boston Edison, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 16, 1988.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER88–457–000]

Take notice that on June 9, 1988, Boston Edison Company (Edison) tendered for filing Supplement No. 1 to Rate Schedule FERC No. 158 which is agreement for the sale of power to Public Service Company of New Hampshire. Pursuant to the power sales agreement, on a monthly basis Edison will sell to PSNH varying amounts of power from certain designated Edison jet turbine units.

Edison requests waiver of the Commission's notice requirements to permit Supplement No. 1 to the power sales agreement to become effective as of May 1, 1988.

Copies of the filing have been served upon PSNH and on the Department of Public Utilities of the Commonwealth of Massachusetts.

Comment date: June 30, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. South Carolina Public Service Authority

[Docket No. ES88–39–000]

Take notice than on June 8, 1988, the South Carolina Public Service Authority ("Authority") filed an application seeking an order authorizing the issuance of up to $30 million in Electric Revenue Bonds. The Authority asks, in the alternative, an order dismissing the application for lack of jurisdiction. The bonds are to be sold by the Authority to the residents of South Carolina, the Authority's customers and employees. The proceeds will be used to fund ongoing capital improvements to the Authority System.

Comment date: July 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Company

[Docket No. ER81-177-009]

Take notice that on June 7, 1988, Southern California Edison Company (Edison) tendered for filing, pursuant to the Commission's Order Directing Submittal of Revised Compliance Filing, revised reseal rates and supporting rate design and cost of service data. Edison states that the revised rate will replace the resale rates which became effective, sufject to refund, on July 16, 1981, and continued in effect until superseded by rates filed in Docket No. ER82-427-000 which became effective, subject to refund, on June 2, 1982.

Comment date: June 30, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Generating Company

[Docket No. ER85-204-009]

Take notice that on June 6, 1988, South Carolina Generating Company (GENCO) tendered for filing in accordance with FERC Opinion No. 280 issued on July 31, 1987, as modified by Opinion No. 280-A issued May 4, 1988, a revised Schedule 8 billing format to the Unit Power Sales Agreement dated December 18, 1984 between South Carolina Electric & Gas Company (SCE&G) and GENCO. GENCO states that Schedule 8 reflects the findings and conclusions of Opinion No. 280, as modified by Opinion No. 280-A, including the rate of return on common equity of 12.155% established by the Commission in Opinion No. 280-A.

GENCO states that it has also filed a refund summary showing refunds and computation of interest of refunds for sales by GENCO and SCE&G.

Comment date: June 30, 1988, in accordance with Standard Paragraph E at the end of this document.

5. Consumers Power Company

[Docket No. ER88-459-000]

Take notice that on June 9, 1988, Consumers Power Company (Consumers) tendered for filing a revision to the annual charge rate for charges due Consumers from Northern Indiana Public Service Company (Northern), under the terms of the Barton Lake-Batavia Interconnection Facilities Agreement (designated Consumers Power Company Electric Rate Schedule FERC No. 44).

The revised charge is provided for in Subsection 1.043 of the Agreement, which provides that the annual charge rate may be redetermined from time to time by Consumers. The annual fixed charge factor has been redetermined using year-end 1987 data with the new annual charge rate effective May 1, 1988. As a result of the redetermination, the monthly charges to be paid by Northern were reduced from $18,573 to $18,430.

Consumers requests an effective date of May 1, 1988, and therefore requests waiver of the Commission's notice requirements.

Comment date: June 30, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Power & Light Company

[Docket No. ER88-458-000]

Take notice that on June 9, 1988, Puget Sound Power & Light Company (Puget) tendered for filing pursuant to the Commission's regulations, 18 CFR Part 35, a wholesale for resale contract between Puget and Port of Skagit County. Puget states that this filing is for the renewal of an existing contract only, and therefore represents no change in rates or revenues to the company.

Comment date: June 30, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power Company

[Docket No. ER88-454-000]

Take notice that on June 6, 1988, Duke Power Company (Duke) tendered for filing a Contract for Purchases of Economic Energy by Jacksonville Electric Authority from Duke.

Duke requests an effective date of June 7, 1988. Duke requests waiver of the Commission's notice requirements under § 35.11 of the Commission's Regulations. If such waiver is not granted, however, Duke requests an effective date as soon after June 7, 1988 as the Commission deems appropriate.

Duke states that the price of service contemplated by the Contract is Duke's anticipated incremental production cost plus a negotiated adder that cannot exceed an equal share of the benefits.

Comment date: June 30, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Eric R. Jacobson and Hydro-West Inc.

[Docket No. QF88-410-000]

On May 27, 1988, Eric R. Jacobson and Hydro-West, Inc. (Applicant), of 2995 Wilderness Place, Boulder, Colorado 80301, submitted for filing an application for certification of a facility as a qualifying small power production facility and for determining "new capacity" pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 0.500 MW hydroelectric facility (FERC P. 6623-001) will be located on Bridal Veil Creek, near the town of Telluride, in San Miguel County, Colorado.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's Regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

9. Thermal Energy Development Partnership, L.P.

[Docket No. QF85-231-003]

On May 27, 1988 Thermal Energy Development Partnership, L.P. (Applicant) c/o Community Energy Alternatives Incorporated, 1200 East Ridgewood Avenue, Ridgewood, New Jersey 07450 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 10 MW, biomass-fired small power production facility, will be located in San Joaquin County, California. The original application filed on February 7, 1987 by MARMAC, was granted on May 3, 1985; 31 FERC ¶ 62,158 (1985). The first recertification was filed on June 10, 1985 due to change in the electric power production capacity from 10MW to 24 MW. The application for recertification was granted by the Directors' order on July 24, 1985; 32 FERC ¶ 62,224.

The instant recertification is sought due to change in ownership, electric power production capacity and primary energy source. The ownership changed from MARMAC to Thermal Energy Development Partnership, L.P. (Partnership). The general partners of the Partnership are a privately held corporation and an indirect wholly owned subsidiary of Public Service Enterprise Group Incorporated (PSEG), which is an electric utility holding Company and will own less than 50% of interest in the facility. The net electric power production capacity will decrease from 24 MW to 18.6 MW. The primary energy source will be expanded to include biomass in the form of agricultural waste and municipal wood waste such as pruning, orchard removals, fruit pits, field crops, and rice hulls.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14077 Filed 6-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-414-000, et al.]

Trafalgar Power, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 15, 1988.

Take notice that the following filings have been made with the Commission:

1. Trafalgar Power, Inc.

[Docket No. QF88-441-000]

On May 27, 1988, Trafalgar Power, Inc. (Applicant), of Smith and Canal Street, Franklin, New Hampshire 03235 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 725 KW hydroelectric facility (FERC P. 4639) will be located on the Sacandaga River in Hamilton County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. St. Lawrence Solid Waste Disposal Authority

[Docket No. QF88-411-000]

On May 27, 1988, St. Lawrence Solid Waste Disposal Authority (Applicant), of U.S. Custom House, 127 North Water Street, Ogdensburg, New York 13669 submitted for filing an application for certification of a facility as a qualifiying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Ogdensburg, New York. The facility will consist of a 250 ton per day furnace/waterwall steam generator and an extraction condensing turbine generator. The net electric power production capacity will be 6.2 megawatts. The prmiary energy source will be biomass in the form of municipal solid waste. Natural gas will be used for stat-up purposes, however, such fossil fuel usage will amount to approximately 0.25% of the total energy input to the facility during any calendar year period.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. CNG Energy Company

[Docket No. QF88-418-000]

On May 27, 1988, CNG Energy Company (Applicant), of CNG Tower, Pittsburgh, Pennsylvania, 15222, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Lakewood Industrial Park, in Lakewood Township, New Jersey. The facility will consist of four combustion turbine generating units, four waste heat recovery steam generators and an extraction steam turbine generating unit. Steam produced by the facility will be used for process and space heating by unaffiliated users in the Lakewood Industrial Park. The net electric power production capacity of the facility will be 210 MW. The primary energy source will be natural gas. Installation of the facility is scheduled to begin in mid 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

4. Scrubgrass Power Corp.

[Docket No. QF88-406-000]

On May 26, 1988, Scrubgrass Power Corp. (Applicant), of 53 State Street, Exchange Place, 30th Floor, Boston, Massachusetts 02109, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near the Village of Kennerdell, Scrubgrass Township, Venango County, Pennsylvania. The facility will consist of fluidized bed combustion boilers, a steam turbine generator and approximately 17.5 miles of 115kV transmission line. Applicant states that the primary energy source for the facility will be coal refuse material provided from multiple sources. The net electric power production capacity of the facility will be 80 MW. Construction of the facility is expected to begin in 1988.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

5. N. B. Partners, Ltd.—North Branch Power Project

[Docket No. QF88-412-000]

On May 27, 1988, N. B. Partners, Ltd., c/o EASE/NMI, Inc. (Applicant), of 2365 Harrodsbury Road, Suite A200, Lexington, Kentucky 40504, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately two miles southeast of the town of Bayard, in Grant County, West Virginia. The facility will consist of two fluidized bed combustion boilers, a condensing steam turbine generator and approximately 6.7 miles of 138kV transmission line. Applicant states that the primary energy source for the facility will be waste in the form of bituminous coal refuse. The net electric power production capacity of the facility will be 80 MW.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

6. National Railroad Passenger Corporation (AMTRAK)

[Docket No. QF88-407-000]

On May 27, 1988, National Railroad Passenger Corporation (AMTRAK) (Applicant), of 400 North Capitol Street, NW., Washington, DC 20001, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on the campus of the University of Pennsylvania in Philadelphia, Pennsylvania. The facility will consist of two combustion turbine generating units, one heat recovery steam generator and an extraction/condensing steam turbine generating unit. Steam produced by the facility will be used by the University of Pennsylvania for district heating. The maximum net electric power production capacity of the facility will be 70 MW. The primary energy source will be natural gas. Installation of the facility is expected to begin in early 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

7. B&W Clarion, Inc.

[Docket No. QF88-417-000]

On May 27, 1988, B&W Clarion, Inc. (Applicant), of 1010 Common Street, New Orleans, Louisiana 70161 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Piney Township, Clarion County, Pennsylvania. The facility will consist of one circulating fluid bed boiler, a turbine-generator, coal receiving and handling equipment and other supporting systems and equipment. The primary energy source of the facility will be bituminous waste coal. The useful thermal energy output of the facility, which will be in the form of process steam, will be sold to accelerate a chemical separation reaction to isolate CO_2 which will then be compressed. The net electric power production capacity of the facility will be 28.7 megawatts.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

8. Trafalgar Power, Inc.

[Docket No. QF88-415-000]

On May 27, 1988, Trafalgar Power, Inc. (Applicant), of Smith and Canal Street, Franklin, New Hampshire 03235, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1050 KW hydroelectric facility (FERC P.9709) will be located on the West Canada Creek in Herkimer County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements if local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

9. Trafalgar Power, Inc.

[Docket No. QF88-413-000]

On May 27, 1988, Trafalgar Power, Inc. (Applicant), of Smith and Canal Street, Franklin, New Hampshire 03235, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3675 KW hydroelectric facility (FERC P.9821) will be located on the Oswegatchie River in St. Lawrence County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

10. Trafalgar Power, Inc.

[Docket No. QF88-416-000]

On May 27, 1988, Trafalgar Power, Inc. (Applicant), of Smith and Canal Street, Franklin, New Hampshie 03235 submitted for filing an application for certification of a facility a a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 595 KW hydroelectric facility (FERC P.9685) will be located on the Oswegatchie River in St. Lawrence County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14078 Filed 6-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-421-000, et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP88-421-000]

June 14, 1988.

Take notice that on May 27, 1988, K N Energy, Inc., P.O. Box 15265, Lakewood, Colorado 80215, (K N), filed in Docket No. CP88-421-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps for the delivery of natural gas to end users under the certificate authorization issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

K N proposes to construct and operate sales taps to provide service to various end users located along its jurisdictional pipelines as listed below. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps would have no significant impact on K N's peak day and annual deliveries.

Customer	Location	Estimated volumes, Mcf	
		Peak day	Annual
Ediger Farms	Hamilton Co., NE.	24	[1] 800
Gerald F. Meitl	Sheridan Co., KS.	26	[1] 880
Bose Brothers, Inc.	Harlan Co., NE.	36	[1] 1,200
Russell Fralick	Kiowa Co., KS.	24	[1] 800
Ray E. Dillon	Edwards Co., KS.	24	[1] 800
Karl S. Kohfield	Norton Co., KS.	2	[2] 120

[1] Irrigation.
[2] Domestic.

K N states that the gas delivered and sold by KN to the various end users would be priced in accordance with the currently filed rate schedules authorized by the applicable state or local regulatory body having jurisdiction.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Company

[Docket No. CP88-434-000]

June 15, 1988.

Take notice that on June 1, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP88-434-000 an application pursuant to section 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing El Paso to establish a Gas Inventory Charge (GIC) and permission and approval of the pregranted abandonment of certain existing firm sales service, all as more fully set forth in the application on file with the Commission and open to public inspection.

El Paso requests authorization to implement, effective October 1, 1988, a GIC mechanism to its five largest customers (hereinafter, the non-exempt customers). The GIC would apply to Southern California Gas Company, Pacific Gas and Electric Company, Southern Union Gas Company and Gas Company of New Mexico, it is explained. El Paso states that the non-exempt customers represent about 98 percent of its jurisdictional sales market. El Paso explains that the remaining exempt customers have the option to elect GIC service.

El Paso explains that each non-exempt customers would be afforded the opportunity to freely nominate the quantity of gas that it wishes to have El Paso hold in inventory for its future purchase. El Paso alleges that it would warrant the availability of the nominated quantity, subject only to force majeure. El Paso explains that the customers would have full knowledge of all costs associated with the purchase prior to the customer making a nomination. El Paso further explains that there would be no exit fee or other charge to any customer nominated a quantity which is less than its present entitlement.

El Paso explains that when the GIC mechanism becomes effective, it would suspend the operation of its existing Purchased Gas Adjustment (PGA) clause. Unrecovered purchased gas costs attributable to periods prior to the suspension of the PGA would be allocated among all customers, it is explained. El Paso further explains that after the GIC becomes effective, the gas price and GIC charge would be the only means by which El Paso would recover it own costs.

El Paso explains that nomination of a firm sales service level would represent agreement to the abandonment by El Paso of any sales obligation in excess of the nominated quantity. It is further explained that the quantity of firm sales service abandoned would be converted to firm transportation service subject to El Paso's Rate Schedule T-3.

El Paso states that upon the effective date of the GIC rate, El Paso proposes to collect its unrecovered purchase gas costs attributable to gas purchases prior to such effective date by means of direct billing in the case of two-part rate customers and through special volumetric billing arrangements for those customers who purchase under one-part rate schedules. El Paso proposes to collect the unrecovered gas costs through the above procedure over a five year amortization period, with the unamortized portion of such costs subject to carrying charges. El Paso explains that the customers may choose to pay its allocated share of such costs in a lump sum or over a shorter amortization period.

Comment date: July 6, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Florida Gas Transmission Company

[Docket No. CP88-242-002]

June 15, 1988.

Take notice that on May 20, 1988, Florida Gas Transmission Company (Florida Gas), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-242-002 an amendment to the application currently pending before the Commission in Docket No. CP88-242-000 for a limited-term certificate of public convenience and necessity authorizing Florida Gas to transport natural gas for Air Products and Chemicals, Inc. (Air Products), all as more fully set forth in the amendment to the application which is on file with the Commission and open to public inspection.

Florida Gas states that on February 18, 1988 it filed an application in Docket No. CP88-242-000 for authorization to provide a transportation service for Air Products, pursuant to a transportation agreement dated February 8, 1988. Florida Gas indicated that in accordance with this agreement, gas would be delivered to Florida Gas for the account of Air Products at the following existing points of interconnection between Florida Gas and the indicated entity:

(1) Acadian Gas Pipeline System in West Baton Rouge Parish, Louisiana.

(2) Matagorda Offshore Pipeline System in Refugio County, Texas.

(3) Exxon Company, U.S.A. in Pearl River County, Mississippi.

(4) Prosper Energy Corporation in Pearl River County, Mississippi.

Florida Gas also stated that pursuant to the February 8, 1988 agreement Florida Gas would transport gas for Air Products on an interruptible basis to an existing point of interconnection between Florida Gas and Five Flags Pipeline Company (Five Flags) in Santa Rosa County, Florida for ultimate delivery by Five Flags to Air Products' plant in Santa Rosa County.

In Docket No. CP88-242-002 Florida Gas states that on April 4, 1988, Florida Gas and Air Products entered into an amendment of the February 8, 1988 transportation agreement which would add two new points of receipt for Air Products, and one new point of delivery. The proposed new points of receipt are:

1. Existing point of interconnection between Florida Gas and facilities owned by Amoco Production Company in Baldwin County, Alabama.

2. Existing point of interconnection between Florida Gas and facilities owned by Bay City Minerals in Baldwin County, Alabama.

The proposed new point of delivery is the existing point of interconnection between Florida Gas and the facilities of United Gas Pipe Line Company (United) in Baldwin County, Alabama.

Florida Gas further states that it is requesting authorization to provide the transportation service for Air Products utilizing the points of receipt and delivery proposed in the original application and in the instant amendment.

Florida Gas proposes to charge Air Products the maximum rate applicable to this service. The maximum rate consists of a facility charge of 7.3 cents per MMBtu equivalent of gas delivered and a service charge of 3.9 cents per MMBtu equivalent of gas per 100 miles of forward haul. Florida Gas states that these charges are in addition to the currently effective Gas Research Institute surcharge of 1.47 cents per MMBtu equivalent of gas and Florida Gas' ACA surcharge of 0.21 cent per MMBtu equivalent of gas which became effective on October 1, 1987.

Florida Gas states that the term of the transportation agreement is for a primary term of five years from the date of initial deliveries under the contract, and from year to year thereafter.

Florida Gas indicates that, since the transportation service is fully interruptible and is contingent upon the availability of capacity sufficient to provide the service without deteriment or disadvantage to Florida Gas' existing customers, the transportation service proposed herein cannot have an adverse impact on Florida Gas' existing customers.

Comment date: July 6, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Florida Gas Transmission Company

[Docket No. CP87-386-005]

June 15, 1988.

Take notice that on May 27, 1988, Florida Gas Transmission Company (Florida Gas), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP87-386-005 an application to amend the order issued September 17, 1987 in Docket No. CP87-386-000 authorizing Florida Gas to transport natural gas for Winnie Pipeline Company (Winnie), all as more fully set forth in the amendment to the application which is on file with the Commission and open to public inspection.

Florida Gas states that on April 27, 1988, Florida Gas and Winnie entered into an amendment of the interruptible transportation agreement dated May 13, 1987, which provides for the continuation of the subject transportation service by Florida Gas for Winnie for another year.

Florida Gas states that the term of the existing transportation agreement on file as Florida Gas' Rate Schedule X-29 is for five years; thus no change to the term thereof is required.

Florida Gas indicates that, since the transportation service is fully interruptible and is contingent upon the availabililty of capacity sufficient to provide the service without detriment or disadvantage to Florida Gas' existing customers, the transportation service proposed herein cannot have an adverse impact on Florida Gas' existing customers.

Comment date: July 6, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Williston Basin Interstate Pipeline Company

[Docket No. CP88-436-000]

June 16, 1988.

Take notice that on June 3, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarch, North Dakota 58501, filed in Docket No. CP88-436-000 an application pursuant to Section 7(b) of the Natural Gas Act to abandon the 1682 feet of well line to Baker Field Well #95 located near Fallon County, Montana.

By order issued May 22, 1985 Williston Basin was authorized to abandon Well #95 in its Baker Storage field. The well line connecting Well #95 to Williston Basin's system is no longer needed and is therefore being proposed for abandon in place by this filing.

Comment date: July 18, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, filed pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn

within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14079 Filed 6-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR88-4-000]

KK Appliance Co. v. Mid-America Pipeline Co.; Complaint and Show Cause Order Initiating Proceeding

Issued June 16, 1988.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

On April 11, 1988, two letters and a "Memo to Shippers No. 262" from Mid-America Pipeline Company (Mid-America) [1] were filed, by Mr. Roy Pearson, President of KK Appliance Company with the Commission as a complaint. The letters question whether Mid-America is in compliance with all of the terms and conditions contained in its FERC No. 10 tariff. The March 3, 1986 memo to shippers indicates that effective February 14, 1986, if a shipper's inventory is below 2,000 barrels after 3:30 p.m. on the last day of a work week, Mid-America will put that shipper on a "Do Not Load" (DNL) list, and the shipper will be unable to receive its propane. The memo further indicates that the shipper's name will be removed from the DNL list when sufficient barrels are received into the shipper's inventory.

The Commission has decided to establish a complaint proceeding under section 13(1) of the Interstate Commerce Act (ICA) based upon Mr. Pearson's letters, since Mid-America's FERC tariff No. 10 does not appear to contain any provisions dealing with truck loadings on the weekend and the additional requirement of having a 2,000 barrel inventory going into the weekend before a shipper can have access to his inventory for truck loadings during the weekend.

Section 13(1) of the ICA provides:

> Any person, firm, corporation, company . . . complaining of anything done by any common carrier . . . may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission.

In addition, the Commission shall establish a show cause proceeding in this docket and require Mid-America to respond to the issues raised in Mr. Pearson's letters. Accordingly, the Commission hereby directs Mid-America to show cause, in writing and under oath, why the Commission should not find that Mid-America is in violation of its tariff No. 10 and section 6 of the ICA, and provide the following:

(1) A response to the allegations contained in Mr. Pearson's January 5 and March 21 letters,

(2) A justification for its frequent use of memos to shippers which appear to involve substantial conditions of service that might be more appropriately set for as items in its official tariff, and

(3) A justification for its use of retroactive effective dates. The March 3, 1986 memo was issued to shippers on March 3, 1986, but the policy set forth there was made effective February 14, 1986. Under the provisions of the ICA, changes in rates and terms and conditions of service can only be made after 30 days notice.

The Commission Orders

(A) Pursuant to the authority of 49 U.S.C. 13(1), the Commission shall establish a complaint and show cause proceeding in the instant docket. The Commission hereby directs Mid-America to show cause, in writing and under oath, why the Commission should not find that Mid-America is in violation of its FERC tariff No. 10. and section 6 of the ICA, 49 U.S.C. 6.

(B) Mid-America is hereby directed to respond to this show cause order and complaint within thirty (30) days of its issuance.

(C) Any person desiring to be heard on the instant complaint and show cause proceeding should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 7, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14080 Filed 6-21-88; 8:45 am]

BILLING CODE 6717-01-M

---

[1] The letters were dated January 5, 1988 and March 21, 1988. The memo to shippers was dated March 3, 1986.

Western Area Power Administration

Boulder Canyon Project Proposed Power Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed power rate, Boulder Canyon Project.

SUMMARY: The Western Area Power Administration (Western) is proposing to adjust the rate for power and energy from the Boulder Canyon Project (BCP). The rate adjustment for the BCP is necessary to cover annual operating expenses and to repay the Federal investment and the funds advanced by certain customers to complete the uprating of existing generating units (Uprating Program) of the BCP. The proposed rate for firm power is composed of an energy charge of 3.94 mills per kilowatthour (kWh) and a capacity charge of $0.81 per kilowatt (kW) per month. The present rate is 3.410 mills per kWh for energy and $0.75 per kW per month for capacity. In addition, Western will continue to include a charge of 2.5 mills for every kWh of energy generated from the BCP and sold to customers in California and Nevada, and 4.5 mills for every kWh of energy generated from the BCP and sold to customers in Arizona for augmentation of the Lower Colorado River Basin Development Fund.

The proposed rate will replace the rate put into effect on an interim basis on June 1, 1987, by the Under Secretary of the Department of Energy and approved by the Federal Energy Regulatory Commission order issued May 18, 1988. In Rate Order No. WAPA-34 (52 FR 21351, June 5, 1987), Western indicated that a new computer program would be developed and that issues raised in the determination of the rates put into effect on June 1, 1987, would be addressed. Western has developed a new computer program which includes the modifications requested by the BCP contractors. The new program, which was explained to the BCP contractors at an informal meeting held in Los Angeles, California, on May 5, 1988, was used in the rate analysis in determining the need for this rate adjustment. The research and analysis information in support of the need for and the probable effect of the proposed rate, including the BCP

repayment analysis, is available for review and copying at the Boulder City Area Office. In addition, copies of the revenue requirement analysis to support the need for the adjusted rate will be distributed to the BCP customers and other interested parties. Since the proposed rate is a major rate adjustment as defined by the current procedures for public participation in general rate adjustments, a public information and a public comment forum will be held.

DATES: The effective date of the rate adjustment is intended to be the beginning of the October 1988 billing period. The consultation and comment period will begin with publication of this notice in the **Federal Register** and will, pursuant to § 903.14(d) of 10 CFR Part 903, be shortened from the normal 90 days to end August 8, 1988. The shorter consultation and comment period is necessary in order to meet Western's commitment to BCP contractors to place rates developed under the new computer program into effect by October 1, 1988. However, if requested by customers or interested parties, consideration will be given to extension of the consultation and comment period. A public information forum will be held at 9 a.m. on June 30, 1988. A public comment forum will be held at 9 a.m. on July 22, 1988.

ADDRESSES: The public information forum and public comment forum will be held at the Boulder City Area Office, 3 miles south on Buchanan Road, Boulder City, Nevada, on the dates and times cited above. Written comments may be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005.

FOR FURTHER INFORMATION CONTACT: Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3255.

SUPPLEMENTARY INFORMATION: Power rates for the BCP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*); the Reclamation Act of 1902 (32 Stat. 388) and all acts amendatory thereof and supplementary thereto; the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501, *et seq.*); the Colorado River Storage Project Act of 1956 (43 U.S.C. 620, *et seq.*); the Boulder Canyon Project Act of 1928 (43 U.S.C. 617, *et seq.*); the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618, *et seq.*); the Hoover Power Plant Act of 1984 (98 Stat. 1333) (43 U.S.C. 619, *et seq.*); and the General Regulations for the Charges for Sale of Power from the Boulder Canyon Project, Final Rule (General Regulations) (10 CFR Part 904) published in the **Federal Register** at 51 FR 43124 on November 28, 1986.

The Secretary of the Department of Energy, by Delegation Order No. 0204-108 (48 FR 55664, December 14, 1983), as amended at 51 FR 19744 on May 30, 1986, delegated to the Administrator of Western the authority to develop power and transmission rates; to the Under Secretary of the Department of Energy the authority to confirm, approve, and place such rates in effect on an interim basis; and to the Federal Energy Regulatory Commission the authority to either confirm and approve and place in effect on a final basis, to remand, or to disapprove such rates.

The procedures for public participation in rate adjustments for power marketed by Western are formally cited as "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions" (10 CFR Part 903) published in the **Federal Register** at 50 FR 37837 on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rate are and will be available for inspection and copying at the Boulder City Area Office, located at the address noted above.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an iitial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the BCP rate adjustment is related to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the BCP rate is of limited applicability, no flexibility analysis is required.

Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981). In addition, Western has an exemption from sections 3, 4, and 7 of Executive Order 12291, and therefore will not prepare a regulatory impact statement.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity was provided in the proposed rule for the interested public to participate in the development of the General Regulations. There is no requirement that members of the public participating in the development of the BCP rate supply information about themselves to the Government. It follows that the BCP rates are exempt from the Paperwork Reduction Act.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 and Department of Energy regulations published in the **Federal Register** on December 15, 1987 (52 FR 47662), Western is conducting an environmental evaluation of the proposed rate adjustment. BCP customers and interested parties will be notified of the results of the environmental evaluation.

Issued at Golden, Colorado, June 13, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88-14202 Filed 6-21-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3400-8]

Approval of Prevention of Significant Deterioration (PSD) Permits for Several Sources in California

AGENCY: U.S. Environmental Protection Agency, Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Environmental Protection Agency (USEPA), Region 9, has issued nine (9) PSD permits under 40 CFR 52.21, to sources located in the State of California. The project names, project numbers, location, and allowable emission rates of these sources are as follows:

Project name	Location	Emission rates
Chevron USA, Inc	Taft, Kern County, CA	Minor Modification
Shell Ca. Production (SJ 85-03)	South Belridge Oilfield, Kern County, CA	CO: 30 lbs/hr, 55.8 ppm
Kerr-McGee (SE 86-04)	Trona, San Bernardino County, CA	CO: 280 lbs/hr; 316 ppm at 3% O_2
P G&E (NC 84-02)	Pine Grove, Lake County, CA	Permit Extension
Ogden Martin Systems (LA 87-01)	Ontario, San Bernardino County, CA	SO_2: 23.1 lbs/hr; 42 ppm HG: 0.057 lbs/hr H_2SO_4: 2.87 lbs/hr PM_{10}: 7.4 lbs/hr; 0.010 gr/dscf
Ultrapower 2 (NE 86-01)	Westwood, Lassen County, CA	TSP: 8.0 lbs/hr, 0.02 gr/dscf 20% opacity NO_x: 26 lbs/hr, 72 ppm CO: 314 lbs/hr VOC: 37.4 lbs/hr
Honeylake Power Co. (NE 87-01)	Wendel, Lassen County, CA	NO_x: 56.32 lbs/hr, 0.10 lbs/10^6 BTU TSP: 15.0 lbs/hr, 0.010 gr/dscf CO: 154.0; 0.030 lb/10^6 BTU at 12% CO_2 VOC: 21.22; 0.040 lb/10^6 BTU
Southern Ca. Edison (SE 80-01)	San Bernardino, County CA	NO_x: 144.0 lbs/hr; 50 ppm (dry basis) CO: 7.70 lbs/hr; 50 ppm (dry basis) SO_2: 9.4 lbs/hr at fuel sulfur <0.7% SO_2: 65 lbs/hr at fuel sulfur >0.7%
Midway-Sunset (SJ 87-01)	Taft, Kern County, CA	CO: 52 ppmvd at 15% O_2 or 94 lbs/hr per turbine for loads >75% (gas/oil firing), or 62 ppmvd at 3% O_2 or 94 lbs/hr per turbine at loads <75% (gas/oil firing). NO_x: *Natural gas firing* 25.0 ppmvd at 15% O_2 or 85 lbs/hr per turbine for loads >75% or 85.0 lbs/hr per turbine for loads <75% load capacity w/a minimum water-to-fuel injection ratio of 0.60:1.0 NO_x: *Distillate fuel oil firing* (1) the more stringent of 47.0 ppmvd at 15% O_2 or 140 lbs/hr per turbine for loads >75% load capacity; (2) 140. lbs/hr per turbine for loads <75% load capacity with a minimum water-to-fuel injection ratio of 0.60:1.0 or (3) 243 lbs/hr total for the three (3) turbine at all operating loads w/a minimum water-to-fuel injection ratio of 0.60:1.0

FOR FURTHER INFORMATION CONTACT: Copies of the permits listed above are available for public inspection upon request, address request to: Linda Barajas (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8221; FTS 454-8221.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by August 22, 1988.

Date: June 3, 1988.

Carl C. Kohnert,

Acting Director, Air Management Division, Region 9.

[FR Doc. 88-14046 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

[PF-500; FRL-3401-3]

Elanco Products Co.; Amended Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the filing of an amendment to pesticide petition (PP) 7F3507 and feed additive petition (FAP) 7H5534 for the fungicide fenarimol (alpha-[2-chlorophenyl]-alpha-[4-chlorophenyl]-5-pyrimidinemethanol) by the Elanco Products Co., Plant Science Projects Development and Registration Division, P.O. Box 708, Greenfield, IN 46140.

ADDRESS:

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

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

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

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Attention: Product Manager (PM) 21, Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person, contact: Lois Rossi (PM 21), Rm. 227, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has received from Elanco Products Co. an amendment to FAP 7H5534 to amend 21 CFR Part 561 by establishing a regulation to permit the residues of the fungicide fenarimol [alpha-[2-chlorophenyl]-alpha-[4-chlorophenyl]-5-pyrimidinemethanol) and its metabolites, alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5-[(2-chlorophenyl) (4-chlorophenyl)-methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[2-chlorophenyl) (4-chlorophenyl)methyl] pyrimidine (DHF) in the feed additive grape pomace (wet and dry) at 0.5 ppm. Raisin waste remains at 3.0 ppm. EPA also received an amendment to pesticide petition 7F3507 from Elanco Products Co. amending 40 CFR Part 180.421 by establishing a regulation to permit the residues of the fungicide fenarimol [alpha-[2-chlorophenyl]alpha-[4-chlorophenyl]-5-pyridinemethanol] and its metabolites, alpha-(2-

chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5-[(2-chlorophenyl) (4-chlorophenyl)-methyl] 3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[2-chlorophenyl) (4-chlorophenyl) methyl] pyrimidine (DHF) in or on the raw agricultural commodity grapes at 0.2 ppm and 0.01 ppm for fenarimol (alpha-[2-chlorophenyl]-alpha-[4-chlorophenyl]-5-pyrimidinemethanol) in or on the raw commodities eggs and poultry, meat, fat, and meat byproducts.

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

Dated: June 12, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-14047 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36161; FRL-3400-6]

Pesticide Registration Standard; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of draft standard for comment.

SUMMARY: This notice announces the availability of a draft pesticide Registration Standard document for comment. The Agency has completed a review of the listed pesticide and is making available a document describing its regulatory conclusions and actions.

DATE: Written comments on the Registration Standard should be submitted on or before August 22, 1988.

ADDRESSES: Three copies of comments identified with the docket number listed with the Registration Standard should be submitted to: By mail: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: To request a copy of a Registration Standard, contact Frances Mann of the Information Services Section, in Rm. 246 at the address given above (703-557-3262). Requests should be submitted no later than July 22, 1988 to allow sufficient time for receipt before the close of the comment period.

For technical questions related to the Registration Standard, contact the Product Manager listed for that Standard, at the phone number given.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency conducts a systematic review of pesticides to determine whether they meet the criteria for continued registration under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). That review culminates in the issuance of a Registration Standard, a document describing the Agency's regulatory conclusions and positions on the continued registrability of the pesticide. In accordance with 40 CFR 155.34(c), before issuing certain Registration Standards, the Agency makes the draft document available for public comment.

A draft Registration Standard for the following pesticide is now available:

Names of pesticide	Docket No.	Contact person
Methomyl.....	16752-77-5	Dennis Edwards, Product Manager 12, 703-557-2386.

Copies of the Registration Standard may be obtained from the Agency at the address listed under **FOR FURTHER INFORMATION CONTACT.** Because of the length of the Standard and the limited number of copies available for distribution, only one copy can be provided by mail to any one individual or organization. The Registration Standard is also available for inspection and copying in EPA Regional offices at the addresses listed below after July 22, 1988.

List of EPA Regional Offices

Pesticides and Toxic Substances Branch, EPA—Region I, JFK Federal Building, Boston, MA 02203. Contact person: Marvin Rosenstein

Pesticides and Toxic Substances Branch, EPA—Region II, Woodbridge Avenue, Edison, NJ 08837. Contact person: Ernest Regna

Toxic and Pesticides Branch, EPA—Region III, 841 Chestnut St., 7th Fl., Philadelphia, PA 19107. Contact person: Larry Miller

Pesticides and Toxic Substances Branch, EPA—Region IV, 345 Courtland, St. NE. Atlanta, GA 30365. Contact person: Acting Chief

Pesticides and Toxic Substances Branch, EPA—Region V, 230 South Dearborn St., Chicago, IL 60604. Contact person: Phyllis Reed

Pesticide and Toxic Substances Branch, (6T-PT), EPA—Region VI, 1445 Ross Avenue, Dallas, TX 75270. Contact person: Norman Dyer

Pesticide and Toxic Substances Branch, EPA—Region VII, 726 Minnesota Ave., Kansas City, Kan. 66101. Contact person: Leo Alderman

Toxic Substances Branch, EPA—Region VIII, 999 18th St., Suite 500, Denver, CO 80202. Contact person: C. Alvin Yorke

Pesticides and Toxic Substances Branch (T-5-1), EPA—Region IX, 215 Fremont St., San Francisco, CA 94105. Contact person: Rich Vaille

Pesticides and Toxic Substances Branch, EPA—Region X, 1200 6th Ave., Seattle, WA 98101. Contact person: Anita Frankel.

Dated: June 7, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-13817 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100052; FRL-3400-7]

Tetra Tech, Inc., Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug and Cosmetic Act (FFDCA). Tetra Tech, Inc. (TTI) the been awarded a contract to perform work for the EPA Office of Water Regulations and Standards, and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to TTI as authorized by 40 CFR 2.307(h) and 40 CFR 2.308(h)(2), respectively. This action will enable TTI to fulfill the obligations of the contract and serves to notify affected persons.

DATE: TTI will be given access to this information no sooner than June 27, 1988.

FOR FURTHER INFORMATION CONTACT:
By mail:
Catherine S. Grimes, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone number Rm. 212, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-4460).

SUPPLEMENTARY INFORMATION: Under Contract No. 68-03-3475, TTI will prepare pollutant summary profiles and fact sheets to be used in support of a study of the potential for pollutant chemicals to bioaccumulate in fish. TTI will review studies from open literature and other information submitted to or collected by EPA. TTI's work for the next 12 months involves a selected group of chemicals, some of which are used in pesticides. A list of the pesticide chemicals appears below. Other pesticide chemicals may be included in TTI's work later in this contract. These woud be compounds likely to be metabolically stable and to occur in fish tissue; such as for example other halogenated aeromatics and aliphatics, and certain of the organo-metalics. Readers may contact the person named above in approximately one year to learn if chemicals other than those on this list will be involved in this contract. This contract involves no subcontractor.

1,2,3,6,7,8-HeCDD
1,2,3,7,8,9-HeCDD
1,2,3,4,6,7,8-HpCDD
1,2,3,4,6,7,8-HpCDF
1,2,3,4,7,8,9-HpCDF
1,2,3,4,7,8-HxCDF
1,2,3,6,7,8-HxCDF
1,2,3,7,8,9-HxCDF
2,3,4,6,7,8-HxCDF
1,2,3,7,8-PeCDD
1,2,3,7,8-PeCDF
2,3,4,7,8-PeCDF
2,3,7,8-TCDD
2,3,7,8-TCDF
-BHC
-BHC
Biphenyl
Chlorobenzilate
cis-Chlordane
trans-Chloradane
Chlorpyrifos
p,p-DDE
Dicofol
Dieldrin
Diphenyldisulfide
Endrin
Heptachlor
Heptachlor Expoxide
Hexachlorobenzene
Isopropalin
Mercury
Methoxychlor
Mirex
cis-Norachlor
trans-Norachlor
Nitrofen
Octachlorostyrene
Oxychlordane
PCBs:
Monochlorobiphenyl
Dichlorobiphenyl
Trichlorobiphenyl
Tetrachlorobiphenyl
Pentachlorobiphenyl
Hexachlorobiphenyl
Heptachlorobiphenyl
Octachlorobiphenyl
Nonachlorobiphenyl
Decachlorobiphenyl
Pentachloroanisole
Pentachlorobenzene
Pentachloronitrobenzene
Pentachlorophenyl
Perthane
1, 2, 4, 5-Tetrachlorobenzene
1, 2, 3, 4-Tetrachlorobenzene
1, 2, 3, 5-Tetrachlorobenzene
1, 2, 3-Trichlorobenzene
1, 2, 4-Trichlorobenzene
1, 3, 5-Trichlorobenzene
Trichloronate
Trifluralin

The Office of Water Regulations and Standards and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract and these evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with TTI prohibits use of the informaiton for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the informaiton in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, TTI is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Water Regulations and Standards. All information supplied to TTI by EPA for use in connection with this contract will be returned to EPA when TTI has completed its work.

Dated: May 16, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-13816 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44509; FRL-3402-1]

Toxic Substances Control Act Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of the test data on biphenyl (CAS No. 92-52-4) and the C9 aromatic hydrocarbon fraction submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for biphenyl was submitted by the Monsanto Company pursuant to a test rule at 40 CFR 799.925. It was received by EPA on June 1, 1988. The submission is a final report on biphenyl: Environmental fate in a river water/sediment system. Chemical fate testing is required by this test rule. Biphenyl is used primarily to produce dye carriers, heat transfer fluids and alkylated biphenyls.

Test data for the C9 aromatic hydrocarbon fraction was submitted by the American Petroleum Institute pursuant to a test rule at 40 CFR 799.2175. It was received by EPA on June 6, 1988. The submission contains two

final reports: (1) An inhalation neurotoxicity study in rats with C9 aromatic hydrocarbon fraction; and (2) a neurotoxicity study in rats with C9 aromatic hydrocarbons: pathology report. Neurotoxicity testing is required by this test rule. The C9 aromatic hydrocarbon fraction is used in solvents, components of solvents, and in gasoline blending.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to their completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44509). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St. SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: June 13, 1988.

J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-14048 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44510; FRL-3402-2]

Toxic Substances Control Act Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 3,4-dichlorobenzotrifluoride (CAS No. 328-84-7) submitted pursuant to a testing consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St. SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submission

Test data for 3,4-dichlorobenzotrifluoride (DCBTF) was submitted by Occidental Chemical Corporation pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on June 7, 1988. The submission consists of two reports: (1) Toxicity of DCBTF to the freshwater green alga *Selenastrum capricornutum;* and (2) ready biodegradability of DCBTF by the closed bottle method. Environmental effects and chemical fate testing are required by this consent order. This chemical is used as an herbicide intermediate.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the submission's completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44510). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St. SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: June 15, 1988.

J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-14049 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

June 13, 1988.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Yvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0342.

Title: Section 74.1284, Rebroadcasts.

Action: Extension.

Respondents: Businesses including small businesses.

Frequency of Response: On occasion.

Estimated Annual Burden: 25 Responses; 25 Hours.

Needs and Uses: Section 74.1284 requires that the licensee of an FM Translator station obtain prior consent from the primary FM broadcast station or other FM translator before rebroadcasting their programs. In addition, the licensee must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station. The data is used by FCC staff to update records and to assure compliance with FCC rules and regulations.

OMB Number: 3060-0254.

Title: Section 74.433, Temporary authorizations.

Action: Extension.

Respondents: Businesses including small businesses.

Frequency of Response: On occasion.

Estimated Annual Burden: 20 Responses; 40 Hours.

Needs and Uses: Section 74.433 requires that a licensee of a remote pickup station make an informal written request to the FCC when requesting temporary authorization for operations of a temporary nature that cannot be conducted in accordance with § 74.24. The data is used by FCC staff to insure that the temporary operation of a remote pickup station will not cause interference to existing stations.

OMB Number: 3060-0340.

Title: Section 73.51, Determining operating power.

Action: Extension.

Respondents: Businesses including small businesses.

Frequency of Response: Recordkeeping requirements.

Estimated Annual Burden: 4,950 Recordkeepers; 1,237 Hours

Needs and Uses: Section 73.51 requires AM stations to make notation in the station log when using indirect measurement of power determination and that a record of value F (efficiency factor) be kept. When it is not possible to use the direct method of power determination due to

technical reasons, the indirect method of determining input power may be used on a temporary basis. The data is used by FCC staff to assure that the station is operating by indirect method is necessary.

OMB Number: 3060–0246.
Title: Section 74.452, Equipment changes.
Action: Extension.
Respondents: State or local governments, non-profit institutions, and businesses including small businesses.
Frequency of Response: On occasion.
Estimated Annual Burden: 100 Responses; 25 Hours.
Needs and Uses: Section 74.452 requires that licensees of remote pickup stations notify the Commission of any equipment changes that are deemed desirable or necessary (without departing from its station authorization) upon completion of such changes. The data is used by FCC staff to assure that the changes made comply with the rules and regulations.

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.
[FR Doc. 88–13991 Filed 6–21–88; 8:45 am]
BILLING CODE 6712–01–M

Advisory Committee on Advanced Television Service; Planning Subcommittee; Meeting Canceled

The fifth meeting of the Planning Subcommittee published at 53 FR 21917, June 10, 1988, which was scheduled for June 28, 1988, has been canceled. A new date for the meeting will be announced in a subsequent notice.

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.
[FR Doc. 88–13992 Filed 6–21–88; 8:45 am]
BILLING CODE 6712–01–M

[Report No. W–43]

Window Notice for the Filing of FM Broadcast Applications

Release: June 17, 1988.

Notice is hereby given that applications for vacant FM broadcast allotments listed below may be submitted for filing during the period beginning June 17, 1988 and ending July 28, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—295A
Marianna—AR
Buckeye—AZ
La Junta—CO
Rock Valley—IA
Newton—IL
Woodlawn—IL
Spring Arbor—MI
Lucedale—MS
St Pauls—NC
Masontown—PA
Bloomington—TX
Daingerfield—TX
Bedford—VA

Channel—242A
Austin—IN
Indianapolis—IN
Augusta—KS
Herington—KS
Wilmore [1]—KY
Lewisburg—PA
Brillion—WI

Channel—295C2
Plainview—TX

Channel—294A
North Cape May—NJ

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.
[FR Doc. 88–13998 Filed 6–21–88; 8:45 am]
BILLING CODE 6712–01–M

[Report No. 1733]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

June 15, 1988

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed July 8, 1988.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 97.313 of the Commission's Rules Concerning Identification Procedures for Amateur Stations Operating Under a Reciprocal Permit. Number of petitions received: 1.

[1] A counter proposal in MM Docket 88–31 requests substitution of Channel 221C2 for this allotment. If the proposal is adopted applicants will be required to amend their applications to specify the higher class channel and will be afforded cut-off protection against any applications not filed during this window.

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.
[FR Doc. 88–14002 Filed 6–21–88; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Advisory Commission on Nursing; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following national advisory body scheduled to meet during the month of July 1988:

Name: Secretary's Commission on Nursing.

Date: July 13, 1988.

Time: 8:30 a.m.

Place: Room 727A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

Purpose: The Secretary's Commission on Nursing will advise the Secretary of Health and Human Services on how the public and private sectors can work together to address problems and implement solutions regarding the supply of active registered nurses. The Commission will also consider the recruitment and retention of nurses in the U.S. Public Health Service, the Veteran's Administration and the Department of Defense. As appropriate for its work, the Commission will consider the findings of studies which are relevant to the development of a multi-year action plan for implementation by the public and private sectors.

Agenda: The agenda for the July 13 meeting will consist primarily of discussions about potential recommendations for inclusion in the Commission's final report. In addition, there will be a presentation on the "image of nursing."

Agenda items are subject to change as priorities dictate.

Anyone wishing to attend these meetings who is hearing impaired and requires the services of an interpreter for the deaf should contact the Commission at least one week before the scheduled meeting. All such requests, as well as requests for information, should be addressed to the Secretary's Commission on Nursing, Hubert H. Humphrey Building, Room 616E, 200 Independence Avenue SW.,

Washington, DC 20201, telephone 202/245-0409.

Lillian K. Gibbons,

Executive Director, Secretary's Commission on Nursing.

[FR Doc. 88-14075 Filed 6-21-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 88N-0025]

Biological Resources, Inc.; Opportunity for Hearing on Intent To Revoke U.S. License No. 915

AGENCY: The Food and Drug Administration.

ACTION: Notice.

SUMMARY: Food and Drug Administration (FDA) is announcing an opportunity for hearing on a proposal to revoke the establishment license (U.S. License No. 915) and product license issued to Biological Resources, Inc., for the manufacture of Source Plasma. The proposed revocation is based on significant noncompliance with certain provisions of the biologics regulations specified in this document.

DATES: The firm may submit a written request for a hearing to the Dockets Management Branch by July 22, 1988, and any data justifying a hearing must be submitted by August 22, 1988. Other interested persons may submit comments on the proposed revocation by August 22, 1988.

ADDRESS: Written requests for hearing, data, and written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn M. Minor, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8600 Rockville Pike, Bethesda, MD 20892, 301-295-8049 or 301-295-8101.

SUPPLEMENTARY INFORMATION: FDA is proposing to revoke the establishment license (U.S. License No. 915) and product license issued to Biological Resources, Inc., 16041 Woodward Ave., Highland Park, MI 48203, for the manufacture of Source Plasma. The proposed revocation is based on the failure of the firm and its responsible management to conform to the applicable standards and conditions established in its license and the requirements in 21 CFR Parts 600, 601, 610, and 640.

FDA inspections of Biological Resources, Inc., conducted on January 9 through 15, January 18 through 24, and March 5 through 21, 1985, revealed numerous and significant deficiencies from applicable standards in major areas of the plasmapheresis operation including: (1) Donor suitability determinations, (2) blood collection, (3) whole blood centrifugation and plasma processing, and (4) plasma storage and distribution. The deviations included, but were not limited to, the following:

I. Donor Suitability Determinations and Related Quality Control Procedures

The establishment accepted individuals for plasmapheresis who did not meet the donor suitability criteria set forth in the biologics regulations for Source Plasma. For example: (a) An individual with a history of viral hepatitis was allowed to donate in violation of 21 CFR 640.63(c)(11); (b) donors were allowed to donate more than twice in a 7-day period in violation of 21 CFR 640.65(b)(5); (c) donors with abnormal results to serum protein electrophoresis testing were not temporarily deferred from participating in the plasmapheresis program in violation of 21 CFR 640.65(b)(2)(i); and (d) on at least six occasions reports of serum protein elecrophoresis tests for donor samples were not reviewed by a qualified licensed physician within 21 days of collection of the sample in violation of 21 CFR 640.65(b)(2)(i).

It was further noted that the establishment failed to maintain a donor identification system that positively identified each donor as required by 21 CFR 640.65(b)(3).

FDA investigators also found deficiencies in compliance with the required quality control procedures set forth in 21 CFR 606.60(a) and (b) designed to monitor equipment for proper performance. Three refractometers used in determining donor suitability had broken sight gates. Management instructed employees to improvise by using a glass slide in place of the broken sight gates. In addition, quality control logs for equipment and reagents used in plasmapheresis contained numerous inaccurate entries. Specifically, FDA investigators found entries for performance checks for reagents and equipment for dates, i.e., weekendes and holidays, when the establishment was reportedly closed.

II. Blood Collection

FDA investigators observed that personnel did not consistently prepare the phlebotomy site to provide maximum assurance of a sterile container of blood as prescribed by 21 CFR 640.64(e). Blood collection scales were not always calibrated each day of use as required by 21 CFR 606.60(b).

Quality control logs for calibration of blood collection scales contained inaccurate entries. Specifically, the logs contained entries for dates, i.e., Sundays, when the establishment was reportedly closed.

III. Whole Blood Centrifugation and Plasma Processing

The establishment did not maintain complete, concurrent, and accurate records as required by 21 CFR 606.160(a)(1) and 640.65(b)(4) and (6). For example, the whole blood and plasma log sheets frequently lacked entries relating to the amount of whole blood collected but the record indicated that such units were centrifuged and that the plasma obtained was pooled.

IV. Plasma Storage and Distribution

FDA investigators noted numerous instances where storage temperatures were warmer than the temperatures required by 21 CFR 640.69(b). Adequate steps were not taken to assure that storage temperatures were consistently maintained as required. In addition, units of plasma were shipped without being relabeled in accordance with 21 CFR 640.76.

Source Plasma was shipped on at least one occasion prior to receipt of written test results for hepatitis B surface antigen (HBsAg).

FDA concluded that these violations demonstrated that the responsible head and other designated managers did not effectively fulfill their responsibilities to assure that the establishment was operated in compliance with the Federal regulations and the establishment's standard operating procedures.

Therefore, by letter dated April 5, 1985, FDA suspended the establishment license (U.S. License No. 915) and the product license for the manufacture of Source Plasma issued to Biological Resources, Inc.

By letter dated April 11, 1985, the establishment requested that the revocation be held in abeyance and outlined corrective actions. In considering the request, FDA comprehensively reviewed the establishment's recent inspectional history. FDA found significant and continued noncompliance with the applicable Federal regulations and the provisions of the establishment's license. Based on the willful nature of the violations, FDA denied the firm's request that license revocation be held in abeyance.

Accordingly, in a letter dated May 8, 1985, issued under § 601.5(b) (21 CFR 601.5(b)), FDA notified Biological Resources, Inc., and its responsible head

of the agency's intent to revoke U.S. License No. 915, setting forth grounds for the revocation, and offering an opportunity for a heading. In letters dated May 31, June 5, June 13, and July 19, 1985, the firm, through its legal counsel, requested the agency to reconsider its decision to pursue license revocation; challenged the findings of an agency investigation conducted concurrently with the inspections; and denied that the firm's management acted willfully. In a letter dated July 11, 1985, the agency advised the firm that the pervasiveness of the deficiencies and the failure of management personnel to correct and prevent the deficiencies represented willful disregard for prescribed standards. The agency also advised the firm that the determination documented during the 1985 inspections and on information obtained during FDA's investigation.

The agency has evaluated and considered all information submitted on behalf of Biological Resources, Inc., including the firm's the request that FDA reconsider its decision to proceed to revoke the firm's license, and has concluded that license revocation is appropriate. Accordingly, FDA is now issuing a notice of opportunity for hearing on the matter under § 12.21(b) (21 CFR 12.21(b)).

Copies of the List of Observations (Form FDA-483's) from the inspections of January 9 through 15, 1985, January 18 through 24, 1985, and March 5 through 21, 1985; FDA's April 5, May 8, and July 11, 1985, letters; and the firm's letters of April 11, May 31, June 5, June 13, and July 19, 1985, are on file at the Dockets Management Branch (address above).

This notice does not detail all the information in support of license revocation. Information from the time of the establishment's initial license application may be applicable to a hearing that may result from the publication of this notice.

The Commissioner of Food and Drugs is offering an opportunity for a hearing under § 12.21(a) on the proposed revocation of the establishment license (U.S. License No. 915) and product license issued to Biological Resources, Inc., for the manufacture of Source Plasma. The establishment may submit a written request for a hearing to the Docket Management Branch by July 22, 1988 and any data justifying a hearing must be submitted by August 22, 1988. Other interested persons may submit comments on the proposed license revocation to the Dockets Management Branch by August 22, 1988. The failure of a license to file a timely written request for a hearing constitutes an election by the licensee not to avail itself of the opportunity of a hearing concerning the proposed license revocation.

FDA procedures and requirements governing a notice of opportunity for hearing, notice of appearance and request for hearing, grant or denial of hearing, and submission of data and information to justify a hearing are contained in 21 CFR Parts 12 and 601. A request for a hearing may not rest upon mere allegations or denials, but must set forth a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factural analyses in the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact that precludes the revocation of the license, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will deny the hearing request, making findings and conclusions that justify the denial.

Two copies of any submissions are to be provided to FDA, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 351, 352, 355, 371 and under authority delegated to the Commission of Food and Drugs (21 CFR 5.10) and as redelegated (21 CFR 5.67).

Dated: June 7, 1988

Paul D. Parkman,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 88-13985 Filed 6-21-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0193]

Bercen, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cranston Print Works Co. has filed a petition on behalf of Bercen, Inc., proposing that the food additive regulations be amended to provide for the safe use of bis(methoxymethyl)tetrakis[(octadecyloxy)methyl] melamine resin as a water repellant in the manufacture of paper and paperboard for food-contact use.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3952) has been filed by Cranston Print Works Co., 1381 Cranston St., Cranston, RI 02920, on behalf of Bercen, Inc., proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) of the food additive regulations be amended to provide for the safe use of bis(methoxymethyl)tetrakis[(octadecyloxy)methyl] melamine resin as a water repellant in the manufacture of paper and paperboard for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 13, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-13977 Filed 6-21-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0300]

Betz Laboratories, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (FAP 7A4031) proposing that the food additive regulations be amended to provide for the safe use of hydroquinone as an additive in boilers producing steam that may come in contact with food.

FOR FURTHER INFORMATION CONTACT: Eric Flamm, Center for Food Safety and

Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–8950.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 7, 1987 (52 FR 37524), FDA published a notice that it had filed a petition (FAP 7A4031) from Betz Laboratories, Inc., 4636 Somerton Rd., Trevose, PA 19047, proposing that § 173.310 *Boiler water additives* (21 CFR 173.310) be amended to provide for the safe use of hydroquinone as an additive in boilers producing steam that may come in contact with food. The firm has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 13, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–13978 Filed 6–21–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88F–0182]

Dow Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of styrene-butadiene-acrylonitrile copolymers as components of paper and paperboard in contact with food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4083) has been filed by Dow Chemical Co., 1803 Bldg., Door 7, Midland, MI 48674, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of styrene-butadiene-acrylonitrile copolymers, copolymerized with not more than 10 percent of one or more of the monomers of acrylic acid, fumaric acid, 2-hydroxyethyl acrylate, itaconic acid and methacrylic acid, as components of paper and paperboard in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 13, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–13979 Filed 6–21–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88F–0196]

E.I. du Pont de Nemours & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that E.I. du Pont de Nemours & Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of trimethyl trimellitate as an optional monomer in the manufacture of a certain polyester elastomer intended for repeated use in contact with food.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4089) has been filed by E.I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898, proposing that § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) be amended to provide for the safe use of trimethyl trimellitate as an optional monomer in the manufacture of a certain polyester elastomer derived from the reaction of dimethyl terephthalate, 1,4-butanediol and α-hydro-ω-hydroxypoly (oxytetramethylene) intended for repeated use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 13, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–13980 Filed 6–21–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88F–0177]

Velsicol Chemical Corp.; Filing of Food Additive Petitions

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Velsicol Chemical Corp. has filed two petitions proposing that the food additive regulations be amended to provide for the safe use of polypropylene glycol dibenzoate and propylene glycol dibenzoate, respectively, as components of adhesives in contact with food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that two petitions (FAP 8B4070 and FAP 8B4071) have been filed by Velsicol Chemical Corp., 5600 River Rd., Rosemont IL 60018–5119, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of polypropylene glycol dibenzoate and propylene glycol dibenzoate, respectively, as components of adhesives in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 13, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–13981 Filed 6–21–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N-0231]

Drug Export; Pneumopent ™ (Pentamidine Isethionate for Inhalation)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Fisons Corp. has filed an application requesting approval for the export of the human drug Pneumopent ™ (Pentamidine isethionate for inhalation) to the United Kingdom. This drug is used in the treatment of *Pneumocystis carinii* pneumonia.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the Act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the Act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Fisons Corp., Two Preston Court, Bedford, MA 01730, has filed an application requesting approval for the export of the drug Pneumopent ™ (Pentamidine isethionate for inhalation), to the United Kingdom for use in the treatment of *Pneumocystis carinii* pneumonia. The application was received and filed in the Center for Drug Evaluation and Research on June 7, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 5, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 14, 1988.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research

[FR Doc. 88-13983 Filed 6-21-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88D-0050]

Investigation of Drugs in Humans; Availability of Revised Clinical Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guideline for the clinical evaluation of anti-inflammatory and antirheumatic drugs. The purpose of the guideline is to present acceptable approaches to the clinical study of drugs intended to treat arthritis and related conditions. The guideline was prepared by the Center for Drug Evaluation and Research. It revises a guideline for the clinical evaluation of anti-inflammatory drugs that was issued in September 1977.

ADDRESSES: Written comments may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockvile, MD 20857. Requests to purchase a copy of the guideline may be sent to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. To order, reference GPO stock No. 017-012-00333-8.

FOR FURTHER INFORMATION CONTACT: Linda Carter, Center for Drug Evaluation and Research (HFN-100) Food and drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4330.

SUPPLEMENTARY INFORMATION: FDA is making available a revised guideline for the clinical investigation of anti-inflammatory drugs. The new guideline is entitled "Guidelines for the Clinical Evaluation of Anti-Inflammatory and Antirheumatic Drugs (Adults and Children)." The revisions represent an update of the guideline, which was originally issued in September 1977, entitled "Guidelines for the Clinical Evaluation of Anti-Inflammatory Drugs (Adults and Children)." This earlier guideline was issued under identification number HEW [FDA 78-3054]. The agency's action is consistent with its commitment to conduct periodic review of all clinical guidelines. The original guideline (HEW [FDA 78-3054]) is hereby revoked.

The new guideline applies to the clinical study of both nonsteroidal anti-inflammatory drugs (NSAID's) and disease-modifying antirheumatic drugs (DMRD's). The guideline was prepared by scientists in the Center for Drug Evaluation and Research with the assistance of the Arthritis Advisory Committee and its subcommittees.

This notice of availability of the revised guidelines is issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to outline procedures or standards of general applicability that are acceptable to FDA for subject matter that falls within the laws administered by FDA. Although use of these guidelines is not a legal requirement, a person may be assured that in following an agency guideline the procedures and standards will be acceptable to FDA. A person may also choose to use alternative procedures or standards for which there is a scientific rationale even though they are not provided for in the guideline. A person who chooses to use procedures or standards not in the guideline may discuss the matter further with FDA to prevent the expenditure of money and effort on work that the agency may later determine to be unacceptable.

The guideline contains recommendations for the clinical study of drugs to treat anti-inflammatory conditions. Research begun in good faith in conformity with the recommendations contained in this guideline will be accepted for review by the agency. This, of course, does not mean that the data

obtained in studies conducted in conformity with these guidelines will necessarily met the statutory requirement for marketing approval for the drug.

Copies of the revised guideline can be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. To order, reference GPO stock No. 017-012-00333-8.

Interested persons may submit written comments on the revised guideline to the Dockets Management Branch (address above). The agency will consider these comments in determining whether further revisions of the guideline are warranted. Two copies of any comments are to be submmited, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. The revised guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 14, 1988.

George R. White,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-13982 Filed 6-21-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88E-0158]

Determination of Regulatory Review Period for Purposes of Patent Extension; Fibrel™

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Fibrel™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims this medical device.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 158(g)(3)(B).

FDA recently approved for marketing the medical device known as Fibrel™ which is indicated for the correction of depressed cutaneous scars which are distensible by manual stretching of the scar borders. Subsequent to approval, the Patent and Trademark Office received a patent term restoration application for U.S. Patent No. 4,006,220 from Sheldon K. Gottlieb. The Patent and Trademark Office requested FDA's assistance in determining the product's eligibility for patent term restoration, and in a letter dated May 16, 1988, FDA advised the Patent and Trademark Office that the medical device had undergone a regulatory review period and that the medical device represented the first permitted commercial marketing or use. This **Federal Register** notice now represents FDA's determination of the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Fibrel™ is 1,542 days. Of this time, 859 days occurred during the testing phase of the regulatory review period, while 683 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* December 9, 1983. The applicant claims the effective date of the investigational device exemption (IDE) was June 29, 1983. However, FDA records indicate the IDE did not become effective until December 9, 1983.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act:* April 15, 1986. The applicant claims that the premarket approval application (PMA) for the device (P850053) was submitted on July 31, 1985. However, FDA records indicate that the PMA was not sufficiently complete to allow FDA review to begin until April 15, 1986.

3. *The date the application was approved:* February 26, 1988. FDA has verified the applicant's claim that the premarket approval application (P850053) was approved on February 26, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before August 22, 1988, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before December 19, 1988, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 13, 1988.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 88-13984 Filed 6-21-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration; HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Immunology Devices Panel

Date, time, and place. July 22, 1988, 9 a.m., Rm. 800, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 3 p.m.; open committee discussion, 3 p.m. to 4:30 p.m.; Srikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 8, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will evaluate the clinical and analytical results obtained by two manufacturers during FDA's required postapproval studies for alpha-fetoprotein (AFP) test kits used in detecting fetal open neural tube defects. The postapproval study, an FDA-mandated requirement for approval of the AFP test kits, was designed to provide: (1) An objective measure of the impact of FDA's recommended AFP testing protocol on medical decisionmaking, e.g., informed consent, normal ranges and median AFP values for each ethnic group served by each testing center, accuracy in interpretation of normal and abnormal maternal AFP levels, outcome of pregnancy, diagnostic efficiency of the testing protocol; and (2) an objective measure of performance by each manufacturer's test kit by determining whether there are significant differences in normal ranges and median values among laboratories, ethnic groups, and seasons.

ear, nose, and Throat Devices Panel

Date, time, and place. July 29, 1988, 8:30 a.m., Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 4:30 p.m.; David A. Segerson, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8185.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 15, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) The children's cochlear implant guideline for premarket approval, (2) the adult cochlear implant guideline for premarket approval, and (3) the classification of several preamendments devices.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory

Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 15, 1988.

George R. White,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–13986 Filed 6–21–88; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

National Advisory Council on Health Professions Education; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of July 1988:

Name: National Advisory Council on Health Professions Education.

Date and Time: July 25, 1988, 9:00 a.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on July 27, 9:00 a.m.–1:00 p.m. Closed for Remainder of Meeting.

Purpose: The Council advises the Secretary with respect to the administration of programs of Financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover welcome and opening remarks, report of the Administrator, Health Resources and Services Administration, report of the director, Bureau of Health Professions, financial management update, and future agenda items. The meeting will be closed from 1:00 p.m. to 5:00 p.m. for the review of grant applications for Geriatrics Education Centers and Grants for Faculty Training Projects in Geriatric Medicine and Dentistry. The closing is in accordance with the provisions set forth in section 552(c)(6), Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92–463.

Anyone requiring information regarding the subject Council should contact Mr. James M. Hoeven, Executive Secretary, National Advisory Council on Health Professions Education, Room 8C–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6880.

Agenda Items are subject to change as priorities dictate.

Date: June 17, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88–14062 Filed 6–21–88; 8:45 am]

BILLING CODE 4160–15–M

National Advisory Council on Nurse Training; Meeting

In accordance with section 10(a)((2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of August 1988:

Name: National Advisory Council on Nurse Training.

Date and Time: August 18–19, 1988, 9:00 a.m.

Place: The Potomac Room, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on August 18, 9:00 a.m.–12:30 p.m. Closed for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Education Amendment of 1985 (Pub. L. 99–92). The Council also performs final review of grants applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting will cover announcements; considerations of minutes of previous meeting; report by the Director, Bureau of Health Professions, the Director, Division of Nursing and staff reports. The meeting will be closed to the public on August 18, at 12:30 p.m. for the remainder of the meeting for the review of grant applications for Advance Nurse Education applications, Nurse Practitioner/Nurse Midwifery applications, and Special Project Grants applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92–463.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, National Advisory Council on Nurse Training, Room 5C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6193.

Agenda Items are subject to change as priorities dictate.

Dated: June 17, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88–14063 Filed 6–21–88; 8:45 am]

BILLING CODE 4160–15–M

Final Special Consideration for Nursing Special Project Grants, Purpose No. 2 (Fiscal Year 1988)

The Health Resources and Services Administration announces the final Special Consideration for Nursing Special Projects, Purpose No. 2, which will be applied in the review of applications for Fiscal Year 1988.

Section 820 of the Public Health Service Act, as implemented by 42 CFR Part 57, Subpart T, authorizes assistance in meeting the costs of special projects to carry out the following designated purposes:

(1) To increase nursing education opportunities for individuals from disadvantaged backgrounds, as determined in accordance with criteria prescribed by the Secretary of Health and Human Services, by:

(A) Identifying, recruiting, and selecting such individuals,

(B) Facilitating the entry of such individuals into schools of nursing,

(C) Providing counseling or other services designed to assist such individuals to complete successfully their nursing education,

(D) Providing, for a period prior to the entry of such individuals into the regular course of education at a school of nursing, preliminary education designed to assist them to complete successfully such regular course of education,

(E) Paying such stipends (including allowances for travel and dependents) as the Secretary may determine for such individuals for any period of nursing education, and

(F) Publicizing, especially to licensed vocational or practical nurses, existing sources of financial aid available to persons enrolled in schools of nursing or who are undertaking training necessary to qualify them to enroll in such schools;

(2) To provide continuing education for nurses;

(3) To provide appropriate retraining opportunities for nurses who (after periods of professional inactivity) desire again actively to engage in the nursing profession;

(4) To demonstrate improved geriatric training in preventive care, acute care and long term care (including home health care and institutional care);

(5) To help increase the supply or improve the distribution by geographic area or by specialty group of adequately trained nursing personnel (including nursing personnel who are bilingual) needed to meet the health needs of the Nation, including the need to increase the availability of personal health services and the need to promote preventive health care;

(6) To provide training and education to upgrade the skills of licensed vocational, practical or vocational nurses, nursing assistants, and other paraprofessional nursing personnel;

(7) To demonstrate clinical nurse education programs which combine educational curricula and clinical practice in health care delivery organizations, including acute care facilities, long-term care facilities and ambulatory care facilities;

(8) To demonstrate methods to improve access to nursing services in noninstitutional settings through support of nursing practice arrangements in communities; and

(9) To demonstrate methods to encourage nursing graduates to practice in health manpower shortage areas (designated under section 332 of the PHS Act) in order to improve the specialty and geographical distribution of nurses in the United States.

Under section 820(d)(1) funds for special projects under purposes (1) through (6) above must be obligated as follows: not less than 20 percent of the appropriated funds for projects to increase education opportunities for individuals from disadvantaged backgrounds (which may include stipends) (purpose 1); not less than 20 percent of the appropriated funds to demonstrate improved geriatric training (purpose 4); and not less than 10 percent of the appropriated funds to help increase the supply or improve the distribution by geographic area or by specialty groups of adequately trained nursing personnel (purpose 5). The remaining appropriated funds will be awarded for purposes (2), (3), and (6).

Section 820 (d)(2) requires that in making grants from funds appropriated for purposes (7) through (9), the Secretary shall give priority to applications for purpose (8).

Eligible Applicants: Public or nonprofit private schools of nursing or other public or nonprofit entities.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The national or special local need which the particular project proposes to serve;

(2) The potential effectiveness of the proposed project in carrying out such purposes;

(3) The administrative and managerial capability of the applicant to carry out the proposed project;

(4) The adequacy of the facilities and resources available to the applicant to carry out the proposed project;

(5) The qualifications of the project director and proposed staff;

(6) The reasonableness of the proposed budget in relation to the proposed project; and

(7) The potential of the project to continue on a self-sustaining basis after the period of grant support.

Special consideration will be given to those projects under purpose 1 (to increase nursing education opportunities for individuals from disadvantaged backgrounds) that propose to use at least 20 percent of grant funding as stipends given directly to nursing students.

Special consideration will be given to special projects under purposes 1 through 6 that plan to continue beyond the period in which Federal funding is available and meet a clear, financial need.

For purposes 7, 8 and 9, special consideration will be given to:

(1) Projects which include a target population of minority or disadvantaged persons.

(2) Projects that plan to continue beyond the period in which Federal funding is available and meet a clear financial need.

(3) Projects which demonstrate efforts to recruit and retain minority nurses.

The reason for these special considerations are:

(1) To help ensure that grant funds are awarded to educational institutions with a demonstrated need for them;

(2) To encourage grantee institutions to continue grant supported programs after grant support ends; and

(3) To increase the percentage of minority enrollment of students in undergraduate and graduate nursing programs. Minority students are currently underrepresented in these programs.

A proposed special considerastion for Purpose No. 2 was published in the **Federal Register** of March 25, 1988 (FR 9813) under Advanced Nurse Education Grants, Nurse Practitioner and Nurse Midwifery Grants and Nursing Special Project Grants. No comments were received during the 30-day comment period.

Therefore, the special consideration as proposed is retained as follows:

Special consideration will be given to approved applications with projects which provide expansion of current or development and implementation of new curriculum concerning the prevention of HIV-infection and care of HIV-infected persons, including AIDS patients. Nursing personnel are increasingly required to provide a wide range of services to HIV-infected persons, including AIDS patients in both inpatient and outpatient settings. However, organized formal curricular offerings for these personnel are not in place. This priority is designed to encourage new offerings.

This program is listed at 13.359 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: June 16, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-13987 Filed 6-21-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements; Availability, etc.; Chickamauga and Chattanooga National Military Park, GA; US 27 Relocation

AGENCY: National Park Service; Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: Notice is hereby given that the National Park Service and the Georgia Department of Transportation intend as joint lead agencies to prepare an EIS in accordance with section 102 of the National Environmental Policy Act of 1969 for a proposal to relocate existing US 27 on a new location generally outside the Chickamauga and Chattanooga National Military Park, Walker/Catoosa Counties, Georgia [Project Number MLP-813(1)]. Interested and affected Federal, State and local agencies, interest groups and individuals are invited to participate in determining the scope of the EIS and significant issues to be analyzed in depth in the EIS.

Several alternative alignments will be studied including a "no-build" or status-quo alternative. Approximately 200 feet of right-of-way will be required for this project. The project's typical section will be four 12-foot travel lanes, two in each direction, separated by a median. The proposed work is necessary to separate the high volumes of US 27 traffic from park visitor traffic.

The EIS will assess the impacts to the environment as well as the socio-economic impacts associated with the relocation of this roadway and the alternative alignments.

Notice is also given that the lead agencies will conduct public meetings which will be scheduled and announced at a later date. Particularly solicited is information on reports or other environmental studies planned or

completed in the project area, major issues and data which the EIS should consider, and recommended mitigating measures and alternatives associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a cooperating agency.

ADDRESSES: Send written comments to: Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Danchetz, State Environmental/Location Engineer, Georgia Department of Transportation, Office of Environment/Location, 3993 Aviation Circle, Atlanta, Georgia 30336, Telephone (404) 696–4634.

Dated: May 27, 1988.

Frank Catroppa,

Acting Regional Director, Southeast Region.

[FR Doc. 88–13988 Filed 6–21–88; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Applications to Consolidate, Merge or Acquire Control

The following Applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonable to oppose will be construed as a waiver of opposition and participation in the preceeding.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.6

Noreta R. McGee,

Secretary.

MC–F–19153, filed April 25, 1988. Catawese Coach Company (CCC) (950 Arch Street, Shamokin, PA 17872)—Purchase—Catawese Coach Lines, Inc. (CCL) (of the same address). Representative: James W. Patterson, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106–3619. CCC, a non-carrier, seeks authority to purchase certain assets of CCL including its interstate operating rights held in certificate No. MC–116370 and subnumbers thereunder, a CCL's Pennsylvania intrastate authority held in Docket No. A–14729 and folders and amendments thereunder. The interstate rights being transferred authorize transportation of passengers and their baggage in special and charter operations, between specified points in the United States (except Hawaii). The interstate rights being transferred authorize the transportation of passengers in special and charter operations, and limousine service, between specified points in Pennsylvania. The Commission's Motor Carrier Board recently granted CCC temporary authority to purchase the involved authority.

CCC is owned and controlled by Carl W. Kephart, Sr. and Carl W. Kephart, Jr. The Kepharts also control Susquehanna Transit Company (MC–148069). As a result of this purchase, the Kepharts will also control CCL.

[FR Doc. 88–14008 Filed 6–21–88; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 290 (Sub-No. 5) (88–3)]

Quarterly Rail Cost Adjustment Factor; Rail Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved the third quarter 1988 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter 1988 RCAF is 1.035. Maximum third quarter 1988 RCAF rate levels may not exceed 99.2 percent of maximum second quarter 1988 RCAF rate levels. To the extent that any maximum RCAF rate exceeds that level a corresponding reduction must be made.

DATES: Effective July 1, 1988.

FOR FURTHER INFORMATION CONTACT:

William T. Bono (202) 275–7354

or

Robert C. Hasek (202) 275–0938, 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 contact Dynamic Concepts, Inc. Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or telephone (202) 289–4357. 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.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Decided: June 16, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley concurred in the result with a commenting separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88–14009 Filed 6–21–88; 8:45 am]

BILLING CODE 7035–01–M

[I.C.C. Order No. P–96]

Passenger Train Operation; Atchison, Topeka and Santa Fe Railway Co.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between New Orleans, Louisiana and Los Angeles, California, via El Paso, Texas. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks near Lizard, New Mexico, are temporarily out of service because of a derailment. An alternate route is available via The Atchison, Topeka and Santa Fe Railway Company between El Paso, Texas and Deming, New Mexico.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public

and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 USC 562(c)), The Atchison, Topeka and Santa Fe Railway Company (ATSF) is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between El Paso, Texas, and a connection with Southern Pacific Transportation Company at Deming, New Mexico.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 7:30 p.m., (EDT), May 28, 1988.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. (MDT), May 29, 1988, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon The Atchison, Topeka and Santa Fe Railway Company and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, May 28, 1988.

William J. Love,

Agent.

Noreta R. McGee,

Secretary.

[FR Doc. 88-14010 Filed 6-21-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 87-7]

Great Lakes Wholesale Drugs, Inc.; Revocation of Registration

On December 16, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Great Lakes Wholesale Drugs Inc. (Respondent) of 11731-51 Levan Road, Livonia, Michigan 48150, proposing to revoke Respondent's DEA Certificate of Registration PG0033112, and to deny any pending applications for renewal of such registration as a distributor under 21 U.S.C. 823(b) and 823(e). The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(b) and 823(e) and 21 U.S.C. 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a three days hearing was held in Washington, DC beginning on June 30, 1987. On February 3, 1988, the Administrative Law Judge issued his opinion and recommended ruling, findings of facts, conclusions of law and decision. On March 31, 1988, counsel for Respondent filed a letter to the Administrator in lieu of exceptions to Judge Young's opinion and recommended ruling. On April 6, 1988, Judge Young transmitted the record of these proceedings, including the aforementioned letter, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

Respondent has been a distributor of controlled substances since 1967. DEA investigators conducted an inspection of Respondent in April 1977. During this inspection, the investigators discovered both recordkeeping and security violations of Federal laws and regulations relating to controlled substances. Respondent's representatives were notified of these violations and a Letter of Admonition was sent to Respondent by DEA.

A follow-up inspection was conducted by DEA investigators in May 1978. This inspection uncovered numerous violations of Federal laws and regulations, including: (a) Failure to note the date shipped on all Schedule II order forms; (b) failure to maintain accurate sales records for controlled substances in that the customers' current DEA numbers and addresses were not correctly noted on sales invoices; (c) failure to verify that customers were properly registered with DEA before shipping controlled substances; and (d) failure to maintain a complete and accurate record of all controlled substances received, sold, delivered, or otherwise disposed of. In addition, it was noted that Respondent had failed to establish a system for reporting to DEA excessive purchases of controlled substances. Following this investigation DEA personnel discussed all of the violations discovered during the inspection with Respondent's representative.

As a result of the violations discovered during the 1978 investigation Respondent entered into an Agreement of Understanding with DEA on September 15, 1978. The agreement noted the violations and listed the measures that Respondent agreed to take to correct them. The 1978 inspection also resulted in the filing of a two count civil complaint against Respondent in the United States District Court for the Eastern District of Michigan, Southern Division. This action culminated in a consent judgment in which Respondent agreed to pay a $4,000.00 civil penalty.

In November 1985, DEA conducted another inspection of Respondent. This investigation also disclosed numerous violations of Federal laws and regulations relating to controlled substances, including: (a) Failure to maintain complete and accurate records of controlled substances received, in that an audit of a number of substances revealed that Respondent could not account for all of the substances it apparently had in its possession during the audit period; (b) failure to maintain an inventory containing a complete and accurate record of all controlled substances on hand on the date the inventory was taken, i.e., Tuinal 100 mg. was not listed on the inventory although subsequently it was learned that there were, in fact, 400 Tuinal 100 mg. dosage units in stock on the day the inventory was taken; (c) failure to indicate whether the inventory was taken at the opening or closing of business on the day it was taken; (d) failure to maintain the Schedule II inventory separate from all other records of the registrant; (e) failure to maintain the inventory of Schedule III, IV and V controlled substances in a readily retrievable

manner; (f) failure to enter on an order form the name and address of the supplier from whom Respondent had ordered controlled substances; (g) failure to enter on an order form the quantity of substances received by Respondent pursuant to the order; (h) failure to shop controlled substances to its customers at the location printed on the order forms received from the customers, resulting in the shipment of controlled substances to a location not registered with DEA; (i) failure to forward copy 2 of a DEA official order form to DEA; (j) failure to record on an order form the number of containers of controlled substances shipped and the date on which the containers are shipped; (k) failure to refuse to fill order forms that were not complete, legible or properly prepared, executed or endorsed by the customer submitting the order; (l) failure to refuse to fill order forms which showed alterations, erasures or changes; (m) placing information on order forms in the wrong column; (n) making changes on order forms so that they were difficult to read; (o) failure to maintain certain records in a readily retrievable manner in that an invoice failed to indicate that some of the substances shipped were controlled substances; (p) failure to record the correct date of distribution of controlled substances on invoices; (q) failure to indicate the registrant's name on invoices as required and shipping controlled substances to a nonregistered location; (r) failure to indicate the registrant's actual address on invoices; (s) failure to make a good faith inquiry to determine whether a customer is registered to handle controlled substances before shipment of these substances; (t) failure to report the loss or theft of controlled substances to DEA; (u) failure to maintain the controlled substance cage door under the direct supervision of an employee while the door was propped open; and (v) failure to report suspicious orders of controlled substances to DEA and to develop a system to detect such orders.

A discussion was held with management at the conclusion of the 1985 inspection. A corporate officer and manager of Respondent, and a long-time employee of Respondent represented the firm at this discussion during which DEA investigators discussed each and every violation that was discovered during the inspection and showed Respondent's representatives examples of these violations. The investigations told the representatives that these were serious violations since a number of them were repeats of the violations found in the 1978 inspection. In addition, the investigators offered Respondent their assistance in remedying these violations.

On October 15, 1986, DEA investigators interviewed one of Respondent's employees. During this interview, the employee stated that to the best of her knowledge there were no procedures in place to reconcile controlled substance inventory discrepancies between the computer figures and the actual count of substances in the controlled substance cage. She stated that there had been no meeting of Respondent's management with employees following the November 1985 inspection to discuss the violations discovered at that time. No changes in policy or procedures had been instituted following the 1985 inspection. The employee stated further that she was not aware of any system to detect suspicious orders. In addition, she stated that orders for controlled substances were never reduced; that if Respondent had the drug in stock when an order was received, Respondent shipped it, regardless of the quantity ordered.

The November 1985 inspection was followed up by another inspection conducted in Nobember 1986. During the November 1986 inspection, DEA investigators interviewed three employees of Respondent who worked in the controlled substance cage. These employees told the investigators essentially the same information which the other employee told them on October 15, 1986.

During the November 1986 inspection, investigators found that the majority of violations relating to order forms, which were discovered during the November 1985 inspection has been corrected. The employee responsible for handling the order forms had participated in the meeting with the DEA investigator following the 1985 inspection. The other violations noted during the 1985 inspection had not been corrected and continued to occur. The violations of Federal laws and regulations discovered during the 1986 inspection included: (a) Failure to indicate on the inventory whether the inventory was taken as of the opening or closing of business on the day it was done; (b) failure to record the correct date of distribution on an invoice; (c) failure to indicate the registrant's name and registered address on records of sale and the shipping of controlled substances to a non-registered location; (d) failure to indicate on records (an inventory and invoices) all controlled substances in a readily retrievable manner; (e) failure to develop a system to detect suspicious orders and failure to report such orders; and (f) failure to make a "good faith inquiry" prior to distributing a controlled substance to determine that the customer is registered to handle controlled substances.

At the conclusion of the November 1986 inspection, yet another discussion was held with management. The corporate officer who was present during the 1985 management discussion again represented Respondent. Each and every violation that was discovered during the 1986 inspection was discussed. Subsequent to the management discussion, Respondent began sending the local DEA office computer printouts of all of its controlled substance sales. One printout indicated that Respondent was still shipping controlled substances to a pharmacy which was not registered at the location to which the substances were being shipped. This specific problem has been discussed with management after the 1986 inspection.

In May or June 1987, a DEA investigator interviewed the former employee who had been responsible for the handling of Respondent's order forms during both the 1985 and 1986 inspections. This interview occurred after the individual telephoned DEA to inform the investigator that she had recently quit her job at Respondent after being relieved of her duties relating to Schedule II order forms. Her area of responsibility at Respondent, the Schedule II order forms, was the only area in which improvement was found by DEA investigators between the 1985 and 1986 inspections. The individual told the investigator that thefts of controlled substances from Respondent's inventory could go undetected, since there were no procedures in place to determine if the inventory in the computer corresponded with the amount of controlled substances actually in stock. The individual went on to say that several of the employees questioned not only the types of customers ordering controlled substances from Respondent, but also the amount of substances they were ordering. Whenever the employees voiced any concern, the individual responsible for Respondent's day-to-day operations told them he would check into it and then he would tell them to go ahead and ship the order. Concerning verification of a customer's registration with DEA, the individual stated that employees would telephone the customer and inquire as to the name of the company, its DEA number and the expiration date of the number. The individual stated that no inquiries were ever made as to the customer's

registered address. She further stated that no inquiry was made regarding the DEA registration of a new customer—the drugs were just shipped.

The Administrative Law Judge found that DEA conducted a study of Respondent's codeine based product sales from October 1, 1986, excluding December 1985. This study revealed that 148 registrants purchased a total of 1,199,920 dosage units of solid oral codeine from Respondent during this period of time for an average purchase per registrant of 8,107.6 dosage units. Seven of these registrants purchased at a level of two standard deviations above the average purchase. These seven top purchasers purchased a total of 618,200 dosage units, or 51.52% of the codeine. These seven purchased an average of 88,134.3 dosage units per registrant. Excluding these seven registrants, the remaining 141 registrants purchased only 581,720 dosage units of codeine or 48.48% of the codeine sold by Respondent. The average purchase amongst these remaining purchasers was 4,126.7 dosage units. If Respondent had had a system to detect suspicious orders as required by Federal regulations, it would have identified the orders of its top seven purchasers of oral codeine as being "suspicious", i.e. of unusual size or deviating from a normal pattern or of unusual frequency.

Respondent argues that its DEA registration should not be revoked, because it has never engaged in the diversion of controlled substances. The Administrative Law Judge concluded that this is not true. Respondent has shipped controlled substances to an unregistered person. It has shipped controlled substances to an unregistered address. Such shipments are diversion outside the legitimate, authorized channels of distribution. In addition, Respondent has asserted that it has consistently sought to follow a responsible, practical, common-sense approach to its regulatory obligations. Once again, Judge Young concluded that the record clearly indicates the contrary. Respondent has failed to comply with the Federal laws and regulations applicable to distributors of controlled substances for almost a decade.

The Administrative Law Judge concluded that essentially the same violations were found by investigators on each of at least four inspections—records were not being maintained as required. Judge Young noted that such complete and accurate recordkeeping is essential to assure that adequate control is maintained to prevent the diversion of controlled substances into illegitimate channels. Preventing such diversion of these dangerous drugs is the ultimate purpose of Federal regulations relating to controlled substances. When these regulations are not carefully observed the purpose of the entire regulatory scheme can be thwarted.

Judge Young concluded that no single regulatory violation, of those repeatedly found in Respondent's facility, would warrant revocation. However, in this case, there were numerous violations, essentially the same ones, repeated over a protracted period of time. Respondent's repeated failures to responsibly comply with the regulations establishes it to be a potential leak in the distribution chain of controlled substances, and therefore, its continued registration is inconsistent with the public interest. The Administrative Law Judge recommended that Respondent's registration be revoked.

The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety. The evidence is clear—Respondent has disregarded its regulatory responsibilities and cannot be trusted to handle controlled substances. Respondent's registration must 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 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration PG0033112, previously issued to Great Lakes Wholesale Drugs, Inc., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective August 22, 1988.

Dated: June 16, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-14070 Filed 6-21-88; 8:45 am]

BILLING CODE 4410-09-M

Jeffrey Martin, M.D.; Revocation of Registration

On April 20, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jeffrey Martin, M.D. of 26035 Moulton Parkway #41, Laguna Hills, California 92653, proposing to revoke his DEA Certificate of Registration AM1991923, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Martin's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

The Order to Show Cause was personally served on Dr. Martin on April 27, 1988. More than thirty days have passed since the Order to Show Cause was received by Dr. Martin and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Jeffrey Martin, M.D. 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 on the investigative file. 21 CFR 1301.57.

The Administrator finds that between January 1, 1985 and April 19, 1986, Dr. Martin issued numerous prescriptions for Percocet, a Schedule II narcotic controlled substance, to various individuals for no legitimate medical need. The individuals had the prescriptions filled at local pharmacies and then returned the drugs to Dr. Martin for his own personal use. On April 24, 1986, Dr. Martin surrendered his DEA registration in Schedules II and IIN. Subsequently, on September 22, 1986, the Board of Medical Examiners of the State of North Carolina revoked Dr. Martin's license to practice medicine in that state.

The Administrator also finds that Dr. Martin was arrested on December 7, 1986, in Columbus, Ohio for issuing a prescription for Tylox, a Schedule II narcotic controlled substance, for a non-existent individual, and then attempting to have the prescription filled at a pharmacy. As a result of this activity, Dr. Martin surrendered his Ohio medical license to that state's Medical Board on February 6, 1987.

The Administrator further finds that on his application to renew his DEA Certificate of Registration in California, executed on July 5, 1987, Dr. Martin indicated that he had never surrendered a DEA registration, when in fact, he had surrendered his DEA Schedule II and IIN privileges on April 24, 1986. Therefore, Dr. Martin materially falsified his renewal application.

No evidence of explanation or mitigating circumstances has been offered on behalf of Dr. Martin. Based on the above, the Administrator concludes that Dr. Martin's continued registration with DEA is inconsistent with the public interest, and therefore, his DEA Certificate of Registration must 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 28 CFR

0.100(b), hereby orders that DEA Certificate of Registration AM1991923, previously issued to Jeffrey Martin, M.D., be, and it hereby is, revoked. Any pending applications for registration, be, and they hereby are, denied. This order is effective July 22, 1988.

Dated: June 16, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-14071 Filed 6-21-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-47]

Neveille H. Williams, D.D.S.; Denial of Application for Registration

On May 6, 1987, the Deputy Assistant Administrator of the Drug Enforcement Administration (DEA), Office of Diversion Control, issued an Order to Show Cause to Neveille H. "Trey" Williams, D.D.S. (Respondent), of Houston, Texas, proposing to deny the application for registration which Respondent executed on August 24, 1986. The statutory predicate for seeking the denial of Respondent's application is that Respondent's registration would be inconsistent with the public interest, based upon his recent felony conviction relating to controlled substances and the material falsification of his application for registration. Respondent, through counsel, timely filed a request for a hearing on the issues reaised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner.

After receiving prehearing statements from counsel for Respondent and the Government, Judge Bittner held a prehearing conference on August 11, 1987, after which she issued a prehearing ruling ordering Respondent's counsel to provide more detailed statements of expected testimony from the Respondent and one other witness on or befoare September 21, 1987. The prehearing ruling also contained a warning that no "additional testimony is likely to be admitted over objection." Judge Bittner scheduled the hearing to take place on October 20, 1987, in Washington, DC.

Respondent's counsel did not timely file a detailed summary of testimony of witnesses. On October 15, 1987, based upon Respondent's failure to comply with the prehearing ruling, Government counsel filed a motion to strike portions of Respondent's prehearing statement, including Respondent's testimony. After receiving the Government's motion, Judge Bittner issued an order affording Respondent the opportunity to file a response to the Government's motion on or before October 13, 1987. As of October 14, 1987, no such response was received by the Administrative Law Judge and, on that date, Judge Bittner granted the Government's motion to strike the testimony of Respondent and one of his witnesses.

On October 15, 1987, Judge Bittner received a document entitled "Expanded Testimony of Respondent" from Respondent's counsel. The document gave no explanation for Respondent's failure to file the statement by the date specified in the prehearing ruling. On October 16, 1987, Respondent's counsel submitted a letter to Judge Bittner explaining that there had been a clerical error in mailing the document received the previous day. The letter did not provide any explanation for the failure to file the detailed summary of testimony in accordance with the prehearing ruling.

The hearing in this matter was held in Washington, DC., on October 20, 1987, and was continued on December 1, 1987, due to the unavailability of Respondent's witness. During the hearing, Respondent's counsel requested that the Administrative Law Judge reconsider her earlier order granting the Government's motion to strike. Judge Bittner denied his request, noting that Respondent's counsel did not comply with the prehearing ruling, nor did he provide adequate justification for failing to comply with that order. Accordingly, Respondent was not permitted to testify at the hearing. In posthearing submissions, Respondent's counsel again requested that his client be permitted to testify on his own behalf. For reasons stated at the hearing, Respondent's request was denied.

At the hearing, the Government called two witnesses to testify, FBI Special Agent Robert Walther and DEA Diversion Investigator Jorge Acevedo, and introduced 11 documents. Respondent's counsel called one witness to testify, William S. Nail, Esq., of the Texas State Board of Dental Examiners, and introduced six documents. Following the hearing, both parties submited proposed findings of fact, conclusions of law and arguments.

On March 9, 1988, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that Respondent's application for registration be denied based upon his felony conviction relating to controlled substances. With respect to the allegation that Respondent materially falsified an application for registration, Judge Bittner determined that the record of the administrative proceeding was insufficient to conclude that Respondent *intentionally* falsified an earlier application for registration.

On March 29, 1988, Respondent's counsel filed exceptions to the opinion and recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge. On May 24, 1988, more than one month after the entire record of this proceeding was transmitted to the Administrator, Respondent mailed a letter directly to the Administrator requesting that he disregard the Administrative Law Judge's recommendations and grant his application for registration.

After careful consideration of the entire record of this proceeding, including exceptions filed by Respondent's counsel, and Respondent's subsequent letter, the Administrator adopts the findings of fact, conclusions of law, and recommended ruling of the Administrative Law Judge.

The Administrator finds that on June 7, 1982, in the Northern District of Georgia, Respondent was convicted, after entering a plea of guilty, of one count of using a communication facility in causing and facilitating the commission of acts constituting a felony under 21 U.S.C. 963 and conspiring to import cocaine hydrochloride into the United States, in violation of 21 U.S.C. 843(b). Based upon the conviction, Respondent was sentenced to serve three years in prision. He was incarcerated from June 21, 1982, to July 2, 1984, and completed his parole on December 18, 1984.

Respondent's conviction resulted from an FBI undercover investigation of white collar crime in the Atlanta, Georgia area in the Fall of 1981. During the investigation, FBI Special Agents posed as money brokers seeking to lend and invest "offshore funds" in the United States. The Special Agents were approached by a Rick Johnson, who informed them that his cousin, Lee Johnson, could assist them in bringing the funds into the country. Lee Johnson advised them that he knew of individuals who could utilize the funds by importing drugs, specifically cocaine, into the United States from Columbia. Lee Johnson put the Special Agents in contact with Respondent and a Charles Pate.

On October 7, 1981, undercover Special Agents met with Respondent at his dental laboratory in Texas. During the meeting, they discussed the funding for importing approximately 30 to 50 kilograms of cocaine, the division of profits from the sale of the cocaine, and Respondent's relationship with Mr. Pate. Respondent informed the Special Agents

that he had known Mr. Pate for five years, and that for the previous eighteen months he and Mr. Pate had attempted to import cocaine into the United States, but always lacked the necessary financing. Based upon the arranged division of profits, Respondent stood to make more than $300,000.00 from his involvement in the scheme.

The undercover FBI Special Agents met with Respondent again in December 1981. At that time, Respondent informed them that he had a potential purchaser for a large quantity of the cocaine. Respondent also participated in several telephone conversations with the Special Agents in December 1981 and January 1982, in which he reaffirmed his willingness to participate in the conspiracy to import large quantities of cocaine into the United States. A final meeting was held in Atlanta, Georgia in January 1982. Although Respondent did not attend the meeting, he expressed his continued interest in participating in the scheme during telephone conversations with the Special Agents both before and after the final meeting. Subsequent to the meeting, Mr. Pate travelled to South America and met with reputed cocaine suppliers in Colombia to discuss the importation of the cocaine.

Prior to his indictment, Respondent was contacted by FBI Special Agents and was given an opportunity to disclose the proposed transaction. Although Respondent stated that he had been in contact with individuals in an effort to obtain venture capital for his dental business, he did not mention the proposed cocaine transaction. He also never attempted to disassociate himself from the group or its activities.

Respondent was previously registered with the Drug Enforcement Administration, but allowed the registration to expire in 1982. In June 1983, Respondent also allowed his Texas Department of Public Safety Registration to expire.

On June 14, 1984, Respondent executed applications to handle controlled substances with both the Drug Enforcment Administration and the Texas Department of Public Safety. On the DEA application for registration, he answered "yes" to the question asking whether he was

> * * * currently authorized to * * * prescribe, distribute, dispense * * * or otherwise handle controlled substances in the schedules for which you are applying under the laws of the state or jurisdiction in which you are operating or propose to operate?

At that time, Respondent did not possess a valid Texas Department of Public Safety registration. Without the state registration, a practitioner is not authorized to handle controlled substances in Texas. Respondent also answered his Texas Department of Safety registration application indicating that he possessed a valid DEA registration, although that registration had expired in 1982. Respondent subequently withdrew his DEA application for registration after he was informed by Diversion Investigators from the DEA Houston Field Division that he could not obtain a DEA registration without possessing a valid state controlled substance registration.

On December 28, 1984, following an administrative hearing, Respondent's state dental license was indefinitely suspended by the Texas State Board of Dental Examiners. The Board based its decision upon Respondent's 1982 conviction. Besides a review of state triplicate prescriptions for Schedule II controlled substances issued by Respondent, The Board did not conduct an independent investigation regarding Respondent's controlled substance handling activities. At that hearing, Respondent testified about his involvement in the cocaine importation scheme. He emphasized that no drugs or money ever changed hands during the transactions, and claimed that the activities were nothing "but people sitting around B.S.ing about making 10 million dollars." Although he conceded that he had erred in associating with persons involved in those activities, he asserted that "there would be a lot of people who would be tempted by 2 million dollars for doing nothing, and these people were coming around flashing money."

On November 15, 1985, the Texas State Board of Dental Examiners reinstated Repondent's license to practice dentistry in that state, effective October 15, 1985, subject to certain conditions. One of the conditions was that Respondent would not be permitted to handle controlled substances in state Schedules II and IIN for for a period of three years, or until approved by the Board. The Board also required Respondent to appear before the Board on a semiannual basis and to comply with the laws, rules and regulations governing dental practice in the state.

On October 28, 1985, Respondent applied for a new Texas Department of Public Safety registration in state Schedules III, IIIN, IV and V. After his application was denied on November 21, 1985, Respondent requested a hearing in the matter. On July 16, 1986, following the hearing, the Texas Department of Public Safety issued an order granting Respondent's application for registration.

On August 24, 1986, Respondent executed another application for a DEA registration, requesting permission to handle Schedule III, IIIN, IV and V controlled substances.

Respondent appeared before the Texas State Board of Dental Examiners in January 1987, requesting reinstatement of his Schedule II and IIN controlled substance handling privileges in that state. The Board granted his request. Respondent also received a Texas Department of Public Safety registration, dated June 9, 1987, authorizing him to handle state Schedule II, IIN, III, IIIN, IV and V controlled substances.

The Administrator may deny an application for registration if he determines that such registration would be inconsistent with the public interest. The factors which are considered in determining whether the registration would be in the public interest are enumerated in 21 U.S.C. 823(f). Two of the factors to be considered include the applicant's conviction record under Federal or state laws relating to controlled substances, and the applicant's compliance with Federal, state or local laws relating to controlled substances. All factors need not be present for the Administrator to deny an application for registration. Instead, the Administrator may accord each factor the weight he deems appropriate in determining the public interest. See *Paul Stepak, M.D.*, 51 FR 17556 (1986).

In this instance, there is no question that Respondent's felony conviction resulted from illegal activities involving controlled substances. He was an active participant in a conspiracy to import a large quantity of cocaine into the United States. Although the illegal activities which resulted in Respondent's conviction fell outside the scope of his professional practice and did not involve the use of his DEA registration, the conviction constitutes a sufficient basis for finding that his registration is not in the public interest. See *Gordon Acker, M.D.*, Docket No. 86-41, 52 FR 9962 (1987), aff'd *sub nom Acker v. DEA*, No. 87-1160 (D.C. Cir. January 19, 1988); and *Walker L. Whaley, M.D.*, Docket No. 85-12, 51 FR 15556 (1986).

Based upon Respondent's felony conviction relating to controlled substances, and the facts underlying that conviction, the Administrator finds that Respondent's registration would not be in the public interest. The FBI investigation revealed that Respondent played a significant role in the conspiracy to import cocaine. He introduced the Special Agents to an individual who had contacts in

Colombia able to supply the cocaine. He attempted to locate buyers for the cocaine. He also planned to share in the anticipated profits from the transaction. The scheme was never carried out because of the nature of the FBI investigation, not because of any lack of diligence by Respondent and the other participants. Statements made by Respondent at his sentencing hearing and the hearing before the Texas Board of Dental Examiners indicate that Respondent has not acknowledged the gravity of his illegal activities. Even the brief summary of Respondent's testimony originally provided in his prehearing statement was consistent with the statements he made during the criminal sentencing hearing and the state licensing hearing. Clearly, Respondent has repeatedly attempted to minimize the seriousness of his involvement in the cocaine importation scheme, rather than to accpet responsibility for his actions.

A DEA registration carries with it a serious responsibility for the proper use of controlled substances. The Administrator requires assurance that the registrant will uphold his responsibility to handle controlled substances with sufficient care to protect the public interest. Respondent has yet to provide the Administrator with that degree of assurance. The only evidence of rehabilitation presented in the proceeding was that Respondent complied with the requirements imposed by the Texas State Board of Dental Examiners. These requirements were minimal and compliance with the requirements, absent any other evidence of rehabilitation, is insufficient to justify the issuance of a DEA registration to this Respondent. Consequently, the Administrator determines that issuing a DEA registration to Respondent would be inconsistent with the public interest.

Having concluded that Respondent's registration would be inconsistent with the public interest, the Administrator of the Drug Enforcement Administration, pursuant to the powers vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that the application for registration, executed by Neveille H. "Trey" Williams, D.D.S. on August 24, 1986, be, and it hereby is, denied.

This order is effective June 22, 1988.

Dated: June 16, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-14072; Filed 6-21-88; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL LABOR RELATIONS BOARD

Revision of Statement of Organization and Functions; Change in Status of Hartford Subregional Office (Subregion 39) to Regional Office (Region 34)

AGENCY: National Labor Relations Board.

ACTION: Notice of upgrading of Hartford Subregional Office to Regional Office status.

SUMMARY: The National Labor Relations Board is reorganizing the structure of its office in Hartford, Connecticut, to upgrade it from a Subregion of the Boston Regional Office to a Regional Office and is revising its Statement of Organization and Functions accordingly.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: The National Labor Relations Board has decided to upgrade the status of the Agency's Hartford Subregional Office (Subregion 39) from a Subregion of the Boston Regional Office to the full status of a Regional Office headed by a Regional Director. The purpose of the change in status of Subregion 39 is to provide improved case processing capability for the Hartford Office. This change will vest the new Regional Office with independent casehandling responsibility with respect to both unfair labor practice and representation case. Currently, the officer in charge in Subregion 39 has been delegated all the powers, duties, and functions of a Regional Director except for the final processing of representation proceedings, which remains within the responsibility of the Director of the Boston Regional Office. With the change to Regional Office status the Regional Director of the Hartford Region will have the same authority in the representation case area as has been delegated to other Regional Directors.

The geographical area covered by the Hartford Region will continue to be the same as that currently covered by the Subregion, namely, the entire State of Connecticut.

The newly created Region will be designated as Region 34.

The last list of Regional and Subregional Offices was published at 53 FR 10305-10308, March 30, 1988.

Accordingly, the NLRB revises its Statement of Organization and Functions to reflect the addition of Region 34, Hartford, and the elimination of Subregion 39.

Dated, Washington, DC, June 17, 1988.

By direction of the Board. National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 88-14083 Filed 6-21-88; 8:45 am]

BILLING CODE 7545-01-M

NATIONAL SCIENCE FOUNDATION

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 22 Jackson Place, Room 3208, NEOB Washington, DC 20503.

Title: Survey of Superconductivity Research and Development Activities in Industry.

Affected Public: Businesses or other for profit.

Response/Burden Hours: 100 responses, 200 burden hours.

Abstract: Quantitative information on R&D expenditures and scientific and engineering (S&E) employment in superconductivity is needed to improve the ability of the Federal Government to assess its policymaking and budget formulation activities in science and technology. Executive Branch agencies and the Congress use responses of industry leaders to make timely decision on S&T policy questions.

Dated: June 17, 1988.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 88-14031 Filed 6-21-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Polar Programs; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs.

Date and time:

July 11, 1988, 8:30 a.m.-5:00 p.m.

July 12, 1988, 8:30 a.m.-5:30 p.m.

Type of meeting:

Place: National Science Foundation, Rooms 543 and 627, 1800 G Street, NW., Washington, DC 20550.

Type of meeting: Closed—July 11, 1988, 8:30 p.m.–5:00 p.m.
Open—July 12, 1988, 8:30 a.m.–5:00 p.m.
Contact Person: Dr. Peter E. Wilkniss, Division Director, Division of Polar Programs, Room 620, National Science Foundation, Washington, DC 20550. Telephone: 202/357–7766.
Purpose of Committee: Serves to provide expert advice to the U.S. Antarctic Program and the Arctic Program, including advice on science programs, polar operations support, budgetary planning, and polar coordination and information.
Agenda:

July 11, 1988

8:30 a.m.–5:00 p.m. Room 627
Subcommittee for the External Peer Oversight Review of the Polar Biology and Medicine Program
8:30 a.m.–5:00 p.m. Room 543
Subcommittee for Polar Science Long Range Plans

July 12, 1988

8:30 a.m.
Welcome, Introductions, Announcements
8:45 a.m.
Minutes of March 88 (Tenth) meeting—review DAC report and DPP response
9:00 a.m.
Subcommittee report—review of Polar Biology and Medicine
9:30 a.m.
Discussion
10:00 a.m.
Coffee Break
10:15 a.m.
Briefing on USAP Safety Review
10:30 a.m.
Oversight review of Polar Operations
11:30 a.m.
Lunch Break
1:00 p.m.
Subcommittee report—Polar Science Long Range Plan and Discussion
2:00 p.m.
Recent developments in Polar Science
3:30 p.m.
DAC Tasking and Plans
5:00 p.m.
Adjourn

Reason for Closing: The meeting will deal with a review of grants and declinations in which the Committee will review materials containing the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This meeting will also include a review of peer review documentation pertaining to applicants. Any non-exempt materials that may be discussed at this meeting (proposals that have been awarded) will be inextricably intertwined with the discussion of exempt materials and no further separation is practical. The meeting will also deal with budgetary data or privileged financial information in connection with work on long range plans. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
June 17, 1988.

[FR Doc. 88–14032 Filed 6–21–88; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a change to Facility Operating Licenses NPF–10 and NPF–15 issued to the Southern California Edison Company, (SCE) et al., (the licensee), for operation of the San Onofre Nuclear Generating Station Units 2 and 3, located in San Diego, California.

Identification of the Proposed Action

Section 2.B(6) of the licenses currently authorizes SCE to possess "such byproducts and special nuclear materials as may be produced by the operation of the facility." The proposed change woud replace "the facility" with "San Onofre Unit 1 and 2" in NPF–10 and "San Onofre Unit 1 and Unit 3" in NPF–15. The effect of this change would be to allow storage of spent fuel produced by operation of Unit 1 in either Unit 2 or Unit 3. The change proposed by the staff would include that proposed by SCE and would add the following sentences to the end of Section 2.B(6) of Facility Operating Licenses NPF–10 and NPF–15, as indicated:

NPF–10

Transshipment of Unit 1 fuel between Units 1 and 2 shall be in accordance with SCE letters to U.S. Nuclear Regulatory Commission dated March 11, 18, and 23, 1988 and in accordnace with the Quality Assurance Requirements of 10 CFR Part 71.

NPF–15

Transshipment of Unit 1 fuel between Units 1 and 3 shall be in accordance with SCE letters 5 to U.S. Nuclear Regulatory Commission dated March 11, 18, and 23, 1988 and in accordance with the Quality Assurance requirements to 10 CFR part 71.

Summary of Environmental Assessment

The environmental impacts of plant operations were estimated in the "Final Environmental Statement Related to Operation of San Onofre Nuclear Generating Station, Unit 1, "U.S. Atomic Energy Commission, October 1973 and "Final Environmental Statement Related to the Operation of San Onofre Nuclear Generating Station, Units 2 and 3," U.S. Nuclear Regulatory Commission, April 1981 (NUREG–0490). Since these documents did not consider the transfer of Unit 1 spent fuel between the units as recently proposed, the environmental impacts as a consequence of this transfer will be addressed here.

The proposed amendment would not alter the type or amount of fuel that can be received, used, and possessed at the site. Limitations on the amount of fuel that may be stored in the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 spent fuel pools and the manner in which it may be stored and handled would also not be changed. Only the Unit 1 spent fuel that has aged for at least 120 days will be transferred to Units 2 and 3 spent fuel pools. A cask for which a Certificate of Compliance has been issued by the NRC wil be used to transfer spent fuel between units.

Occupational Radiation Exposure

The cumulative occupational radiation dose for the proposed transfer operation is estimated to be less than 0.1 person-rem per spent fuel assembly. Based on present and projected operations, the staff estimates that the proposed transfer of Unit 1 spent fuel to Units 2 or 3 will add only a small fraction to the total annual occupational radiation dose at the facility. The total cumulative occupational dose for 1985 and 1986 at the site was approximately 773 person-rems per year. The total cumulative dose for seven spent fuel assemblies in one cask would be less than 1 person-rem. The licensee estimated no more than 216 spent fuel assemblies would be transferred in any one year; this corresponds to a dose of about 22 person-rems. This would be less than 3% of the annual cumulative occupational dose at the site. Thus, the staff concludes that the proposed transfer of spent fuel will not result in any significant increase in doses received by workers

10 CFR 71.47 provides that radiation levels external to the package must not exceed 10 mrem/hr at any point two meters beyond the outermost sides of

the transporting vehicles. For a cask meeting this criterion, the corresponding dose rate is approximately 0.0001 rem/hr at the nearest site boundary. The licensee stated that the time to travel from the Unit 1 cask area to the Unit 2 or Unit 3 cask area will be about ½ hour. Under the above conditions, and assuming a maximum of 31 transfers per year, the staff estimates that the annual dose commitments to a maximally exposed individual at the nearest site boundary due to the proposed transfer of spent fuel between the units will be less than 2 millirem. Likewise, the staff estimates that the annual population dose to the general public due to the proposed transfer would be a small fraction of the three person-rem population dose estimated in the Final Environmental Statements for Units 1, 2, and 3 for transportation of all fuel and waste. Thus, the estimated annual total population dose including the proposed transfer of spent fuel would be very small compared to the annual cumulative dose of about 61,000 person-rems to this same population from background radiation.

Non-Radiological Impact

The Commission's staff has evaluated the potential non-radiological environmental impacts associated with the proposed spent fuel transfer and concluded that they are not significant. The staff has concluded that the proposed license change would not cause a significant increase in the impact to the environment and will not change any conclusions reached by the staff in the Final Environmental Statement for each unit.

Finding of No Significant Impact

The Commission's staff has reviewed the proposed license change to transfer the spent fuel between the units relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license change would not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed license change.

For further details with respect to this action, see (1) the application for license change dated December 30, 1987 as supplemented by letters of January 12, February 22, March 11, 18, and 23, 1988, (2) the "Final Environmental Statement Related to the Operation of San Onofre Nuclear Generating Station, Units 2 and 3," dated April 1981, (3) the "Final Environmental Statement Related to Operation of San Onofre Nuclear Generating Station, Unit 1" dated October 1973, and (4) the Environmental Assessment dated June 15, 1988. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, Washington, D.C. 20555, at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 15th day of June, 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V, and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88-14052 Filed 6-21-88; 8:45 am]

BILLING CODE 7590-01-M

Inactive Uranium Mill Facilities; Availability and Request for Public Comment on a Draft Technical Position on Information Needs To Demonstrate Compliance With EPA's Proposed Groundwater Protection Standards

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of and soliciting public comment on a draft "Technical Position on Information Needs to Demonstrate Compliance with EPA's Proposed Groundwater Protection Standards in 40 CFR Part 192, Subparts A–C." The Position provides NRC guidance on the types of information and assessments that the NRC staff considers acceptable to demonstrate compliance with standards proposed by the U.S. Environmental Protection Agency (EPA) for groundwater protection at inactive uranium mill tailings sites. NRC is requesting public comment on the draft Technical Position before it is finalized.

DATE: Comments on the draft Technical Position should be submitted by August 22, 1988 to ensure that the comments are considered by NRC staff in developing the final Technical Position.

ADDRESSES: Copies of the draft Technical Position may be obtained by writing to Michael Weber at Mail Stop 5E4, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments on the draft position should be sent to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, between the hours of 7:30 a.m. and 4:15 p.m. weekdays except Federal holidays. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Weber, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–0565.

SUPPLEMENTARY INFORMATION: The NRC staff is developing guidance to assist the Department of Energy (DOE) in developing remedial action plans to demonstrate compliance with standards proposed by EPA for groundwater protection at inactive uranium mill tailings sites. Title I of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) requires the NRC to concur with DOE's selection and performance of remedial action in accordance with EPA's standards. The draft Technical Position provides guidance on the types of information and assessments that the staff considers acceptable to demonstrate compliance with EPA's proposed groundwater protection standards. These standards are contained in proposed revisions to Subparts A–C of 40 CFR Part 192 published in the **Federal Register** on September 24, 1987 (52 FR 36000). Under section 108 of UMTRCA, as amended, and Section 275 of the Atomic Energy Act, remedial action taken by DOE must comply with these proposed standards until EPA promulgates final standards.

EPA's proposed disposal and control standards in Subparts A and C of 40 CFR Part 192 require DOE to demonstrate that disposal of residual radioactive material complies with site-specific groundwater protection and closure performance standards. The purpose of the groundwater protection and closure performance standards is to establish minimum acceptable performance for the disposal and control of residual radioactive material to prevent or control future releases of hazardous constituents. The disposal and control standards also require implementation of a monitoring and corrective action program to provide the basis for performance assessment,

confirm the performance of disposal units, and provide for corrective actions that may be necessary if disposal units do not perform adequately.

EPA's proposed cleanup standards in Subparts B and C of 40 CFR Part 192 require DOE to demonstrate that existing groundwater contamination at inactive uranium mill sites will be cleaned up or otherwise controlled to protect humans and the environment. The clean up standards require a demonstration consisting of three components: a groundwater cleanup standard, a cleanup demonstration, and a cleanup monitoring program. The groundwater cleanup standard specifies target concentrations for cleanup of hazardous constituents in contaminated groundwater. The cleanup demonstration shows how the planned remedial action will attain the cleanup standard. The cleanup monitoring program defines the extent of groundwater contamination, provides feedback on the effectiveness of the cleanup program, and monitors compliance with the groundwater cleanup standard.

Consistent with EPA's proposed standards for groundwater protection, the draft Technical Position distinguishes between aspects of the disposal and control of residual radioactive material at new disposal sites and at existing inactive mill sites, and the cleanup of existing groundwater contamination at inactive mill sites. In the interim, before EPA promulgates final groundwater protection standards, the NRC staff will review groundwater protection information and assessments submitted by DOE using the draft Technical Position along with relevant procedures and acceptance criteria provided in Chapter 4 of the staff's Standard Review Plan for UMTRCA Title I Mill Tailings Remedial Action Plans. The staff intends to finalize the Technical Position and revise the Standard Review Plan after EPA promulgates final groundwater protection standards for inactive uranium mills under Title I of UMTRCA.

NRC staff is requesting comments from interested parties to assist the staff in developing the Technical Position and will use those comments in revising the Standard Review Plan and finalizing the Technical Position after EPA promulgates final groundwater protection standards for inactive uranium mill sites under Title I of UMTRCA.

Dated at Rockville, Maryland, this 10th day of June, 1988.

R. John Starmer,

Acting Chief, Technical Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 88-14053 Filed 6-21-88; 8:45 am]

BILLING CODE 7590-01-M

Appointments to Performance Review Board for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to performance review board for Senior Executive Service.

SUMMARY: The Nuclear Regulatory Commission (NRC) has announced the following new appointments to the NRC Performance Review Board (PRB):

New Appointees:

Joseph J. Fouchard, Director, Public Affairs, Office of Governmental and Public Affairs

Clemens J. Heltemes, Jr., Deputy Director, Office for Analysis and Evaluation of Operational Data

William C. Parler, General Counsel, Office of the General Counsel

William T. Russell, Regional Administrator, Region I

Brian W. Sheron, Director, Division of Systems Research Office of Nuclear Regulatory Research

In addition to the above appointments, the following members are continuing on the PRB:

Paul E. Bird, Director, Office of Personnel

John C. Hoyle, Assistant Secretary of the Commission, Office of the Secretary

William G. McDonald, Director, Office of Administration and Resources Management

Frank J. Miraglia, Associate Director for Projects, Office of Nuclear Reactor Regulation

John M. Montgomery, Deputy Regional Administrator, Region IV

Hugh L. Thompson, Jr., Director, Office of Nuclear Material Safety and Safeguards

William B. Kerr, Director, Office of Small and Disadvantaged Business Utilization and Civil Rights, continues to serve as an ex officio non-voting member.

The following members are continuing on the NRC Performance Review Board Panel:

Robert M. Bernero, Deputy Director, Office of Nuclear Material Safety and Safeguards

Hudson B. Ragan, Assistant General Counsel for Administration, Office of the General Counsel

James M. Taylor, Deputy Executive Director for Regional Operations, Office of the Executive Director for Operations

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Hugh L. Thompson, Jr., Chair, Performance Review Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-3352.

Dated at Rockville, Maryland, this 14th day of June, 1988.

For the Nuclear Regulatory Commission.

Date: June 14, 1988.

Victor Stello, Jr.,

Chairman, Executive Resources Board.

[FR Doc. 88-14067 Filed 6-21-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-352-OLA (TS Iodine)]

Philadelphia Electric Co. (Limerick Generating Station, Unit 1); Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this operating license amendment proceeding: Alan S. Rosenthal, Chairman, Thomas S. Moore, Howard A. Wilber.

Dated: June 16, 1988.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 88-14068 Filed 6-21-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-289 and 50-320]

GPU Nuclear Corp., et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-50 and DPR-73, issued to GPU Nuclear Corporation, *et al.* (the licensee), for operation of the Three Mile Island Nuclear Station, Units 1 and 2 located in Dauphin County, Pennsylvania.

The proposed amendments would approve the TMI Modified Amended Physical Security Plan as requested in the licensee's June 2, 1988 submittal. The amendment request is responsive to the NRC's Miscellaneous Amendments and Search Requirements Rule (10 CFR 73.55) published on August 4, 1986. It also proposes major changes to the listing of vital areas associated with TMI-2 and consolidation of security forces for both TMI Units 1 and 2.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided below.

The requirements of 10 CFR 73.55 are designed to "provide high assurance that activities involving special nuclear material are not inimical to the common defense and security, and do not constitute an unreasonable risk to the public health and safety." Furthermore, the physical protection requirements of 10 CFR 73.55 are "* * * designed to protect against the design basis threat of radiological sabotage" as defined in Section 73.1(a).

The proposed Security Plan change is based on the concept of devitalizing TMI-2 while still maintaining adequate security for TMI-1. GPU Nuclear believes that the proposed devitalization of TMI-2 warranted based on previous regulatory guidance that relates the concern of radiological sabotage to the off-site dose criteria of 10 CFR Part 100. Numerous analyses have been performed to determine the off-site dose potential for both normal and accident conditions at TMI-2. These analyses would not be adversely impacted by the proposed plan change since the consequences of these analyses assume release of the evaluated source term (e.g., rupture of cansister contents, fires in containment.) The results of the referenced analyses have determined that there are no credible accident scenarios at TMI-2 that could exceed the off-site dose criteria of 10 CFR Part 100. Additionally, the present status of TMI-2 is unique in that it is a long-term cold shutdown condition. There are no active systems required to maintain TMI-2 in this condition as was recognized by the NRC in License Amendment No. 27 which deleted the Technical Specfication requirements for backup on-site AC power sources (e.g., emergency diesel generators, nuclear service river water system, *et al.*). This was also recognized by the Commission when it granted TMI-2 regulatory relief from the requirements of 10 CFR 50, Appendix A, General Design Criteria 17 and 19 related to on-site AC power sources and Control Room habitability. Thus, the potential for radiological sabotage at TMI-2 has been drastically reduced if not eliminated. Therefore, the proposed change does not increase the probability or consequences of an accident previously evaluated.

The proposed Security Plan change does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change is consistent with previous regulatory relief from the requirements of 10 CFR 73.55 for vitalized areas during extensive shutdown. Furthermore, as the TMI-2 facility is defueled, the potential for radiological sabotage will be further reduced. Additionally, the off-site dose releases addressed in the accident scenarios previously evaluated will bound the remaining recovery activities.

Finally, the proposed change does not involve a reduction in a margin of safety based on the fact that the proposed change would still retain access control to the TMI-2 Protected Area via the TMI-2 Processing Center until such time that TMI-2 enters Post-Defueling Monitored Storage. Specifically, the TMI-2 Processing Center will continue to be manned by Site Security personnel.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 22, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceedings as to which petiioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner

shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated June 2, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 16th day of June 1988.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR. Doc. 88-14054 Filed 6-21-88; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan Fish and Wildlife Program; Proposed Interpretation of Five-Year Review and Request for Recommendations Requirements of the Pacific Northwest Electric Power Planning and Conservation Act

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of proposed agency interpretation of five-year review and request for recommendations requirements of the Pacific Northwest Electric Power Planning and Conservation Act.

SUMMARY: The Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted, pursuant to the Pacific Northwest Electric Power and Conservation Act, 16 U.S.C. § 839-839h (1982) (the Act), a Columbia Basin Fish and Wildlife Program (November 14, 1982) and a Northwest Conservation and Electric Power Plan (April 17, 1983). Section 4(d)(1) of the Act requires the Council to "review" the Power Plan at least every five years and section 4(h)(2) requires the Council to solicit fish and wildlife recommendations prior to "development, review, or major revision" of the Plan.

This notice sets forth the Council's proposed interpretation of:

- What constitutes a "major revision" of the Power Plan and
- What constitutes "review" of the Plan, either of which will trigger a request for fish and wildlife recommendations. This proposed interpretation also establishes the scope of the recommendations that will be requested in each instance. This notice sets forth the full text of the Council's proposed interpretation and explains how to comment on this proposal.

DATES AND ADDRESSES: All written comments must be received by August 8, 1988 in the Council's central office or must be presented at the Council's August meeting. The Council's central office address is 851 S.W. Sixth, Suite 1100, Portland, Oregon 97204. A public hearing on the proposed interpretation will be held at the Council's meeting to be held on August 10-11, 1988, in

Kalispell, Montana. Notice of the hearing will be given in accordance with usual Council notice procedures.

Guidelines for Presenting Oral Comments at Hearings

1. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis, Information Coordinator, at the Council's central office (851 S.W. Sixth, Suite 1100, Portland, Oregon 97204 or (503) 222–5161 (toll free 1–800–222–3355 in Idaho, Montana, and Washington or 1–800–452–2324 in Oregon)) no later than the day before the hearing.

2. Those who do not reserve time periods will be permitted to present oral comments as time permits.

3. Each speaker will be allowed 15 minutes during the hearing.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbe Fendall, Legal Assistant, 851 S.W. Sixth, Suite 1100, Portland, Oregon 97204 (toll-free 1–800–222–3355 in Idaho, Montana and Washington; toll-free 1–800–452–2324 in Oregon; or 503–222–5161).

SUPPLEMENTARY INFORMATION: Through its experience in implementing the Power Plan and Fish and Wildlife Program, the Council has developed a practice by which it continually reviews and updates, in orderly fashion, elements of both the Plan and the Program. The frequency with which an element is updated often depends on the availability of new information or changed circumstances. For example, in the case of the Power Plan, the Council has several times reviewed and amended the model conservation standards (MSC) for new residential and commercial construction based on new data, improved analytical methodologies, and the Council's own monitoring of Plan implementation. Development of "generic" MCS, revised commercial MCS, and a reevaluation of gas and oil prices represent other instances in which the Council has reviewed or amended some discrete aspect of the Power Plan in an ongoing or serial fashion.

The Council judges that these amendments to the Power Plan did not properly trigger the request for fish and wildlife recommendations on two grounds: first, although these processes were a review of some part of the Power Plan, they did not take up the entire Plan for top-to-bottom reexamination. Second, although they resulted in certain revisions to the Plan, the revisions were properly characterized as less than "major," because they did not result in changes to the Plan that had substantial consequences for fish and wildlife.

In the case of the Fish and Wildlife Program, the Council has pursued a similar approach and has taken up a variety of particular topics for individual consideration. The Council has an ongoing wildlife planning process that generates proposed Program amendments on a more or less continuous basis. The system planning process now being conducted by the fish and wildlife agencies and Indian tribes, which is funded by the Council, is intended to result in a system-wide framework for proposed amendments aimed at doubling anadromous fish runs consistent with system policies. In addition, the Council is now considering issue-specific amendments, such as protected areas, and in the past has taken up other such amendments, such as the Program's spill provisions.

While some proposed amendments are taken up on the Council's own initiative, others are the result of informal suggestions or recommendations from outside parties. Some have resulted from litigation. In addition, the Council has adopted specific procedures that allow any person to petition for an amendment to the Plan or Program at any time.

This current practice of continuous review of the Plan and Program, coupled with the right of any interested person to make formal or informal requests for amendment, has a number of adavantages. It allows the Plan and Program to remain current, by making them responsive to new data, improved analysis, and new technologies. It enables the Council to focus attention on issues of critical importance to the region. It also permits interested persons and organizations to concentrate their resources on particular questions, without having to address the whole spectrum of issues that would be raised if the entire Plan or Program were under review.

The Act guarantees interested persons the right to make formal recommendations for amendments to the Fish and Wildlife Program in two instances: in the case of "review" and in the case of a "major revison" of the Power Plan. The Act required the Council to call for formal recommendations prior to the development of the initial Power Plan. Although the Council's current practices are intended to encourage ongoing involvement and participation in the Council's planning processes, the right to invoke the fish and wildlife recommendation procedure is a valuable right and one that the Council believes should be fully preserved. However, in the course of a continuous review of the Plan and Program, it is sometimes difficult to determine precisely when a "review" or a "major revision" of the Plan has occurred. Consequently it is difficult to know just when the recommendation process is properly triggered and what the scope of such recommendations should be. For these reasons, the Council is proposing the following interpretive policy.

General Policy, Interpretation, and Practice

General Policy

It is the Council's policy to give due consideration to fish and wildlife concerns along with power uses of the Columbia River and its tributaries in its ongoing amendment and implementation of the Power Plan and Fish and Wildlife Program. The Council intends to pursue its practice of updating and revising the Plan and the Program on a regular and continuous basis, in accord with the personnel and resources at its disposal. As significant new data, improved analytical tools, or the Council's monitoring of Plan and Program implementation suggest it is appropriate, the Council will select the most important issue to address according to the goals set forth in the Northwest Power Act. Interested persons are always free to petition the Council to amend particular elements of the Plan or Program, pursuant to the Council's existing policymaking petition process (51 FR 23865 (July 1, 1986)) for the Power Plan and Section 1303(a) of the Fish and Wildlife Program.

Review

The Council interprets "review," as used in section 4(d)(1) and 4(h)(2) of the Act, to mean a formal process to consider amendments to the entire Power Plan. This is the review that requires the Council to request recommendations for the Fish and Wildlife Program generally.

The Council acknowledges its statutory obligation to perform this review of the Power Plan at least every five years, and it will do so, beginning from May 1, 1986, when notice of the most recent complete amendment of the Plan was published in the **Federal Register** (51 Fed. Reg. 16239 (May 1, 1986)). This review, which may be initiated before 1991, will examine the whole Power Plan taken in its entirety. If the Council determines that there are elements of the Plan that have not been scrutinized during the preceding five years, or if there are important elements that have become substantially out of date since the last time the Council addressed them in its ongoing update process, then the Council will propose such further amendments as it judges appropriate.

Prior to such review, the Council will call for fish and wildlife recommendations generally. Recommendations must be submitted, along with supporting documents, within 90 days of the Council's request, unless the Council extends the time pursuant to section 4(h)(3).

Major Revision

The Council interprets a "major revision" of the Power Plan, as used in Section 4(h)(2) of the Act, to mean one that is likely to have significant consequences for the fish and wildlife affected by the development or operation of hydroelectric facilities in the Columbia River Basin.

Whenever the Council judges that an amendment proposed during the course on its ongoing update of the Power Plan is likely to result in a major revision of the Plan, it will so state. The Council strongly encourages all parties to participate actively in the consideration of fish and wildlife issues that pertain to such an amendment. Before adopting such an amendment to the Power Plan, the Council will request relevant recommendations for Fish and Wildlife Program amendments, as required by section 4(h)(2). "Relevant" recommendations are those that address the effects on fish and wildlife anticipated from the proposed revision. Recommendations that are not relevant to the revision will not be considered.

Whenever, on the other hand, the Council determines that an amendment does not constitute a major revision, it will so state. Any interested person who believes otherwise may petition the Council for reconsideration under the Council petition process for the Power Plan (51 FR 23865 (July 1, 1986)). Such petition must be received by the Council no later than 60 days following the date on which the Council gives notice of the final Plan amendment.

Edwin Sheets,

Executive Director.

[FR Doc. 88-14028 Filed 6-21-88; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25804; File Nos. SR-NYSE-87-11 and 88-04]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), on April 6, 1987, submitted to the Securities and Exchange Commission ("Commission") a proposal to provide permanently for opening price settlement of stock index options traded on the NYSE (File No. SR-NYSE-87-11). On March 14, 1988, the NYSE submitted a proposal to add permanent auxiliary opening procedures to accommodate the increased order flow experienced on quarterly expirations (File No. SR-NYSE-88-04).[3] The Commission herein approves the two NYSE proposals.

In Securities Exchange Act Release No. 24466 (May 15, 1987), 52 FR 19947, the Commission granted partial approval to the opening price settlement proposal, so that it applied only to stock index option contracts traded on the NYSE and expiring in August and September 1987. In several additional rule filings, the NYSE requested and was granted approval to implement opening price settlement of index options listed on subsequent monthly expirations.[4] The most recent of the NYSE filings (File No. SR-NYSE-88-05) permits opening price settlement of index options listed on or prior to the September 1988 expiration.[5] The auxiliary opening procedures proposal was granted limited accelerated approval for purposes of the March 18, 1988 quarterly expiration and was published for comment on permanent approval in Securities Exchange Act Release No. 25476 (March 17, 1988), 53 FR 9559. The Commission did not receive any comments on either proposed rule change.

The NYSE has employed opening price settlement of NYSE Composite Index ("NYA") options[6] since the June 1987 expiration.[7] The NYSE proposes to amend permanently the definition of the term "Current Index Group Value" in NYSE Rule 700(b)(17) to permit the Exchange to specify that the closing expiration Friday value of NYA options will be calculated from the opening prices of the constituent stocks on that day. The proposed rule change also makes clear that trading in NYA options would end on the Thursday before expiration.

The NYSE's auxiliary opening procedures, which are described in detail in Securities Exchange Act Release No. 25476, 53 FR at 9559, have been employed on the last four quarterly expirations (*i.e.*, June, September, and December 1987, and March 1988) pursuant to grants of limited approval by the Commission. The auxiliary procedures require stock orders relating to options or futures contracts that settle based on opening expiration Friday prices to be received by 9:00 a.m. on quarterly expirations.[8] The Exchange then disseminates the size of substantial market order inbalances (50,000 shares or more) as of 9:00 in certain stocks, which are major component stocks of broad-based stock indexes.

On quarterly expiration Fridays, the Exchange makes its automatic order routing system, known as "SuperDot," available to accept orders at 7:30 a.m. The Exchange also raises the order size eligibility for the Opening Automation Reporting Service ("OARS") to 30,099 shares—in effect, raising SuperDot's pre-opening order size parameters.[9] The procedures confine orders relating to opening-price settling contracts to market orders and require them to be identified appropriately. the procedures also ban "limit-at-the-opening" orders and apply to reduced waiting periods for second and subsequent price indications approved previously by the Commission.[10]

---

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1982).

[3] Quarterly expirations are the four expiration Fridays each year on which *all* stock index futures, stock index options, and options on stock index futures expire concurrently. Expiration Friday is the one Friday each month, including the four quarterly expirations, on which at least *some* stock index derivative instruments expire.

[4] File Nos. SR-NYSE-87-13, 87-26, and 87-34. The NYSE proposal first was submitted to the Commission on march 16, 1987 (File No. SR-NYSE-87-06). The Exchange requested and the Commission granted approval of opening price settlement only with respect to contracts expiring in June 1987. Securities Exchange Act Release No. 24276 (March 27, 1987), 52 FR 10836. In granting each extension of opening price settlement, the Commission noted its desire to study the new procedures' effectiveness in quelling market volatility associated with expirations of stock index options and futures. *See, e.g.*, Securities Exchange Act Release No. 25466 (March 15, 1988), 53 FR at 9395.

[5] Securities Exchange Act Release No. 25466 (March 15, 1988), 53 FR 9394. Approval of that filing is, of course, superseded by permanent approval of opening price settlement.

[6] The NYSE proposal applied originally to NYA and NYSE Beta Index options. Beta Index options, however, were delisted by the Exchange on December 31, 1987.

[7] NYA options expire on a monthly basis. Other, but not all, stock index options and futures contracts, including the Standard & Poor's ("S&P") 500 Stock Index futures contract, now settle based on opening expiration Friday stock prices. *See, e.g.*, Securities Exchange Act Release No. 24367 (April 17, 1988), 52 FR 13890 (S&P 500 Index options).

[8] Prior to each quarterly expiration, the Exchange, in response to changes in market weighting, adjusts the list of stocks subject to the procedures.

[9] The Exchange recently was granted authority to raise the order size eligibility for OARS to 30,099 shares on all trading days. Securities Exchange Act Release No. 25460 (March 14, 1988), 53 FR 9159.

[10] *See* Securities Exchange Act Release No. 24880 (September 4, 1987), 52 FR 35020.

The NYSE believes that implementation of its auxiliary opening procedures and of opening price settlement of NYA options will help ameliorate expiration Friday stock price volatility by permitting the Exchange to rely on its time-tested opening procedures. The Exchange asserts that its auxiliary opening procedures are designed to provide for an efficient opening of each stock as close to 9:30 a.m. as possible by requiring dissemination of a picture of substantial order imbalances in the affected stocks as of 9:00 a.m. and by giving off-floor participants time to react to any such order imbalances. In addition, the NYSE argues that cutting off order entry at 9:00 a.m. is required in order to provide sufficient time for order imbalances to be disseminated and taken into consideration by market participants. Finally, in support of its preclusion of limit-at-the-opening orders, the Exchange asserts that because such orders cannot be entered into the electronic display book, acceptance of limit-at-the-opening orders would complicate the specialist's task by requiring maintenance of a separate, manual tally of orders.[11]

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [12] and the rules and regulations thereunder. The Commission over the last four quarterly expirations has monitored closely the effectiveness of the NYSE's auxiliary opening procedures. From its analyses of trading on these four days, the Commission concludes that, in general, basing the settlement of index products on opening, as opposed to closing, prices on expiration Fridays helps alleviate the stock market volatility once experienced frequently on expiration Fridays.[13] The Commission's analysis of opening price settlement of NYA options and other derivative instruments on non-quarterly expirations supports this view. Although some stock index options and futures still settle based on closing expiration Friday prices, there were no significant problems arising from split settlement pricing over the last four quarterly expirations. If any such problems were to develop, the Commission would revisit the need for uniform settlement pricing times.

The Commission believes that one of the principal reasons that opening price settlement has helped quell expiration Friday Volatility is that the NYSE's auxiliary opening procedures permit the Exchange to handle relatively smoothly the increased volume diverted to the opening as a result of opening-price settlement of NYA options and other options and futures contracts. In particular, the early collection and dissemination of opening order imbalances provides market participants with sufficient opportunity to react accordingly and generally lessens the potential impact of such imbalances on specialists and other market participants. Although the Commission intends to continue to monitor actively the effectiveness of the NYSE's auxiliary opening procedures and of opening price settlement of NYA options, we believe that the procedures have functioned well enough over the last year to warrant permanent approval.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule changes are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: June 15, 1988.

[FR Doc. 88-14093 Filed 6-21-88; 8:45 am]

BILLING CODE 8010-01-M

[11] The NYSE noted that customers still are free to enter regular limit orders.

[12] 15 U.S.C. 78f (1982).

[13] Only minor stock price volatility was experienced at the openings and closings on the last four quarterly expirations. Indeed, the openings were particularly smooth on those four days.

[14] 15 U.S.C. 78s(b)(2) (1982).

[Release No. 34-25805; File No. SR-NYSE-88-16]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Auxiliary Closing Procedures for Orders Relating to Expiring Stock Index Contracts

Pursuant to section19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 14, 1988, the New York Stock Exchange ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds auxiliary closing procedures for assisting in handling the order flow associated with the concurrent expiration of stock index futures, stock index options and options on stock index futures on June 17, 1988. It specifies procedures substantively identical to those used on March 18, 1988, and on several earlier expiration Fridays.

Specifically, the auxiliary procedures provide that market-at-the-close stock orders in 50 pilot stocks relating to index arbitrage positions must be received by 3:30 p.m. on June 17. The Exchange will promptly disseminate the size of substantial market order imbalances (50,000 shares or more) as of 3:30 in the pilot stocks. The procedures also ban entry of market-at-the-close orders in the pilot stocks after 3:30 p.m. unless orders (A) offset the imbalances and (B) are not for the purpose of liquidating an index arbitrage position.

The Exchange characterizes the proposed rule change as a Rule of the Board of Directors of the Exchange. The proposed rule change supersedes all other Exchange rules and policies inconsistent with it.

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-regualtory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose.* The purpose of the proposed rule change is to comply with the request of the Commission that the Exchange repeat the June 19, 1987 closing procedures on subsequent concurrent expirations of stock index futures, stock index options and options on stock index futures. (*See* September 16, 1987 letter to Robert J. Birnbaum, President, NYSE, from Richard G. Ketchum, Director, SEC.) The proposed rule change will make the procedures a rule of the Exchange.

2. *Statutory Basis.* The basis under the Act for the proposed rule change is section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the 1934 Act. Confirmation to the industry of the Exchange's intention to comply with the Commission's request that the Exchange repeat the closing procedures specified by the proposed rule change should occur as soon as possible to permit investors and firms to plan accordingly. Moreover, the procedures contain no substantive changes from the procedures used on previous expiration Fridays. Accordingly, the Exchange seeks action by the Commission in time to permit notification of interested parties well in advance of the June 17 expiration.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder. The market-on-close procedures described herein have been utilized on the prior seven expiration Fridays (the quarterly expiration when stock index futures, stock index options and options on stock index futures have simultaneous expirations). These procedures were part of efforts by the Commission and the self-regulatory organizations to address stock market volatility that has been associated with certain index arbitrage trading strategies on expiration Fridays. By requiring submission of market-at-close orders early and disseminating imbalances, the NYSE could attract contra-side interest to alleviate imbalances caused by the closing of index arbitrage positions. The procedures have proven to be operational successes, and have significantly contributed to the smooth handling of the increased order flow associated with these expirations.

The Commission finds good cause for approving this rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the Commission desires to notify market participants as soon as possible of the Exchange's intention to repeat these procedures on the upcoming June 17, 1988 expiration. Moreover, the procedures contain no substantive changes from the procedures utilized by the NYSE on March 18, 1988 and several earlier expiration Fridays.

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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the NYSE. All submissions should refer to the file number in the caption above and should be submitted by July 13, 1988.

It therefore is ordered, pursuant to section 19(b)(2) of the 1934 Act,[1] that the proposed rule change is approved.

[1] 15 U.S.C. Sec. 78s(b)(2)(1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: June 15, 1988.

[FR Doc. 88-14094 Filed 6-21-88; 8:45 am]

BILLING CODE 8010-01-M

First Fidelity Inc.; Application

June 16, 1988.

In the matter of issuer delisting; Application to withdraw from listing and registration; (First Fidelity Incorporated, 11½% Notes, Due 4-1-93) File No. 1-6610.

First Fidelity Incorporated ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company has determined to withdraw its security from the NYSE because the expense of continued listing is no longer justified. Trading in the security has been virtually nonexistent since January 1, 1988, and only sporadic prior to that time. As of January 1, 1988, approximately $50 million principal amount of the security were beneficially owned by approximately 81 persons.

Any interested person may, on or before July 7, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14095 Filed 6-21-88; 8:45 am]

BILLING CODE 8010-01-M

MacAndrews and Forbes Holding Inc., and MacAndrews and Forbes Group, Inc.; Application

June 16, 1988.

In the matter of issuer delisting; Applications to withdraw from listing and registration; MacAndrews & Forbes Holdings Inc., 13% subordinated debentures, due 3-1-99 (File No. 1-8679) and MacAndrews & Forbes Group, Incorporated, senior subordinated exchangeable variable rate notes, 13¼% of subordinated notes due 12-1-94, and 12¼% subordinated notes due 7-1-96 (File No. 1-6306)

MacAndrews & Forbes Holdings Inc. and MacAndrews & Forbes Group, Incorporated ("Companies"), have filed applications with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange ("Amex").

The reasons alleged in the applications for withdrawing these securities from listing and registration include the following:

The Companies have been informed that trading in the above securities has been limited and with respect to three of the securities there have been no trades since they were listed. In addition, with respect to all of the above securities, there is a limited number of registered holders. The Companies, therefore, have determined that the direct and indirect costs and expenses of continued listing is not longer justified.

Any interested person may, on or before July 7, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the applications have been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the applications 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. 14096 Filed 6-21-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16438; (812-7030)]

Mariner Funds Trust; Application

June 16, 1988

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Mariner Funds Trust ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 13(a)(2), 18(f)(1), 22(f) and 22(g), and approval requested under section 17(d) and Rule 17d-1 thereunder.

Summary of Application: Applicant seeks an order (i) to permit Applicant to enter into deferred fee arrangements with one or more members of its board of trustees ("Trustees") and (ii) to permit the Applicant and participating Trustees to effect transactions incident to such arrangements.

Filing Date: The application was filed on May 11, 1988. An amendment, the substance of which has been set forth in a letter to the staff of the Commission dated June 15, 1988, and which thus is included herein, will be filed during the notice period.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 11, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 9003 Greentree Commons, Marlton, N.J. 08053.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney (202) 272-2847 or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copies (800) 231-3282 (in Maryland (800) 258-4300).

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a business trust under the laws of Massachusetts. Applicant is managed by Marinvest Inc., a New York corporation, pursuant to an investment management agreement.

2. The Trustees of Applicant consist of six persons, none of whom is an "interested person" within the meaning of section 2(a)(19) of the 1940 Act. Each of the Trustees is currently compensated at approximately $7,000 per annum, and those Trustees who are members of Applicants nominating and auditing committees currently receive aggregate additional annual compensation of approximately $2,000 for serving on each such committee. Participation in the deferred fee arrangements will be limited to those Trustees who are not "interested persons" within the meaning of section 2(a)(19) of the 1940 Act.

3. The proposed deferred fee arrangements would be implemented by means of a deferred fee agreement (the "Agreement") entered into between a participating Trustee and Applicant. The effect of such Agreement would be to permit individual Trustees to elect to defer receipt of their Trustees' fees to enable them to defer payment of income taxes on such fees, to give the Trustees the number of shares equivalent to the amount of compensation due to each Trustee and thus an interest in the investment performance of the Trust identical to that of a shareholder, to save for retirement or for other reasons. The Agreement would allow each individual Trustee to defer receipt of all Trustees' fees which otherwise would become payable by Applicant to him for services performed after the date of such Agreement. Applicant believes that the availability of deferred fee arrangements will enhance its ability to recruit and retain highly qualified Trustees.

4. Under the Agreement, deferred Trustee fees will be credited, as of the date such fees would have been paid to such Trustee, to a book reserve account established by Applicant (the Deferred Fee Account"). The value of the Deferred Fee Account will be equal to the value such account would have had if the amounts credited had been invested in Applicant's shares on the payment date of the fee and as if all dividends and capital gains distributions had been reinvested.

5. The Agreement provides that credits to the Deferred Fee Account shall remain part of Applicants general assets, shall at all times be the sole and

absolute property of Applicant and shall in no event be deemed to constitute a fund, trust or collateral security for the payment of the deferred compensation. The right of any Trustee to receive payments under the Agreement will be an unsecured claim against Applicant's general assets, if any, available at the time of payment.

6. Deferral of Trustees' fees in accordance with the Agreement will have a negligible effect on Applicant's assets, liabilities, net assets and net income per share. The Agreement will not obligate Applicant to pay any (or any particular level of) Trustees' fees to any Trustee. A participating Trustee's right to receive fees under the Agreement will be non-transferable, except that in the event of such Trustee's death, amounts payable to him under the Agreement will be payable to his designated beneficiary.

Applicant's Legal Analysis

1. Applicant contends that the Agreement possesses none of the characteristics of "senior securities" that led to the adoption of restrictions pertaining to such securities that the restriction on transferability of the deferred fees will have no adverse effect on Applicant's shareholders, and that the deferral of fees under the Agreement should be viewed as being issued not for services, but in return for Applicant not being required to pay such fees on a current basis. Therefore, Applicant requests an exemption from the provisions of sections 13(a)(2), 18(f)(1), 22(f) and 22(g) of the 1940 Act to the extent necessary to permit implementation of the Agreement.

2. Applicant asserts that the Agreement does not involve joint transactions between Applicant and its Trustees within the meaning of section 17(d) of the 1940 Act and Rule 17d–1 thereunder. In this respect, Applicant submits that the Agreement does not possess the profit-sharing characteristcs required for a joint transaction as contemplated by the 1940 Act. To the extent that the Agreement may be deemed to involve joint transactions between Applicant and its Trustees, Applicant submits that the participation in the Agreement by Applicant will not be on a basis which is less advantageous then that of any other participant.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–14097 Filed 6–21–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24667]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Eastern Utilities Associates, et al.

June 16, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 11, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates et al. (70–7511)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, and its subsidiary Eastern Edison Company ("Eastern Edison"), 110 Mulberry Street, Brockton, Massachusetts 02403 have, filed an application-declaration pursuant to sections 6, 7, 8, 9, 10 and 12(c) of the Act and Rules 40, 42 and 50 thereunder.

EUA and Eastern Edison propose to issue and sell from time to time during the period ending May 31, 1990 the following securities:

(a) Up to 1,500, 000 Common Shares of EUA, par value $5 per share ("Additional Shares");

(b) Up to 200,000 shares of a new class of Preferred Stock of Eastern Edison, par value $100 per share (Additional Preferred Stock");

(c) Up to $75,000,000 aggregate principal amount of one or more series of First Mortgage and Colateral Trust Bonds of Eastern Edison ("Additional Bonds").

The foregoing securities will be sold by the competitive bidding procedures of rule 50 of the Act, as modified by the Commission's Statement of Policy, dated September 2, 1982 (HCAR No. 22623). In addition EUA and/or Eastern Edison may request an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5).

The net proceeds of the sale or sales of Additional Shares may be used by EUA for general corporate purposes including the reduction of outstanding short-term bank borrowings incurred in connection with investments in or loans to EUA Cogenex Corporation or EUA Energy Investment Corporation, the reduction of such borrowings in the future and the purchase of up to $16,875,000 in principal amount of 10 ¼% Senior Notes due 1999.

The net proceeds of the sales of Additional Preferred Stock and Additional Bonds may be used by Eastern Edison for any of the following purposes: (i) The repayment of short-term borrowings incurred for the redemption of 150,000 shares of Eastern Edison's 13.25% Preferred Stock with an aggregate par value of $15 milion redeemed on February 19, 1988 and for the redemption of Eastern Edison's First Mortgage and Collateral Trust Bonds, 12–¼% Series due May 1, 2013 outstanding in the principal amount of $39 million immediately prior to their redemption on May 1, 1988; (ii) the refinancing through payment at maturity, redemption, purchases in the open market, purchases in privately negotiated transactions and/or market acquisitions pursuant to exchange or tender offers of Eastern Edison's First Mortgage and Collateral Trust Bonds, 14.2% Series due December 1, 1988 outstanding in the principal amount of $19 million and of other high cost First Mortgage and Collateral Trust Bonds or preferred stock of Eastern Edison or industrial development bonds issued for the benefit of Eastern Edison; (iii) the payment of underwriting costs and other issuance expenses of the Additional Preferred Stock and the Additional Bonds; and (iv) general corporate purposes including payment for construction of capital additional and improvements to plant and system, working capital needs and repayment of short-term borrowings incurred for such purposes.

The proceeds or any part thereof of the Additional Shares, the Additional Preferred Stock and the Additional Bonds may be temporarily invested in

securities meeting the requirements of section 9(c)(1) of the Act or of Rule 40(a)(1) or (2).

EUA and Eastern Edison propose, at any time or from time to time through May 31, 1990, to acquire and retire securities issued by them, of the classes or series and up to the respective aggregate amounts indicated in the following table:

EUA

Up to $16,875,000 in principal amount of 10 ¼% Senior Notes due 1999

Eastern Edison

Up to $15,000,000 aggregate par value of its 9% Redeemable Preferred Stock

Up to $175,000,000 in aggregate principal amount of one or more series of its First Mortgage and Collateral Trust Bonds

Up to $40,000,000 in aggregate principal amount of the 10 ⅛% Massachusetts Industrial Finance Agency revenue bonds due 2013 issued for its benefit (Eastern Edison's list of securities hereinafter referred to as, "Aquired Securities")

The proposed transactions in which such securities are to be acquired may include (A) purchases on the open market, (B) purchases in privately negotiated transactions, and (C) acquisitions pursuant to tender or exchange offers to the then current holders in which the consideration offered consists of cash, first mortgage bonds or preferred stock (as the case may be) of a newly issued class or series, or a combination thereof.

Eastern Edison also proposes and hereby requests authorization from time to time through December 31, 1988, to use its existing bank lines of credit for short-term borrowings to finance the purchase of its Acquired Securities provided, however, that such borrowings are in accordance with and do not exceed the amounts by Commission order dated December 23, 1987 (HCAR No. 24539). Eastern Edison expects that funds for the repayment of its borrowings will be provided by internally generated cash or by sales of long-term securities.

The Columbia Gas System, Inc., et al. (70-7524)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and its subsidiaries Big Marsh Oil Company ("Big Marsh") and Columbia Natural Resources, Inc. ("CNR"), both located at 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, have filed an application-declaration pursuant to sections 6(a), 7, 9(a) and 10 of the Act and Rules 42 and 43 thereunder.

Columbia owns 870 shares of the 894 outstanding shares of common stock, par value $100, of Big Marsh, a West Virginia corporation. Columbia proposes to transfer these 870 shares to CNR, a Texas corporation, in exchange for 3,480 shares of CNR common stock, $25 par value. CNR would then effect a merger of Big Marsh into CNR pursuant to West Virginia and Texas law.

This exchange will make CNR the parent corporation of Big Marsh, and the owner of more than 90% of Big Marsh's outstanding shares. Texas law provides that a subsidiary corporation may be merged into its parent corporation if the parent corporation owns at least 90% of the outstanding shares of each class of shares of the subsidiary corporation being merged into the parent corporation.

Pursuant to the merger, the remaining 24 shares of Big Marsh common stock not held by CNR will be exchanged for cash equal to $1,633 per share. This value has been determined pursuant to a pricing formula previously approved by the Commission, which employs the discounted cash flow analysis pricing method (HCAR No. 23519, December 5, 1984).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14098 Filed 6-21-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16439; (812-6438)]

Smith Barney Mortgage Capital Corp.; Application

June 16, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

Applicant: Smith Barney Mortgage Capital Corp. ("Applicant").

Relevant Sections of the Act: Exemption requested under section 6(c) from all provisions of the Act.

Summary of Application: Applicant seeks to amend a previous order issued to Applicant (IC Rel. No. 15295, Sept. 9, 1986) and to conditionally exempt Applicant from all provisions of the 1940 Act in connection with its proposed issuance of variable rate collateralized mortgage obligations and the sale of the same to foreign investors, election of REMIC status, and the sale of nonvoting equity interests in applicant.

Filing Date: The application was filed on March 18, 1987, and amendments thereto on April 21, and June 2, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 5, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Smith Barney Mortgage Capital Corp., 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Special Counsel Richard Pfordte at (202) 272-2811 or Karen L. Skidmore, Branch Chief, at (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations

1. Applicant is a direct, wholly-owned limited purpose subsidiary of Smith Barney, Inc. ("SBI"), a Delaware corporation and a wholly-owned subsidiary of Primerica Corporation. SBI's primary subsidiary, Smith Barney, Harris Upham & Co. Incorporated, is a registered broker-dealer and investment adviser. Applicant, a Delaware corporation, was formed for the purpose of engaging in asset-backed financing, including issuing and selling, or establishing owner trusts to issue and sell, one or more series of Bonds collateralized by certain "Mortgage Certificates" which consist of (1) "fully-modified pass-through" mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), (2) Mortgage Participation Certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), and (3) Guaranteed Mortgage Pass-Through Certificates

issued by the Federal National Mortgage Association ("FNMA Certificates").

All or a portion of the Mortgage Certificates securing a series of Bonds may be "Partial Pool Certificates" (as defined in the Application). Some of the GNMA Pool Certificates securing a series of Bonds may be backed by mortgage loans that provide for payments during the initial portion of their term that are less than the actual amount of principal and interest payable thereon at a level debt service basis.

2. Applicant will issue one or more series of Bonds pursuant to an indenture between the Applicant and an independent trustee ("Trustee") as supplemented by a supplemental indenture for each series (collectively, the "Indenture"). The Indenture will be qualified under the Trust Indenture Act of 1939, as amended, unless an appropriate exemption is available.

3. In the case of each series of Bonds: (a) The Bonds will be secured by Mortgage Certificates and certain funds, accounts, reinvestment income or other collateral (the "Bond Collateral") having a collateral value determined under the Indenture at the time of issuance of the Bonds, and following each payment date, at least equal to the outstanding principal amount of the Bonds; (b) at the time of issuance of the Bonds, and following each payment date, distributions of principal and interest received on the Mortgage Certificates securing the Bonds, together with the other Bond Collateral, will be sufficient to pay interest due on the Bonds and to retire each class of Bonds by its stated maturity; and (c) the Mortgage Certificates will be pledged by the Applicant to the Trustee and will be subject to the lien of the Indenture.

4. Each series of Bonds to be issued may contain one or more classes of variable or floating interest rate Bonds.

5. Applicant may elect, with respect to one or more series of Bonds, to have the arrangements by which the Bond Collateral secures the Bonds be treated as a real estate mortgage investment conduit (a "REMIC") under the Internal Revenue Code of 1986, as amended. In such case Applicant may issue certificates ("REMIC Certificates") representing the right to receive cash flow from the Mortgage Certificates and other collateral included in such REMIC in excess of amounts required to be paid on the Bonds issued by such a REMIC in accordance with their terms. Applicant may sell such REMIC Certificates in compliance with conditions 10 through 15 herein.

6. The sale of the REMIC Certificates in each REMIC will not alter payment of cash flows under the Indenture with respect to the Bonds of the related series. The interests of the Bondholders will not be compromised or impaired by the ability of the Applicant to sell REMIC Certificates, and there will not be a conflict of interest between the Bondholders and the holders of REMIC Certificates ("REMIC Holders"). The aggregate interests of the REMIC Holders in the Bond Collateral and the expected returns by such REMIC Holders will be far less than the payment made to the Bondholders. Applicants do not intent to deposit Mortgage Certificates to secure a series of Bonds the collateral value of which exceeds 120% of the aggregate principle amount of the Bonds of such series.

7. Neither the Applicant, the Trustee, nor the REMIC Holders will be able to impair the security afforded by the Mortgage Certificates to the holders of the Bonds. That is, without the consent of each Bondholder of a series to be affected, neither the Applicant, the Trustee, nor the REMIC Holders will be able to: (1) Change the stated maturity on any Bonds of scuh series; (2) reduce the principal amount or the rate of interest on any Bonds of such series; (3) change the priority of payment on any class of the Bonds of such series; (4) permit the creation of a lien ranking prior to or on a parity with the lien of the Indenture with respect to Mortgage Certificates securing such series; or (5) otherwise deprive the Bondholders of such series of the security afforded by the lien of the Indenture, except in accoradnce with the terms of the Indenture.

8. For additional descriptions and representations concerning the Bonds, see the Application.

Applicant's Legal Conclusions

9. The requested Order is necessary and appropriate in the public interest because: (1) The modifications described in the Application should not cause the Applicant to be deemed the type of entity to which the provisions of the Act were intended to be applied and (2) the Applicant's activities as described herein will enhance the national goal expressly articulated by Congress in the Secondary Mortgage Enhancement Act of 1984 of expanding financing for housing.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the followng conditions:

A. Conditions Relating to the Bonds

(1) Each series of Bonds will be registered under the Securities Act of 1933, as amended (the "Securities Act"), unless offered in a transaction exempt from registration either pursuant to section 4(2) of the Securities Act or because such series of Bonds will come to rest outside the United States provided that the Bonds are offered and sold outside the United States or to non-United States persons in reliance upon an opinion of United States counsel that registration is not required. No single offering of Bonds both within and outside the United States will be made without registration of all such Bonds under the Securities Act without first obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings. In all such cases, Applicant will adopt agreements and procedures reasonably designed to prevent the Bonds from being offered or sold in the United States or to United States persons (except as United States counsel may then advise is permissible). Disclosure provided to purchasers located outside the United States will be substantially the same as that provided to United States investors in United States offerings.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. In addition, the Mortgage Certificates, collateralizing the Bonds will be limited to GNMA Certificates, FNMA Certificates, and/or FHLMC Certificates.

(3) If new Mortgage Certificates are substituted for Mortgage Certificates pledged as security for a Series of Bonds, the substitute Mortgage Certificates must: (i) Be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flow as the Mortgage Certificates replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Certificates replaced; and (iv) meet the conditions set forth in paragraphs (2) and (4). In addition, new Bond Collateral may not be substituted for more than 40% of the aggregate face amount of the Bond Collateral initially pledged to the Trustee as security for a series of Bonds. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates.

(4) All Bond Collateral will be held by the Trustee, or on behalf of the Trustee by an independent custodian. Neither the Trustee nor the custodian may be an affiliate (as the term "affiliate" is defined on Rule 405 under the Securities Act, (17 CFR 230.405) of the Applicant. The Trustee will be provided with a first

priority perfected security or lien interest in and to all Bond Collateral.

(5) Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Applicant or any REMIC Holder. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(6) So long as applicable law requires, at least annually, an independent public accountant will audit the books and records of the Applicant. In addition, an independent public accountant will report on whether the anticipated payments of principal and interest on the Mortgage Certificates continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Trustee.

B. Conditions Relating to Variable Rate Bonds

(7) Each class of variable rate Bonds will have a set maximum interest rate (an interest rate cap) or a minimum interest rate, in the case of an inverse floating rate Bond, which, in each case, may vary from period to period.

(8) At the time of the deposit of the Mortgage Certificates securing a series of Bonds with the Trustees, as well as during the life of such series of Bonds, the scheduled payments of principal and interest to be received by the Trustee on all Mortgage Certificates pledged to secure the Bonds of such series, plus any other Bond Collateral pledged to secure the Bonds of such series, will be sufficient to make all payments of principal and interest on the Bonds of such series then outstanding, assuming the maximum applicable interest rate for each specified period on each class of variable rate Bonds. Such mortgage Certificates will be paid down as the mortgages underlying the Mortgage Certificates are repaid, but will not be released from the lien of the Indenture (except as permitted by the Indenture) prior to the payment of the Bonds.[1]

[1] In the case of a series of Bonds that contains a class or classes of variable rate Bonds, a number of mechanisms exist to ensure that the representations above will be valid notwithstanding subsequent potential increases in the interest rate applicable to the variable rate Bonds. Procedures that have been indentified to date for achieving this result include the use of (i) interest rate caps for the variable rate Bonds; (ii) "inverse" variable rate Bonds (which pay a lower rate of interest as the rate increases on the corresponding "normal" variable rate Bonds); (iii) variable rate collateral to secure the Bonds; (iv) interest rate swap agreements (under which the issuer of the Bonds would make periodic payments to a counterparty at a fixed rate of interest based on a stated principal amount, such as rate of interest based on a stated principal amount of Bonds in the variable rate class, in exchange for receiving corresponding periodic payments from the counterparty at a variable rate of interest based on the same principal amount, such as rate of interest based on a stated principal amount, such as the principal amount) (v) hedge agreements (including interest rate futures and option contracts, under which the issuer of the Bonds would realize gains during periods of rising interest rates sufficient to cover the higher interest payments that would become due during such periods on the variable rate class of Bonds) and (vi) structuring the Bonds so that the weighted average interest rate on the entire series of Bonds is equal to or less than the weighted average pass-through rate on the Mortgage Certificates securing such series. It is expected that other mechanisms may be indentified in the future. Whatever method is used for a particular series, the collateral structure of each series of Bonds will be reviewed independently by the agency or agencies rating such Bonds (as well as by the independent accountants for the Applicant) in order to insure, for the appropriate rating, that the collateral is sufficient to meet all scheduled payments, as stated above. In all cases, these mechanisms will be adequate to ensure the accuracy of the representations set forth above. In the event that the Applicant uses other mechanisms than the ones described above, it will notify the Commission by letter of any such additional mechanisms, and shall give the Commission an opportunity to comment on such mechanisms before they are utilized in order to give the SEC an apportunity to raise any questions as the to the appropriatieness of their use. No Bonds will be issued for which this is not the case.

C. Conditions Relating to REMIC Election

(9) The election by the Applicant to treat the arrangement by which the collateral for a series of Bonds issued by it secures such Bonds as a REMIC will have no effect on the level of the expenses that would be incurred by any such series. Whether or not the Applicant elects that a series be treated as a REMIC, it will provide that all administrative fees and expenses in connection with the administration of such series will be paid or provided for in a manner satisfactory to the agency or agencies rating the Bonds. Whether or not the Applicant elects that a series be treated as a REMIC, it will provide for the payment of administrative fees and expenses incurred in connection with the issuance of such Bonds by one of the following methods or a combination of one or more of such methods: (a) A third party, whose credit is acceptable to the agency or agencies rating such Bonds and the Trustee, will guarantee the payment of such fees and expenses; (b) one or more reserve funds will be established to provide for the payment of such fees and expenses, which maximum fees typically shall be projected, assuming current inflation factor scenarios required by the independent agency or agencies rating such Bonds, at the time of the issuance of such Bonds by Applicant and the establishing of such reserve funds. Thereafter, the Trustee will look solely to such reserve funds for the payment of certain fees and expenses. The procedure used to calculate the anticipated level of fees and expenses is reasonable and has been used successfully in the past, in that it has provided available funds sufficient to pay such fees and expenses and to insure that funds will be sufficient to cover future fees and expenses of the Trustee; (c) the Bonds of such series will be secured by collateral the value of which is in excess of the amount necessary to make payments of principal and interest on such Bonds, and such excess or a portion thereof will be applied to the payment of such fees and expenses; (d) the Applicant will remain liable for such fees and expenses; and (e) the holders of the REMIC Certificates with respect to such series will be personally liable, pursuant to a separate agreement with the Applicant, for the fees and expenses of such Applicant not otherwise payable from one of the sources described above. The Applicant will insure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which or all of the methods above (which methods may be used in combination) are selected by the Applicant to provide for the payment of such fees and expenses.

D. Conditions Relating to the Sale of REMIC Certificates

(10) Notwithstanding the sale of REMIC Certificates, all of the outstanding stock of the Applicant will continue to be owned by SBI or an affiliate, and SBI or such affiliate will continue to remain in control of the Applicant. The REMIC Certificates do not constitute common stock of the Applicant.

(11) REMIC Certificates will be offered and sold only to no more than 100 (i) institutional investors or (ii) non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the Securities Act. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing REMIC Certificates and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, be required to purchase at least $200,000 of such REMIC Certificates and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their

primary residence). Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage related securities, as to be able to evaluate the risk of purchasing a REMIC Certificate and will have direct, personal and significant experience in making investments in mortgage related securities. Owners of REMIC Certificates will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts or other institutional or non-institutional investors as described above which customarily engage in the purchase of mortgages and mortgage related securities.

(12) Each sale of a REMIC Certificate will qualify as a transaction not involving any public offering within the meaning of section 4(2) of the Securities Act.

(13) Each sale of a REMIC Certificate will prohibit the transfer of such REMIC Certificate if there would be more than 100 holders or REMIC Certificates of any series at any time.

(14) Each sale of a REMIC Certificate will require each purchaser thereof to represent that it is not purchasing for distribution and that it will hold such REMIC Certificate in its own name or for accounts as to which it exercises sole investment discretion.

(15) Each sale of a REMIC Certificate will provide that (i) no owner of such REMIC Certificate may be affiliated with the Bond Trustee and (ii) no owner of a controlling (as that term is defined in the Securities Act (17 CFR 230.405)) interest in a REMIC may be affiliated with either the custodian of the Mortgage Certificates or the agency rating the Bonds of the relevant series.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14099 Filed 6-21-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region V Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Minneapolis/St. Paul, will hold a public meeting at 1:00 p.m., on Tuesday, July 19, 1988, at the U.S. Small Business Administration District Office, 610-C Butler Square, 100 North Sixth Street, Minneapolis, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Edward A. Daum, District Director, U.S Small Business Administration, 610-C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, (612) 370-2306.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 16, 1988.

[FR Doc. 88-14100 Filed 6-21-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collected Requirements Submitted to OMB for Review

Date: June 16, 1988.

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 regarding this information collection should be addressed 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.

Departmental Offices

OMB Number: New.
Form Number: TD F 90-21.3.
Type of Review: New collection.
Title: Survey of Depreciation of Rental Clothing.
Description: The purpose of this study is to collect data that will allow the determination of the class life for tax depreciation purposes for rental clothing. The study will affect firms in the rental clothing industry.
Respondents: Business or other for-profit, Small business or organizations.
Estimated Number of Respondents: 150.
Estimated Burden Hours Per Response: 9 hours.
Frequency of Response: One time only.
Estimated Average Reporting Burden: 1,350 hours.
Clearance Officer: Dale A. Morgan, (202) 343-0263, Departmental Offices, Room 2224, Main Treasury Building, 15th & Pennsylvania Avenue NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Department Reports Management Officer.

[FR Doc. 88-14091 Filed 6-21-88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 120
Wednesday, June 22, 1988

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 HOME LOAN BANK BOARD

TIME AND DATE: 3:00 p.m., Thursday, June 23, 1988.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202) 377-6679.

MATTERS TO BE CONSIDERED:

Final regulation on conservators and receivers, priority of claims
Proposed regulations on conservators and receivers, priority of claims, depositor preference

John M. Buckley, Jr.,
Secretary.

[FR Doc. 88-14146 Filed 6-20-88; 12:21 pm]
BILLING CODE 6720-01-M

Corrections

Federal Register
Vol. 53, No. 120
Wednesday, June 22, 1988

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 AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 303]

Food Stamp Program; Income Exclusion of Certain Charitable Donations

Correction

In rule document 88-13430 beginning on page 22291 in the issue of Wednesday, June 15, 1988, make the following correction:

On page 22291, in the third column, in the first complete paragraph, in the 15th line, "$30" should read "$300".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations Nos. 4 and 16]

Consideration of Vocational Factors

Correction

In proposed rule document 88-12996 beginning on page 21685 in the issue of Thursday, June 9, 1988, make the following correction:

§ 404.1560 [Corrected]

On page 21686, in the second column, in § 404.1560(a), in the fourth line, "a" should read "or".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

Transportation Regulations; Compatibility With the International Atomic Energy Agency (IAEA)

Correction

In proposed rule document 88-12639 beginning on page 21550 in the issue of Wednesday June 8, 1988, make the following corrections:

§ 71.4 [Corrected]

1. On page 21557, in the third column, in § 71.4, in the definition for "Low-Specific-Activity (LSA) material" in paragraph (2), the second line should read "concentration up to 27.0Ci/liters (1TBq/liters);".

§ 71.53 [Corrected]

2. On page 21564, in the second column, in § 71.53(b)(2), in the second line, "5 g/1" should read "5 g/l".

3. On the same page, in the third column, in § 71.53(d), in the third line, "10 1" should read "10 l".

§ 71.97 [Corrected]

4. On page 21570, in the third column, in § 71.97(b)(3)(ii), in the first line, "A_1" should read "A_2".

Appendix A [Corrected]

5. On page 21574, in the sixth column of the table, the ninth entry should read "5.41×10^{-3}".

6. On page 21575, in the first column of the table, the 37th entry (the second entry which reads "^{115m}Cd") should read "^{115}Cd".

7. On the same page, in the sixth column of the table, the 42nd entry should read "8.11×10^{-2}".

8. On page 21577, in the first column of the table, the third entry should read "$^{85}Kr^{m}$".

9. On page 21578, in the second column of the table, in the third entry from the bottom, remove "Unlimited".

10. On the same page, in the third column of the table, the fifth entry from the bottom should read "40".

11. On the same page, in the sixth column of the table, the 15th entry should read "5.41×10^{-3}".

12. On the same page, in the sixth column of the table, the 18th entry should read "5.41×10^{-3}".

13. On page 21579, in the fifth column of the table, the 28th entry (which reads "07") should read "0.7".

14. On the same page, in the second column of the table, the first, second, third, and fifth entries from the bottom, which read "Unlimited" should be removed.

15. On the same page, in the sixth column of the table, the last entry should read "Unlimited" and the existing entry should become the last entry in the seventh column of the table.

16. On page 21580, in the second column of the table, the second entry "Unlimited" should be removed.

BILLING CODE 1505-01-D

Federal Register

Wednesday
June 22, 1988

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 7 and 18

Underground Mining Equipment; Product Testing By Applicant or Third Party; Final Rule

30 CFR Parts 7 and 25

Multiple-Shot Blasting Units; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7 and 18

Underground Mining Equipment; Product Testing By Applicant or Third Party

AGENCY: Mine Safety and Health Adminstration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule implements new procedures and requirements for testing and approval of certain products used in underground mines. The final rule also contains new technical requirements for brattice cloth and ventilation tubing, and revised requirements for battery assemblies currently contained in 30 CFR 18.44 and 18.63. This final rule will reduce the demand on MSHA's product testing resources and allow the Agency to redirect those resources to product audit activities and the evaluation of technological advances in products for use in the underground mining environment.

EFFECTIVE DATE: August 22, 1988, except for the revision of § 18.44 listed as amendment No. 3 and § 18.63 that go into effect August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Room 613, Arlington, Virginia 22203, (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173, as amended by Pub. L. 95-164) (Mine Act), the Mine Safety and Health Administration (MSHA) is required to approve certain products for use in underground mines. This approval indicates that these products have met MSHA's specifications and tests, and have been designed and manufactured to ensure that the products will not present a fire, explosion, or other specified safety hazard related to use.

On March 4, 1983, MSHA published an Advanced Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (48 FR 9475) announcing the availability of a preproposal draft of a new Part 37 of Title 30 of the Code of Federal Regulations (CFR). The draft provided for an alternate and expedited application procedure for the approval of certain products with product testing conducted by the applicant or a third party.

Public conferences were held April 5, 1983 in Pittsburgh, Pennsylvania and April 12, 1983 in San Francisco, California to present detailed information regarding the Agency's approval program. These conferences were well-attended by trade associations, representative of miners, and manufacturers. MSHA received written comments regarding its preproposal from all segments of the mining community.

After reviewing the comments received in response to the preproposal draft, MSHA published a proposed rule in the **Federal Register** (51 FR 4686), on February 6, 1986 as Part 7 of Title 30. The proposal set out in Subpart A new procedures and requirements for testing and approval of certain products used in underground mines, shifting the resources of the Agency from product testing to post-approval oversight of product quality and the evaluation of technological improvements to mining products. The proposed rule also contained new technical requirements for brattice cloth and ventilation tubing (Subpart B) and revised requirements for battery assemblies (Subpart C).

On June 30, 1986 (51 FR 23559), MSHA published a notice of public hearings which outlined the major issues raised during the comment period. Two public hearings were held in Pittsburgh, Pennsylvania and Salt Lake City, Utah in July 1986, during which further comment on the proposal was received. Transcripts of the proceedings were taken and made available for public inspection. Following the public hearings, interested persons were allowed to submit supplementary statements and data until the record closed on August 15, 1986.

MSHA reviewed all written and oral statements submitted in response to the proposed rule and public hearings. Comments were received from all segments of the mining community, including equipment manufacturers, trade associations, testing organizations, and representatives of miners. This final rule was developed after a full evaluation of the entire public record.

MSHA's existing regulations in 30 CFR Parts 15 through 36 govern the process through which manufacturers may obtain MSHA approval, certification, acceptance of evaluation of certain products for use underground. Each of these separate parts contains application procedures and technical requirements for certain types of mining products. MSHA currently conducts most of the testing and evaluation of a product for a fee paid by the applicant, although some regulations require pre-testing of the product by the manufacturer. Upon MSHA approval, manufacturers must ensure that the product continues to conform to the specifications and design evaluated and approved by MSHA. In some instances, as part of the approval process, manufacturers are required to have a quality control plan. In addition, some parts provide for product and manufacturing site audits.

Currently, when MSHA receives an application for approval of a product for use in underground mines, every aspect of the documentation package submitted by the manufacturer is scrutinized to determine whether the technical requirements of the applicable provisions of 30 CFR Parts 15 through 36 have been met. Each drawing and specification in the package is cross-checked against these requirements, and, for some products, samples of the product or parts of the product are disassembled and examined by MSHA for conformity with the drawings and specifications. When MSHA verifies that an applicant's product complies with the design and construction requirements, MSHA then tests the product to determine whether it performs according to the appropriate approval requirements, unless the design precludes the need for testing. If the product passes the tests, MSHA issues an approval for the product.

Once MSHA has approved a product, the manufacturer is authorized to place an approval marking on the product that identifies it as approved for use in underground mines. Use of the MSHA marking obligates the manufacturer to maintain the quality of the product. The MSHA marking indicates to the mining community that the product has been manufactured according to the drawings and specifications upon which the approval was based. Any proposed change to the documentation for a product approved by MSHA must be submitted to the Agency for acceptance prior to implementation of the change. If MSHA approves the change, the manufacturer is issued an extension of approval or a notice of acceptance of the modified product.

II. Discussion and Summary of the Final Rule

This final rule establishes a revised role for MSHA in the evaluation and testing of certain products used in underground mines. Where the Agency's role has been one which emphasizes testing by MSHA, Part 7 requires testing by the applicant or a third party selected by the applicant. This will permit the Agency to refocus its resources to its product audit functions as well as the

review of technological improvements in mining products. This shift in emphasis will expedite the approval of applications. Moreover, it will enhance the safety in mines by providing the mining community a greater assurance that products used in mines have been manufactured in accordance with MSHA specifications, detecting defective products more effectively and introducing new technology in a more expeditious manner.

In requesting approval, an applicant will be required to submit an application package to MSHA. That package will include certain product information. Depending on the type of product for which approval is requested, the information will be submitted in documents such as drawings, specification sheets and in the application letter. In addition, the application must include the place and date for product testing, or if the manufacturer believes that testing is not necessary in a particular case, the reasons for not planning testing. Product testing must be performed according to test procedures specified in the appropriate subpart and MSHA can elect to observe the testing as a prerequisite of approval.

During the application process, the applicant must submit certain certifications. With its application, the manufacturer must certify that the product meets the design portion of any applicable technical requirements. After completion of any required product testing, the applicant must also certify that the product has been tested and performs as required, or, in other words, meets the performance aspect of the applicable technical requirements. In addition, a certification that the applicant will perform the specified quality assurance functions, including the inspection or testing of the product's critical characteristics, is required. These certification statements must be signed by an authorized company official. False certifications are subject to criminal sanctions under section 110(f) of the Mine Act.

Based upon an evaluation of the technical documentation, any observations of product testing, and a review of the certification statements MSHA will issue either an approval or a notice denying approval of the product. Notices denying approval will set forth the Agency's reasons for the denial.

When a product is approved under Part 7, an approval holder will be required to inspect or test critical characteristics as part of its quality assurance program, with MSHA auditing the product to ensure it is being manufactured as approved. Audits will be performed on a periodic basis, and in response to information about a problem with a product. When tests are conducted in order for MSHA to address a problem, they will be the same as those specified in Part 7. If an audit demonstrates that a product fails to comply with the Part 7 technical requirements or otherwise creates a hazard related to use, MSHA will take immediate action to address the problem, including revocation of the approval if necessary.

Part 7 is not a self-certification program. In contrast with this type of program, Part 7 requires manufacturers to document to MSHA a product's design relative to the Part 7 technical requirements. MSHA will review this documentation to determine compliance prior to issuance of an approval. In addition, product testing will be conducted using MSHA-specified procedures and subject to Agency observance of the testing. Finally, only MSHA will have the authority to issue approvals.

Part 7 will make the approval process more efficient for those products capable of being tested by applicants or third party laboratories using Agency-developed, standardized and repeatable tests. In addition, the Part 7 approach, when fully implemented, will allow the Approval and Certification Center to reallocate resources to other areas. Two important areas to which these resources will be directed are product audit activities and the evaluation of technological improvements in mining products submitted for approval. In general, MSHA expects that implementation will result in improved quality assurance and more rapid introduction of technological improvements into the mines, thereby improving miner safety.

In addition to general approval application procedures and requirements, this final rule includes the first two product-specific subparts under the Part 7 concept. Subpart C revises the technical requirements for battery assemblies, currently approved under 30 CFR Part 18, and Subpart B establishes new technical requirements for the approval of brattice cloth and ventilation tubing. While MSHA currently tests brattice cloth and ventilation tubing for flame resistance, no approval regulations exist and only "letters of acceptance," not approvals, have been issued by the Agency. Letters of acceptance indicate that brattice cloth or ventilation tubing meets the flame resistance requirements of 30 CFR Part 75.302–3 and the standardized small-scale flammability test.

It is MSHA's intention to propose additional subparts to Part 7 which will specify the technical requirements for other products that are suitable for testing by applicants or third parties. In the Agency's view, products suitable for applicant or third party testing are those with characteristics which can be objectively tested in a routine and readily reproducible manner, and with no elements of subjective analysis. MSHA believes that basic designs of many products can be subject to the Part 7 procedure. However, products whose testing and evaluation depend upon the experience, judgment and knowledge of agency personnel to establish under what conditions the tests should be conducted will not be candidates for Part 7 subparts. An example of this is spark ignition testing of intrinsically safe circuits where it is necessary to first determine, under a worst case two fault analysis, which components or circuit points should be tested. Once the worst-case is established, the appropriate technique must be selected to increase the energy in the circuit at the point of test to achieve the required factor of safety. It is not possible to describe criteria to be applied to this thought process for every conceivable circuit configuration since the testing and evaluation process relies on the expertise and judgment of the investigator. In determining which products to propose as additional subparts, MSHA intends to solicit input from the mining community on whether particular products are appropriate subjects for the Part 7 concept.

III. Discussion of the Subparts

Subpart A—General Provisions

The following section-by-section analysis discusses Subpart A of the final rule and addresses the comments received on the proposed rule.

Section 7.1 Purpose and Scope.

The purpose of Part 7 is to establish the application procedures and requirements for MSHA approval of certain products for use in underground mines when testing is to be conducted by the applicant or a third party. The general requirements for the approval process are set out in Subpart A and the technical requirements for the design and performance of particular products are set out in subsequent subparts. The technical requirements for brattice cloth and ventilation tubing and for battery assemblies appear in Subparts B and C, respectively. As MSHA develops technical requirements for additional

products, new subparts of Part 7 will be established through rulemaking.

MSHA realizes that some applicants may need a phase-in period to prepare for Part 7 testing responsibility, while others may want to begin their own or third party testing immediately. To accommodate both situations, the technical product subparts with this rule will take effect August 22, 1988. For all subparts a phase-in period will also be set to enable manufacturers and third-party laboratories to make arrangements to conduct the necessary product testing. During the phase-in period, the existing approval provisions or acceptance programs applicable to the product will remain in effect. Thus, applicants can choose to submit applications for approval under either the existing approval regulations for the product to be tested by MSHA, or under the new Part 7 subpart where the obligation to test will be with the applicant. However, to avoid confusion during the phase-in period, applicants must submit extensions of approval under the existing approval regulations in which the original approval was granted.

After the phase-in period for a new subpart, the existing approval regulations for the class of products covered by the subpart will be revoked. If only some designs within a product class are covered by a new subpart, the existing regulations will be revised to indicate which designs will continue to be approved under the existing regulation and those which must be approved under Part 7. For those products for which technical requirements are finalized in subparts of Part 7, and existing approval regulations are revoked or revised, approvals will be granted only under Part 7. At the expiration of the subpart phase-in period, all applications for extensions of approval of the products covered by the subpart will be treated as new applications and applicants will be required to apply for an original approval under Part 7. Although existing approval requirements may be revoked or revised, the approval status of those products previously approved will remain unaffected, allowing them to be manufactured and sold as MSHA approved.

Commenters were concerned that the phase-in time for subparts of Part 7 be related to product testing capability. Commenters suggested that the phase-in periods be product specific and of sufficient duration to ensure that competent third party testing facilities are available for prompt testing of products at a reasonable cost. MSHA agrees that phase-in periods should be product specific based on an assessment of the amount of time needed to prepare for testing. For example, a relatively short, one year phase-in period is set by the final rules for brattice cloth and ventilation tubing. The apparatus used to flame test brattice is simple and inexpensive to build. On the other hand, the time and resources necessary to acquire and install test apparatus for testing of explosion-proof enclosures would present a different situation. Therefore, the phase-in time for future subparts that address explosion-proof testing would likely be longer.

Phase-in periods will be considered for additional product subparts as they are proposed. In developing any proposed phase-in times, MSHA will seek input from the mining community, including manufacturers of the product for which the new subpart is proposed, and testing organizations with potential capability and experience in the area.

MSHA recognizes that situations may occur in the future where the phase-in period specified in a product subpart does not provide enough time for manufacturers or third-party laboratories to obtain the testing capability for that product. Should the capability for applicant or third-party product testing not be available, MSHA would, for good cause, consider extending the phase-in period through notice and comment rulemaking.

Section 7.2 Definitions.

The following definitions apply to Part 7 product approvals. They are designed to clarify the requirements of Part 7 and respond to the issues identified by commenters.

"Applicant". This term means "an individual or organization that manufactures or controls the assembly of a product and that applies to MSHA for approval of that product." During the comment period, questions were raised about what the Agency meant by the phrase "controls the assembly of a product." Commenters questioned whether MSHA intended to hold the applicant responsible for controlling the assembly of approved components purchased for use in the applicant's approved product. MSHA intends that the phrase "controls" the assembly" means that the applicant control the assembly of the specific product for which the approval is requested. For example, if a motor approval is sought, then the assembly of that motor must be controlled by the applicant for approval. However, if a machine approval is being requested which uses that motor, the applicant for approval of the machine need only control the machine assembly, not control the motor assembly purchased for use in the machine.

Commenters also sought assurance that the phase "controls the assembly of a product" would allow an applicant to submit for approval a product built by a third party under a contract specifying the technical requirements and quality control provisions provided for in the appropriate product subpart of Part 7. Under Part 7, approval of a product obligates the applicant to maintain the continuing quality and performance of the product. An applicant can meet this obligation by either manufacturing the product itself, or by controlling the assembly of the product as built by a third party. As long as a party maintains control over the product assembly, such as through a contract with specific terms, that party meets the definition of "an applicant" for purposes of seeking a product approval under Part 7.

"Approval". This term is used to describe a written document issued by MSHA which states that a product has met the requirements of Part 7 and which authorizes the use of an MSHA approval marking. The definition is based on existing definitions of "approval" in 30 CFR Parts 15 through 36. It has been expanded to include "certification," "acceptance," and "evaluation" because these terms are also used to denote MSHA approval.

"Authorized company official". Several commenters wanted assurance that the "authorized company official" was to be desingated by the applicant and not by MSHA. The Agency does not intend to designate the "official" for the applicant. This is the responsibility of the applicant. Accordingly, the definition has been revised to mean "an individual designated by the applicant who has authority to bind the applicant." The term is used in the requirements for the certification statements which are to be signed by an "authorized company official."

"Critical characteristic". Commenters asked that the term "critical characteristic" be defined as a feature of a product which could "adversely affect" product safety and, for this reason, is to be inspected or tested by the applicant. One commenter suggested that the phrase "prior to shipment" be added to the definition to reinforce that this inspection or testing be done before distribution of the product for use in underground mines. The final rule clarifies the definition of "critical characteristic" to be "a feature of a product that, if not manufactured as approved, could have a direct adverse effect on safety for which testing or inspection is required prior to shipment

to ensure conformity with the technical requirements under which the approval was issued." Critical characteristics do not include features of a product that may have an ancillary effect on its safety, but not a direct effect. Critical characteristics for products subject to approval under Part 7 are specified in subparts of the rule. As future subparts are added to Part 7, the critical characteristics of the products addressed will be subject to the same notice and comment as the subparts of this rule.

"Extension of approval". This term is used to describe a written document issued by MSHA which states that the change to a previously approved product meets the requirements of Part 7. It is based on the existing definitions of the term in 30 CFR Parts 15 through 36.

"Post-approval product audit". This term is used to describe MSHA's examination or testing, or both, of approved products to determine whether the products meet the technical requirements and have been manufactured as approved. The decision to conduct an examination or test, or both, will be made by MSHA based on the nature of the product involved.

"Technical requirements". This term is used to describe the design and performance requirements a product must meet to be approved. The technical requirements for products submitted for approval under Part 7 are specified in subparts of this Part.

"Test procedures". This term is used to describe the methods applicants will be required to follow in testing a product under Part 7. Test procedures for particular products are specified in subparts of this Part.

Section 7.3 Application Procedures and Requirements.

Section 7.3 sets out the general procedures and requirements an applicant is required to follow to request MSHA approval of a product under this Part. The technical documentation required for different products is specified in the appropriate subparts.

The application procedures set out the three kinds of approval actions an applicant may request under Part 7: (1) An original approval, (2) a subsequent approval of a similar product and (3) an extension of approval. Subpart A generally identifies the information required to request each of these actions with more specific information about the required documentation specified in the appropriate subparts.

Applications for approval of a product must contain sufficient information for MSHA to determine whether the product complies with the technical requirements as specified in the appropriate subpart. Composite drawings can, in most situations, adequately provide the information needed for product approval, and MSHA will specify the use of composite drawings where possible in the product subparts. In addition, any component of a product such as an electrical cable, hose conduit or insulating material that has been previously tested and approved by MSHA will be accepted under Part 7 without reapproval or retesting, provided suitable documentation is submitted by the applicant to properly identify the component as MSHA approved.

In requesting an original (first time) approval for a particular product, MSHA will require the submission of all information necessary to evaluate all facets of the design and construction of the product relative to the approval requirements. If, after receipt of an original approval, the applicant requests subsequent approval of a similar product or an extension of approval for the original product, the applicant will not be required to submit documentation duplicative of previously submitted information. Only information related to changes in the previously approved product is required, avoiding unnecessary paperwork.

Under § 7.3(d)(4) and (e)(4), applicants requesting subsequent approval or extension of approval must also indicate whether, in their opinion, changes in a previously approved product require testing. If tests are not planned, the applicant will be required to explain the technical reasons for not conducting testing. One commenter suggested eliminating these provisions because, in the commenter's view, all changes to previously approved products should be subject to retesting. However, MSHA's experience is that some changes to a product are of a nature that do not require testing. For instance, a packing gland assembly, lens assembly, or shaft assembly already approved for one product may not require testing when used in another product. Likewise, a change in the value of a resistor in a product may not require retesting of the entire product. Under the final rule, MSHA will evaluate the need for retesting in each case, taking into account the applicant's explanation for not planning to test. MSHA's decision will be based on its evaluation of the effect of any proposed changes on the safe performance of the product. In those cases where the Agency decides that testing is necessary, the applicant will be notified so testing can be scheduled.

Some manufacturers, both in written comments and in statements given at the public hearing, suggested that not all original approvals issued under Part 7 would necessarily require product testing and recommended that the final rule include an option for not testing products submitted for approval for the first time under Part 7. They stated that additional testing may not be required when converting an existing Part 18 approval to one under a future Part 7 subpart, if the new technical requirements for the product did not differ significantly from those in Part 18 under which the product was already approved. An example of this would be an enclosure that was explosion tested and approved as explosion-proof under existing Part 18.

MSHA agrees that testing may not always be necessary when the technical requirements under future subparts remain relatively unchanged. Therefore, § 7.3(c)(4) and (5) have been revised in the final rule to require applications for original approvals to include a statement as to whether, in the applicant's opinion, product testing should be required, and an explanation of the reasons for that opinion. However, as is the case for testing of proposed changes for subsequent approvals and extensions of approvals, MSHA will evaluate the need for testing and will decide whether product testing is required for original approvals based on the circumstances in each application.

MSHA realizes that manufacturers holding approvals at the time of promulgation of a Part 7 product subpart may be in the process of making a modification to their already-approved product. Rather than require that these manufacturers submit the modified product for a new approval under Part 7, MSHA will allow extensions of approval to be granted under the existing approval regulations during the phase-in period for the subpart. However, at the expiration of the phase-in period all applications for extensions of approval of products covered under Part 7 will be treated as new applications and applicants will be required to apply for an original approval under this rule.

Under the existing approval program, any proposed change to an approved product must be submitted to MSHA for approval. The Agency has two special programs in place to facilitate review of such changes. These are the Stamped Notification Acceptance Program (SNAP), and the Stamped Revision Acceptance (SRA) program. SNAP is designed to review for approval one

type of change involving the addition of alternate or optional components to a product which affects the technical requirements for approval. Examples of changes under SNAP would be the addition of an optional gland assembly to an approved explosion-proof enclosure, or an alternate cover to an approved battery assembly. With these types of changes the explosion-proof enclosure could be manufactured with or without the optional gland assembly and the battery assembly could be manufactured with the originally accepted cover or the alternate cover. The SRA program addresses changes which may revise a dimension or specification that has no direct bearing on the safety of a product. An example of modifications reviewed for approval under SRA would be changes in the material, configuration or location of battery box lifting handles.

Many commenters urged that both the SNAP and SRA programs be available to manufacturers proposing changes to products approved under Part 7. The SNAP process will be available to applicants requesting approval changes under Part 7. The program has been successful as an expeditious means of handling approval applications involving certain types of proposed changes to an approved product. Under Part 7, only proposed changes that affect the technical requirements for a product must be submitted for approval. The SRA program is used for changes which do not impact any technical requirements for approval. However, if manufacturers wish to submit for approval SRA-type changes, even though not required to do so, the Agency will process such changes through the SRA program.

As part of an approval application, § 7.3(f)(1) requires the applicant to certify that the design requirements in the appropriate subpart have been met and that the quality assurance functions required by § 7.7 will be performed. Once testing has been completed, the applicant is required to certify, under § 7.3(f)(2), that the product has been tested in accordance with the specified test procedures, and that the product meets the performance requirements. To support the testing certification statement, § 7.4(a) requires the applicant to maintain records of test results for three years. In the case of subsequent approvals or extensions of approval, applicants will be required to certify that the proposed changes indicated in the application are the only changes being made.

All certification statements must be signed by an authorized company official. False certification is subject to criminal sanctions under section 110 of the Mine Act.

Under the final rule for Part 7, the term "technical requirements" is defined to include both the design and the performance requirements for a product. Evaluation of the technical requirements for products submitted for approval under Part 7 will be a two-step process. The first step is the evaluation of the design requirements through review of the documentation submitted with the application, including drawings and specifications. This evaluation will determine if the design requirements of the applicable subpart have been met, if product testing is necessary, and if MSHA desires to observe the testing. If the design requirements have not been met, design modification will be necessary before an approval will be issued. If product testing is necessary and the product has been built prior to the design modification, the product must be modified prior to testing. The second step in the evaluation process focuses on product testing. If product testing is required, MSHA has an option under the final rule to witness the testing. In all cases when testing is required, MSHA will review the required documentation.

To clarify this two-step process, the term "design criteria" in proposed § 7.3(f)(1) is revised in the final rule to specify that the applicant certify that "the design portion of the technical requirements" are met. Correspondingly, § 7.3(f)(2) provides that the applicant certify the product has been tested and "meets the performance portion of the technical requirements."

Fees

In a separate rulemaking, MSHA published a new Part 5 (Fees for Testing, Evaluation, and Approval of Mining Products) in the **Federal Register** on May 8, 1987 (52 FR 17506). That final rule revised the Agency's existing system of charging user fees for the testing, evaluation and approval of products manufactured for use in underground mines. Fees for MSHA processing of an application under Part 7 will be subject to an hourly charge. On hourly rate actions, applicants will be billed for the fee when processing of the action is completed. The final fee will include, in addition to the hourly charge, actual travel and transportation expenses incurred when testing and evaluation requires the investigator to travel to the manufacturing or installation site. The Agency may consider converting to a flat fee schedule, payable with the application, after reviewing its hourly rate data.

MSHA will charge $29 per hour and an application fee of $100 for processing requests for approval or extension of approval for brattice cloth or ventilation tubing under Subpart B of Part 7. An hourly rate of $25 plus an application fee of $100 will be charged for approval or extension of approval requests for battery assemblies under Subpart C of Part 7. These fees are the same as those listed in the fee schedule published with the final rule for Part 5.

Section 7.4 Product Testing.

Under the final rule, all products submitted for approval under Part 7 must be tested unless MSHA determines, upon review of the documentation submitted, that testing is not required. All required testing must be conducted either by the applicant or by a third party selected by the applicant. In addition, testing must be performed with calibrated and accurate instruments according to test procedures specified in the appropriated subpart, and MSHA can elect to observe product testing as a prerequisite of approval. MSHA will monitor the currency of these procedures and will modify them if appropriate through rulemaking. Part 7 will replace the system in which MSHA conducts the testing of most products to determine whether they perform according to the Agency's technical requirements.

Many commenters favored the proposal's provisions that the applicant or a third party conduct testing as it would allow MSHA to devote more resources to reviewing and evaluating the documentation submitted as part of its approval programs, and evaluating technological advances. Other commenters, however, objected to applicant or third-party testing, stating that testing was an important function which should only be performed by MSHA. It was also suggested that allowing applicants or third parties to test products would be improper under the Mine Act because the statute provides for MSHA approval of products to be used in underground mines.

In the final rule, MSHA retains sole authority to approve or deny approval of products. Only product testing, in accordance with Part 7 requirements, will be performed outside the Agency. MSHA will continue to evaluate each application and supporting documentation to determine compliance with the technical requirements. The Agency will also observe, as necessary, any product testing conducted by the applicant or a third party.

Comments received from independent testing laboratories recommended that the final rule require that all testing laboratories, including manufacturer-owned facilities, be accredited by a testing accreditation organization. According to these commenters, accreditation requirements would provide assurance that testing performed under Part 7 was conducted by competent personnel with knowledge and experience in product testing. Other commenters disagreed and stated that accreditation was unnecessary since product testing is required to conform to the procedures specified in the subparts to Part 7 and is subject to observation by MSHA personnel.

The final rule does not require that laboratories be accredited. Under the final rule, testing laboratories must follow the test procedures established in the appropriate Part 7 subpart and calibrate all instrumentation used in testing. In addition, MSHA has the right to observe any product testing required under Part 7 to ensure that tests are conducted properly. Also, as discussed elsewhere in this preamble, MSHA intends to permit testing by others only when the product testing is objective in nature and can be routinely conducted by personnel knowledgeable in the specific discipline. Products whose testing and evaluation depend upon the knowledge and judgment of Agency personnel will continue to be tested by MSHA under other approval regulations, not Part 7.

When MSHA elects to observe product testing, commenters stated that the Agency should be obligated under the final rule to accept the applicant's date and time. For the convenience of all involved, MSHA will attempt to meet the times and dates proposed by applicants for product testing and does not anticipate that schedule changes will be routinely needed. However, because MSHA considers the opportunity to observe product testing to be an important part of the approval process, the final rule requires that applicants permit an MSHA official to be present for testing at a mutually agreeable date, time, and place.

MSHA realizes that some applicants may test their products prior to submitting their application for approval of a product. In these cases, the applicant may submit the certification of testing with the application. However, MSHA may still elect to observe product testing and, if this occurs, the applicant may be required to arrange for re-testing with an MSHA observer present. MSHA does not intend to observe tests prior to submission of an applicant for approval. However, MSHA may consider doing so if the tests are related to technological improvements in mining products, and the Agency finds it in the best interests of miner safety to review the testing.

Some commenters urged MSHA to reconsider requiring testing by others for products identified for approval under Part 7, and recommended that applicants be afforded the option to have MSHA continue to conduct the product testing. This alternative was included in the earlier preproposal draft (then referred to as Part 37). Under the preproposal, manufacturers could choose to be responsible for the product testing themselves or could elect to have MSHA test the product. The proposal eliminated this alternative.

MSHA has carefully considered the issue of including in Part 7 an option for MSHA testing of products submitted for approval. This option is not included in the final rule because it would significantly detract from basic objectives of the Part 7 program. As expressed by MSHA throughout this rulemaking, Part 7 is intended to make the Agency's product approval process more efficient so that resources can be reallocated to auditing products after approval and evaluating technological improvements in products developed for use in the underground mine environment. Making Part 7 an optional program, which would permit applicants to elect that MSHA conduct product testing, would require that the Agency continue to direct its limited resources to performing tests that can be standardized sufficiently to be repeatable by other testing facilities. Performing these testing functions, except as necessary for product audits, is not the most effective use of MSHA's technical expertise in the area of mining equipment safety.

Section 7.4(b) has been added to the final rule to address the calibration and accuracy of instruments used in product testing. It is important that testing equipment be properly calibrated and sufficiently accurate to ensure that the test results reflect the performance of the product. This provision recognizes standard industry and MSHA practice in the calibration and use of inspection and testing instruments and is consistent with § 7.7(b) on quality assurance inspection and testing.

MSHA observation of product testing under § 7.4(c) was also the subject of commenters' attention. A number of comments raised questions about how frequently MSHA intended to observe product testing and what guidelines would be followed in implementing this aspect of the Part 7 program. To determine whether test procedures are followed properly MSHA intends to observe all product testing required when original applications for approval are requested for a particular product. In addition, MSHA may elect to observe product testing required for subsequent requests for approval of a particular product under conditions such as the following: (1) If the application submitted indicates the manufacturer is having difficulty meeting the requirements; (2) if prior observation of testing revealed difficulties in understanding and following test procedures; (3) if a product audit has discovered discrepancies; (4) if the testing site or those responsible for directing the personnel performing the tests has changed; and (5) if the product has a new technology feature which can best be evaluated for compliance with MSHA requirements through performance testing. MSHA will also observe testing on a random basis to ensure that tests are being conducted as specified in the applicable product subpart.

Commenters were also interested in whether MSHA, when observing product testing, intended to be present for the entire time if several days were necessary to perform a test, such as the acid resistance test for battery assemblies. This was a concern to commenters because expenses incurred by MSHA in observing tests are included in the fees charged manufacturers for approval. When multiple-day tests are conducted involving procedures which do not change during the test, MSHA will observe only as necessary to ensure that the test procedures are understood by those administering them, and are being followed properly. The Agency does not intend to have observers stay for the duration of such tests.

Under the final rule, if MSHA elects to observe product testing, the applicant will be required to pre-arrange any necessary clearances. This may need particular attention from an applicant when testing is to be conducted by someone other than the applicant. At the test site, MSHA may require the applicant to disassemble the product for inspection to determine whether the product being tested is the same design and construction as defined in the documentation submitted with the application.

If MSHA elects not to observe product testing, the applicant will be so notified. The applicant can then proceed to perform the necessary testing and, upon successful completion, certify to MSHA that the product has been tested as

specified in the appropriate subpart and meets the performance requirements.

Comments received from manufacturers raised the question of whether MSHA would observe product testing in foreign countries. A related concern was whether MSHA would accept certifications of test results when testing was performed outside the United States. Paragraph (d) of § 7.4 states that "MSHA will accept product testing conducted outside the United States where such acceptance is specifically required by international agreement." One of the goals of Part 7 is to provide an expedited approval process which will permit reallocation of Agency resources to the evaluation of technological improvements used in mining products submitted for approval and to conduct product audits. Observation of testing conducted in countries outside the United States would slow down the approval process and constitute a significant commitment of MSHA personnel and financial resources. Additional difficulties in administering Part 7 could be expected to result from different languages, technical terminology, types of instrumentation, and standards.

This provision on testing conducted outside the United States applies equally to all approval applicants. Accordingly, MSHA will accept under Part 7 any product testing performed outside the United States, whether conducted by American or foreign manufacturers, only when specifically required to do so by international agreement. In this regard, MSHA is open to discussions with other nations concerning reciprocity of treatment on standards and procedures for approval of mining equipment.

For three years after completion of testing, applicants will be required to maintain records of test results and the procedures used. These records will assist MSHA in determining the possible cause of any problems which may be detected during post-approval product audits. MSHA expects that within a three year period it will be able to audit an approved product for which the tests apply.

Some commenters questioned whether different methods of analysis of test results, such as computer-aided techniques, would be permitted under the Part 7 program. Unless specifically stated in the applicable product subpart, the method of analysis is the manufacturer's responsibility and can include computer-aided technology.

During the public hearings, manufacturers asked whether applicants could consult with MSHA, at no cost, about test procedures and requirements in the subparts. Manufacturers may consult with MSHA on these matters prior to submission of an application for approval under Part 7. However, once the application is received for action, costs will be charged pursuant to Part 5, including the time attributable to consultation.

Section 7.5 Issuance of Approval.

The final rule provides that MSHA will issue an approval, or notice denying approval, after all documentation submitted has been evaluated by MSHA. The approval or denial of approval will be in writing, and will follow a review of the applicant's documentation, product testing, if testing is required, and certification statements submitted. It was suggested by some commenters that proposed § 7.5 be revised to require that any notice denying approval specify the reasons upon which the denial was based. MSHA agrees that manufacturers should be given the reasons an application for approval is denied. Paragraph (b) of the final rule provides that a notice denying approval must specify the reasons for MSHA's action.

When issuing an approval under Part 7, MSHA will identify all documents upon which the approval is based, such as drawings, specifications and related materials covering the details of design of the product. Applicants will be required to retain these documents, and adherence to the technical requirements contained in them will be a condition of continued MSHA approval. Applicants are prohibited from representing products as approved until MSHA has issued an approval.

Section 7.6 Approval Marking and Distribution Record.

The final rule requires each approved product to have an approval marking. The marking identifies the product as approved for use in underground mines. Pertinent details on the approval markings for products will be specified in the subpart for the particular product.

The MSHA approval marking indicates to the user that the product meets the specified technical requirements. Any units of a product not in compliance with these requirements may, therefore, need to be recalled or retrofitted. For this reason, the proposed rule required applicants to maintain records on the distribution of each unit with an approval marking so that deficient units could be traced and corrective action taken. The proposal, however, did not specify a time for retention of these records. Instead, MSHA proposed that records on the distribution of approved units be maintained for the projected service life of the product, as determined by the applicant. This approach recognized that product life varies depending on the type of product involved and, within product types, on the materials used. For example, the projected service life for a continuous mining machine would be significantly longer than for a consumable item such as hydraulic fluid. Similarly, the product life of a battery assembly with a metallic cover may be different than one with nonmetallic cover. Since units in service may need to be traced for corrective action, it is necessary to have records of the units as long as they are in use. Commenters generally agreed with this approach, but suggested refinement of the scope of the records. They pointed out that the ownership of MSHA approved products often changes without the knowledge of the manufacturer. Therefore, it was recommended that the record retention requirement apply to initial sales. MSHA agrees and has revised the final rule to require that records of the "initial sale" of approved products be maintained.

MSHA also indicated in the proposal that it was considering the need for specifying a set time for maintaining distribution records on a product-by-product basis. In this regard, the proposal solicited comments and requested information as to what the projected service life would be for brattice cloth and ventilation tubing and battery assemblies. The majority of commenters indicated this was not feasible, and recommended that the retention period be determined by manufacturers, consistent with the proposal. They also suggested, however, that "shelf life" as well as "service life" was an appropriate factor to consider because, depending on the product, both could be used in setting the record retention period. Under the final rule, § 7.6(c) has been modified to require that distribution records of approved products be retained for at least the shelf life and service life of the products.

As noted, manufacturers are required to maintain records on the distribution of each unit with an approval marking. This is necessary so that deficient units which may present a hazard to miners can be traced and withdrawn from use until appropriate corrective action is taken by the approval-holder. Manufacturers already keep records of sales. This provision in the final rule does not specify the type of record to be maintained. MSHA believes most manufacturers will use existing record systems to fulfill this requirement as it is the Agency's experience that these

records have been used in the past to trace defective products. The information needed on initial sales is the customer name and address and product identification on an individual basis except for mass producted items such as brattice cloth or hose conduit which can be identified on a batch or lot basis.

Section 7.7 Quality Assurance.

Under the final rule, § 7.7 requires applicants granted an approval or an extension of approval to perform certain quality assurance functions. These include: (1) Inspecting or testing, or both, the critical characteristics of products approved under Part 7; (2) calibrating the instruments used in the inspection or testing of critical characteristics; (3) controlling production documentation to ensure that the product is manufactured as approved; and (4) immediately reporting to MSHA's Approval and Certification Center any knowledge of a product distributed with critical characteristics not complying with the approval specifications.

During the rulemaking process, some commenters suggested that instead of requiring manufacturers to have a quality assurance program, MSHA should rely solely on post-approval product audits to verify that products are being manufactured as approved. Product audits are an effective method of determining whether approved products are being manufactured as approved. However, an additional measure of protection against defective products entering the market can be achieved by preventative measures taken before distribution of products for use in underground mines. For this reason, the final rule retains requirements for a quality assurance program for approved products. These quality assurance requirements focus on the operation of the applicant's program and require the applicant to perform these functions and to certify that they will be done.

The required quality assurance program includes inspecting, testing, or both, the critical characteristics of the particular product. Critical characteristics are those which can adversely affect the safety of the product if they do not conform to specifications. Inspection or testing of these characteristics of an approved product is an essential element of any effective quality assurance program. The critical characteristics for each product which the applicant will be required to inspect or test will be set forth in the applicable subpart.

Under the final rule, some critical characteristics must be inspected or tested on each product with an MSHA approval marking. In other cases, lot or batch sampling provides the necessary quality assurance. This is because quality assurance testing can involve both destructive and nondestructive testing. If a critical characteristic can be tested nondestructively, such as testing the output of a blasting unit with an oscilloscope, then MSHA will generally require that the characteristic be tested on each unit. However, when destructive testing is involved, as is the case in testing the flame-resistance of brattice cloth where the cloth is actually burned to monitor flame-resistance, lot or batch sampling will be specified. In each subpart, the critical characteristics to be inspected or tested will be identified. In addition, the subpart will indicate whether each unit needs to be inspected or tested, or whether lot or batch sampling will be acceptable.

Because the quality control provisions of the final rule focus on the inspection and testing of critical characteristics, the rule also requires that instruments used to inspect and test be properly calibrated and sufficiently accurate. The minimum frequency of calibration required is that recommended by the instrument manufacturer and the calibration must be traceable to standards set by the National Bureau of Standards, U.S. Department of Commerce, or other nationally recognized standards. Further, the use of instruments "accurate to at least one significant figure beyond the desired accuracy" has been added § 7.7(b) of the final rule. MSHA, in its current testing, uses instruments to that degree of accuracy as do most manufacturers.

In addition to inspecting and testing, the final rule requires that production documentation be controlled so that the product is manufactured as approved. This aspect of the final rule requires approval-holders to ensure that the product coming off the assembly line does not differ from the product as approved by MSHA.

Under the proposal, applicants for approval would have been required to control all drawings and specifications. As a result, only the accepted ones could be used during production and quality assurance inspections and tests. Several commenters objected, however, that the documentation used during manufacture was not necessarily the drawings and specifications submitted to MSHA with an approval application. These commenters recommended that applicants for approval be required to "control production documentation to ensure the product is manufactured as approved." MSHA has reworded § 7.7(c) so that the final rule does not specify which drawings must be controlled, but instead obligates each approval-holder to implement document control procedures sufficient to ensure that the product conforms to the approval.

Adherence to the final rule requirements for quality assurance will provide substantial protection against the distribution of defective products. However, MSHA recognizes that this can occur. In such an event, § 7.7(d) requires the approval-holder to report immediately to MSHA any knowledge that a product has been distributed with critical characteristics not meeting required specifications. This knowledge could come from the results of audits conducted by the approval-holder, reports from users, or other sources. Upon receiving such a report, MSHA will work with the approval-holder to implement appropriate corrective action.

Commenters requested that MSHA provide guidance on how approval-holders would comply with the requirement to report knowledge of a product distributed with critical characteristics not in accordance with approval specifications. Since critical characteristics are features of a product which, if not built to specification, can create a hazard, immediate notification should be by expeditious means, such as by telephone. Telephone contact should then be followed up in writing. The oral and written notification should include a description of the nature and extent of the problem, the locations where the product has been distributed, and the approval-holder's plans for corrective action. Corrective action may include recalling the product or restricting use of the product pending retrofitting it to conform with the approval specifications. MSHA will review all of the information provided, including the approval-holder's program of corrective action. If the program is inadequate, MSHA will work with the manufacturer to develop a more appropriate program. If appropriate corrective action cannot be agreed upon by the approval-holder and MSHA, the Agency may seek revocation of the approval, or other action as necessary.

Section 7.8 Post-Approval Product Audit.

The final rule provides that approved products will be subject to periodic audit by MSHA for the purpose of determining conformity with the technical requirements upon which the approval was based. This aspect of the final rule complements the quality assurance provisions, providing a mechanism for independent evaluation by MSHA of approved products on a random basis.

Approved products audited by MSHA will be selected by the Agency as representative of those distributed for use in mines. When an approved product is requested by MSHA for audit from the approval-holder, the Agency will arrange to examine and evaluate it at a mutually agreed upon time and location and permit the approval-holder to observe any audit-related tests conducted. This examination and evaluation can take place at an MSHA facility, at the manufacturer's plant or distribution center, or at any other place agreed upon by MSHA and the approval-holder. The approval-holder may obtain any final report resulting from such audits.

One commenter recommended deleting the phrase "at a mutually agreed upon time and place," stating that to ensure a true picture of approved products, audits must be made randomly and at a time unknown to the manufacturer. It must be kept in mind that post-approval product audits are but one component of a comprehensive program which includes quality assurance inspection and testing, to see that only safe products are used in mines. The Part 7 audit program will allow MSHA to effectively determine whether products are, in fact, being manufactured as approved. First, the audit program is directed at evaluating approved products, not at reviewing the manufacturing site. The final rule provides that MSHA, not the manufacturer, select the product and also permits MSHA to obtain approved products from sources other than the manufacturer. This approach recognizes that an MSHA conducted audit will be more efficient if a specific product is known to be at a preselected site. This is particularly true for products that are "one of a kind" or of very limited distribution. Since these products are not readily found at mine suppliers or distributors, they would be very difficult to locate without the assistance of the approval-holder.

In determining which approved products will be subject to audit at any particular time, MSHA will consider a variety of factors such as whether the manufacturer has previously produced the approved product or similar products, whether the approved product is new or part of a new product line, or whether the approved product is intended for a unique application or limited distribution. Other considerations may include product complexity, the manufacturer's previous product audit results, product population in the mining community, and the time since the last audit or since the product was first approved.

Under the final rule, approved products can be obtained for audit from the approval-holder or from sources other than the manufacturer such as mine suppliers or distributors. The approval-holder may, however, only be required to provide an approved product once a year, at no cost to MSHA, except for cause. MSHA can obtain products for audit from the approval-holder or other sources such as mine suppliers or distributors at any time at MSHA expense.

Based on MSHA's experience, the Agency anticipates few instances in which more than one approved product will be required "for cause" from any one manufacturer in any one year. There are circumstances, however, under which an additional audit is appropriate to ascertain compliance with the technical requirements upon which an approval was based. Examples of such circumstances include verified complaints about the safety of an approved product, evidence of product changes that have not been approved, audit test results that warrant further testing to determine compliance, and evaluation of corrective action taken by an approval-holder. Under these circumstances, the approval-holder must provide, at no cost to MSHA, additional approved products so the Agency can ensure that the approval-holder is meeting the obligation to manufacture the product as approved.

When discrepancies are found during MSHA audits of approved products, MSHA will require that the manufacturer take all necessary corrective actions. These actions could include, but are not limited to, the approval-holder recalling or retrofitting the approved product involved, and issuing user notices. Revocation of the approval by MSHA may result when discrepancies in approved products are not successfully corrected.

Section 7.9 Revocation.

Section 7.9 provides that MSHA may revoke an approval granted under Part 7 whenever a product fails to meet the applicable technical requirements specified in a subpart or creates a hazard when used in a mine. Commenters recommended that the revocation procedures require MSHA to fully describe the "cause" or reason for a revocation action, and that the procedures include an appeal process for the approval-holder to challenge the basis for such action. The Agency recognizes that an MSHA approval is important to the marketability of a product used in the mining industry. For this reason it has been MSHA's practice to treat approval-holders as "licensees" under the Administrative Procedure Act (APA). Consistent with this practice, the final rule provides that approval-holders be accorded certain protections prior to revocation of an approval. These include being provided with: (1) A written notice of the Agency's intent to revoke a product approval, with an explanation of the reasons for the proposed revocation, (2) an opportunity to demonstrate or achieve compliance with the technical requirements for approval, and (3) and opportunity for a hearing upon request.

Also in accord with the APA is the final rule provision that permits MSHA to suspend an approval without prior notification to the approval-holder, if a product poses an imminent hazard to the safety or health of miners. Under such circumstances, an approval may be suspended immediately to protect the safety and health of any affected miners. Upon suspension of an approval, the product involved is no longer approved and MSHA will require mine operators to withdraw the product from use during the course of any suspension. MSHA will also immediately advise approval-holders of any suspension so effective corrective action can be started as soon as possible.

Subpart B—Brattice Cloth and Ventilation Tubing

Subpart B establishes the specific requirements for MSHA approval of brattice cloth and ventilation tubing and is effective August 22, 1988. After one year, it will replace the current acceptable program for brattice cloth and ventilation tubing.

Brattice cloth and ventilation tubing are used to direct or convey vetilating air in underground mines. Because of the fire hazards in underground coal mines and gassy underground metal and nonmental mines, MSHA safety standards in 30 CFR 75.302–3 and 30 CFR 57.22222 require that brattice cloth and ventilation tubing be flame-resistant. The coal mine standard requires brattrice cloth and ventilation tubing to have a flame spread index of 25 or less, as determined by the American Society for Testing and Materials (ASTM) standards E–84, Surface Burning Characteristics of Building Materials, or E–162, Surface Flammability of Materials Using a Radiant Heat Energy Source. Various studies and flammability evaluations by MSHA's Approval and Certification Center have shown that the ASTM tests are not optimum for evaluating the

flammability of brattice cloth and ventilation tubing. For example, these tests do not evaluate the materials as used in a mining environment and can yield varying test results. In some MSHA tests, certain brattice materials that yielded the required flame spread index of 25 or less based on the existing test procedures were shown to propagate flames and be consumed in large-scale tests that were more representative of the mining environment.

Development of Small-Scale Test and Procedures

The test procedures and criteria in Subpart B are the result of MSHA's efforts to develop a more appropriate standardized small-scale flammability test for these materials. MSHA's primary concerns were to develop test procedures that are objective, repeatable, and which appropriately assess the flammability of brattice cloth and ventilation tubing in the context of the mining environment in which they are used.

A large-scale flammability test, using a mine fire gallery and a manner of testing the materials that simulated their use in the mining environment, was developed for brattice and ventilation tubing by the MSHA Approval and Certifiction Center. Results from the large-scale test were repeatable and the test provided an appropriate method for evaluating the flame resistance of brattice and ventilation tubing. However, the large-scale test required an expensive fire gallery facility and large amounts of samples for testing. MSHA believed it would not be feasible for manufacturers or independent laboratories to construct the large-scale fire gallery and perform the test. Therefore, MSHA began development of a smaller-scale laboratory test that would correlate with the large-scale test. The small-scale test described in this final rule was found to produce repeatable, objective test results which appropriately assess the flame resistance of brattice cloth and ventilation tubing in the context of the mining environment and will permit the flame-resistance testing of these materials to be conducted in a relatively inexpensive manner.

Initially, a prototype test approximately one-fourth the size of the large-scale test was devised. However, test results were very erratic and correlation with the large-scale test was poor. Further analysis and test development work was conducted resulting in a small-scale laboratory test apparatus that produced excellent correlation with the large-scale test, provided that certain critical factors were controlled, including gallery dimensions and certain design elements. These factors are critical for obtaining correlation and repeatable test results. For example, the requirements for construction of the small-scale test gallery described in the rule minimize thermal reflection from the walls to the test sample while maintaining uniform heat insulation characteristics and uniform air flow in the sample test area. The design of the ignitor, also specified in the rule, provides a controlled and consistent flame during the igniting process. Through numerous trials, MSHA found that this type of ignitor design produces a reliable and uniform igniting source.

Due to the fire dynamics during testing, MSHA has found these design characteristics to be essential in obtaining uniform and consistent test results. Variations in the principal parts of the apparatus, such as thickness of insulation and dimensions associated with the tapering of the duct section and fan housing, will produce different heat changes and non-uniform air flow. This will disturb the burning process and yield unreliable results. However, where variations do not affect the reliability of the test results, MSHA has not specified design characteristics, and will allow design flexibility.

The test gallery is large enough to permit evaluation of brattice cloth samples 40 inches wide and 48 inches long. This size of brattice sample allows for shrinkage of plastic brattice cloth prior to burning and permits a reliable assessment of flame propagation. The air flow requirements in the test are also reflective of the conditions of use for this material and optimal for promoting flame propagation. In MSHA's view, the small-scale test will permit the manufacturer to test the flame-resistant quality of brattice and ventilation tubing at the production site in a relatively inexpensive manner. Independent laboratories will also be able to economically construct the small-scale test and perform third party testing.

Application Requirements

Under the final rule, applications for approval of brattice cloth or ventilation tubing will be required to include product identification information such as the trade names, and style and code numbers under which the product will be marketed. Approval applications will also be required to include technical specifications related to the flame resistance of the product such as the type of film, scrim, and adhesive used. Because color additives can affect the flame resistance of brattice cloth, color serves as both an indicator of flame resistance and a product identification feature. MSHA will use the application information to evaluate the product submitted for approval as well as to identify products bearing an MSHA approval marking as those approved by the Agency.

Technical Requirements

The technical requirements will require that brattice cloth and rigid ventilation tubing be flame resistant when tested in accordance with the test procedures in the subpart. Flexible ventilation tubing will have to be manufactured using an MSHA-approved brattice cloth, with a noncombustible supporting structure, if one is used. Use of approved brattice cloth eliminates the need to gallery test flexible ventilation tubing.

Critical Characteristics

The final rule requires each batch or lot of brattice cloth and ventilation tubing to be flame tested or each batch or lot of materials that contribute to its flame-resistance be inspected or tested so that the finished product meets the flame resistance test. The final rule clarifies MSHA's intent that the applicant has the option of performing quality control checks on either the batch or lot of brattice cloth and ventilation tubing, or the batch or lot of the materials that contributed to flame-resistance.

Flame Test Apparatus

Section 7.26 of the final rule describes the principal parts of the apparatus used to test for flame resistance of brattice cloth and ventilation tubing. Drawings and standard test procedures are available upon request, and MSHA is prepared to offer assistance to aid manufacturers in establishing testing programs.

In response to commenters, MSHA has revised the wording in § 7.26(b) to clarify its intent that the "J" hooks that support the steel rod are located approximately 2 3/16 inches from the front and back ends of the test gallery, 1½ inches from the ceiling insulation and centrally located in the gallery along its length. Commenters noted that the wording of this aspect of the proposal was confusing and could be construed as giving the location of the sample.

Tests for Flame Resistance

Sections 7.27 and 7.28 of the final rule set forth the test procedures for determining the flame resistance of brattice cloth and rigid ventilation

tubing, respectively. Under both tests, six samples are conditioned. Three samples are flame-tested in still air and three are tested with an average of 125 feet-per-minute of air flowing past the sample. Performance is acceptable for brattice cloth and rigid ventilation tubing if each of the following criteria is met: (1) Flame propagation of less than 4 feet in each of the six tests, (2) an average duration of burning of less than 1 minute in both groups of three tests, and (3) a duration of burning not exceeding 2 minutes in each of the six tests.

Approval Marking

Approval markings on both brattice cloth and ventilation tubing are required to be permanently placed on the products in a manner that facilitates field identification of the product as approved by MSHA. Where approved brattice cloth does not lend itself to approval markings on the material, the final rule permits marking the edge with an MSHA-assigned color code with permanent paint or ink. Approved ventilation tubing will have to be marked on each section with an MSHA approval number.

Post-Approval Product Audit

The final rule requires approval-holders, upon request, to supply to MSHA at no cost up to fifty feet of each approved design of brattice cloth and ventilation tubing. This request can be made no more than once a year, except for cause. MSHA can, however, obtain brattice cloth and ventilation tubing from the approval-holder or other sources such as mine suppliers or distributors at any time at MSHA expense.

New Technology

The final rule includes a "new technology" provision which applies to either new technology or new applications of existing technology to brattice cloth and ventilation tubing. Several commenters indicated a desire to have a provision added to this Subpart B which would allow MSHA to approve brattice cloth and ventilation tubing that incorporate technology for which the specific requirements of the Subpart are not appropriate. Although at an earlier stage in the rulemaking MSHA believed that the specific requirements of the Subpart would be appropriate for any future technology, the Agency recognizes that technology not now envisioned may at some time in the future be applied to these products. The final rule therefore allows under § 7.52 approval of brattice cloth and ventilation tubing that incorporates technology for which the specific requirements of Subpart B are not appropriate if MSHA determines that the brattice cloth and ventilation tubing are as safe as those which meet the requirements of the Subpart. To implement this provision, MSHA will prescribe appropriate technical requirements and test procedures when such approval is sought.

Subpart C—Battery Assemblies

Subpart C establishes the specific requirements for MSHA approval of battery assemblies intended for use in approved equipment in underground mines and is effective August 22, 1988. After one year it will replace the current battery assembly approval requirements in 30 CFR 18.44 and 18.63.

Definitions

Section 7.42 sets out the definitions which apply in Subpart C. During the comment period, battery manufacturers suggested that the definition of a battery assembly be expanded to more clearly delineate the units intended to be covered under Subpart C. In response to those comments, the definition of "battery assembly" is revised in the final rule to mean "a unit or units, consisting of cells and their electrical connections, assembled in a battery box or boxes with covers." In addition, the definition of battery box was revised to eliminate the confusing use of the word "trays" in the proposal. Battery box is now defined as "the exterior sides, bottom, and connector receptacle compartment, if any, of a battery assembly, excluding internal partitions."

Application Procedures and Requirements

Under the final rule, an application for approval must contain sufficient information to document compliance with the technical requirements and be accompanied by a composite drawing showing the design specifications for the battery assembly. For clear identification, the drawing is required to be titled, dated, numbered, and include the latest revision number.

Commenters raised several questions regarding the type of information to be submitted with the application. Section 7.43(a)(1) requires applicants to provide the "overall dimensions of the battery assembly, including the minimum distance from the underside of the cover to the top of the terminals and caps." Clarification was requested as to whether insulating caps over the terminals or vent caps were intended to be referenced. MSHA did not intend to reference one to the exclusion of the other. The highest point on the cell, whether it is insulating caps, terminals or vent caps, defines the minimum distance to the underside of the cover. Commenters suggested that the word "materials" in § 7.43(a)(2) was unnecessary and should be deleted. MSHA agrees and has revised the language to read "composition and thicknesses of the battery box and cover" must be included with the application.

Section 7.43(a)(3) of the final rule requires specification of the "provision for securing covers," in lieu of language in the proposal which required that the method of securing covers be specified. This change was made because the method of securing covers is the responsibility of the machine manufacturer. The battery assembly manufacturer is only obligated to supply the "provision for securing covers."

Section 7.43(a)(4) requires applicants to document the flame-resistance of insulating materials and cables. Flame-resistance tests for cables and insulating material are currently performed by MSHA under 30 CFR 18.64 and 18.65. Cables and insulating material which pass these tests are "accepted" by MSHA and given an MSHA acceptance number which indicates compliance with these requirements. In response to commenters, previously tested and accepted materials will be acceptable under the final rule, provided that suitable documentation is submitted by the applicant to enable MSHA to identify the material as "MSHA accepted." This documentation could consist of an MSHA-acceptance number, acceptance letter or report.

Section 7.43(a)(5) requires applicants to provide the number, type and rating of the battery cells. This requirement for approval applications is unchanged from the proposal.

Under proposed § 7.43(a)(6), applicants would have been required to submit a "diagram of battery connections between cells and between trays." Commenters indicated that in many mining vehicles with two separate assembly units the connections between battery boxes are internal to the mine vehicle and not known to the battery manufacturer. Recognizing this, § 7.43(a)(6) provides an exception where connections between battery boxes are a part of the mine vehicle's electrical system. Consistent with the revised definition of battery boxes in § 7.42, the final rule deletes the word "trays" and replaces it with the term "battery boxes."

Section 7.43(a)(7) requires that the total weight of a unit of the battery

assembly, charged and ready for service, be provided with the application. This requirement of the final rule is unchanged from the proposal.

Commenters on § 7.43(a)(8) requested clarification on the amount of detail necessary to provide "complete specifications" of certain battery elements. MSHA did not intend by the proposal to require extensive detail on the materials, such as details of the elements used to formulate compound materials. To better convey the Agency's intention, the final rule requires that "documentation of materials and configurations" of various battery elements be supplied with approval applications.

Under the proposed rule, § 7.43(c) would have required applications to contain documentation demonstrating adequate battery assembly ventilation. This proposal was related to the technical requirement in § 7.44(f), which required that battery assemblies be sufficiently ventilated to prevent toxic fumes or gases from accumulating in the assembly. Commenters suggested that compliance with all technical requirements, not just § 7.44(f), should be documented. MSHA agrees that applications for approval of battery assemblies must demonstrate compliance with all technical requirements. Accordingly, the proposal has been so modified and in the final rule this requirement is located in paragraph 7.43(a) of the application procedures and requirements.

Technical Requirements

The technical requirements for approval of battery assemblies are based on the existing requirements in § 18.44. Section 7.44(a)(1) concerns the thickness of boxes and covers which provide physical protection for the battery. These minimum thicknesses are related to the weight of the battery and, under the proposal, were based on the performance of M1020 steel. Battery manufacturers, however, indicated in their comments that the American Iron and Steel Institute (AISI) standard material used by battery manufacturers and steel tray fabricators was AISI 1010 hot rolled steel and not M1020 steel. The final rule specifies AISI 1010 hot rolled steel since it has the lowest tensile strength and impact resistance of the materials most commonly used for construction of the boxes and covers.

The final rule adds a new weight class for battery assemblies, recognizing those weighing up to 1000 pounds, and revises the construction requirements for such battery assemblies. Currently, battery boxes and covers for assemblies weighing less than 2000 pounds must be constructed with at least 3/16-inch steel or the equivalent. The final rule revises this requirement to 1/8-inch AISI 1010 hot rolled steel, or equivalent, for batteries weighing up to 1000 pounds. It was determined through engineering analysis that the 1/8 inch AISI 1010 hot rolled steel would provide equivalent strength for the lighter weight assembly. Section 7.44(a)(2) of the final rule also allows other materials to be used for the boxes, if they have at least the same tensile strength and impact resistance of AISI 1010 hot rolled steel.

Paragraph 7.44(a)(3) is revised from the proposal to make clear that only battery covers having tensile strength and impact resistance less than that of AISI 1010 hot rolled steel or constructed of nonmetallic materials are subject to the impact test requirements in § 7.46. This test reveals whether impact to the cover would bend intercell connectors, crack cells, or otherwise damage the battery. MSHA does not intend applicants to test metal materials with strength above this standard. However, all cover designs of nonmetallic materials must be subjected to this test, regardless of their tensile strength due to the higher elasticity exhibited by these materials.

If nonmetallic materials are used for the construction of the battery box or cover, § 7.44(a)(4) requires that the materials be accepted by MSHA as flame-resistant under 30 CFR Part 18. Nonmetallic materials also have to meet the acceptable performance criteria of the temperature deflection test in § 7.47. This test defines the allowable flexibility of the material due to temperature variation to ensure rigidity throughout the possible range of operating temperatures. The rigidity of battery boxes and covers is related to the protections they provide the battery assembly from impact damage.

Section 7.44(b) addresses the electrical conductivity and flame resistance of insulating material. Commenters questioned the proposed insulation resistance (100 megohms) and voltage (500 volts d.c.) requirements of paragraph (b), relating them to the dielectric strength of the insulation. Rather than evaluating the dielectric strength of the material, criteria were adopted to verify that the assembly would meet a minimum standard. The intent of the requirement is to provide a nondestructive test of the insulated component which can be readily performed during assembly and post-approval auditing and also be independent of the battery voltage.

Under §7.44(c) the battery box and cover insulating material are required to be acid-resistant as determined by the test described in § 7.48. The acid resistance test determines whether the materials tested will chemically react with electrolyte from the battery. Paragraph (d) of § 7.44 requires that covers be lined with insulating material, unless they are constructed of insulating material. This insulation prevents the cover from shorting the battery terminals. Under paragraph (e), the covers must be provided with a means of securing them in a closed position to prevent loss of the cover and damage to the internal assembly.

Proposed § 7.44(f) would have required battery boxes to be "sufficiently ventilated" to prevent the accumulation of toxic fumes or gases. Battery manufacturers requested that the rule identify the criteria for ventilating a battery box and suggested the use of a formula developed by industry members. The values used in the formula include the gas constant (cubic feet of hydogen liberated by one ampere-hour of charge), the capacity rating of the battery (in ampere-hours), the normal overcharge, and the number of cells in the battery box. The volume of hydrogen gas (H_2) liberated during the charging cycle is translated into a minimum effective cross-sectional area needed for dilution of the gas. The formula provides an effective means for ensuring sufficient battery box ventilation. Therefore, paragraph (f) of the final rule adopts the formula for determining the size of vent openings. As another revision to the proposal, the final rule requires the size and location of vent openings to be such that they prevent direct access to "other uninsulated current carrying parts" as well as cell terminals. This will reduce shock and shorting hazards.

Paragraph (g) of § 7.44 requires that battery boxes have drainage holes to prevent the accumulation of water or electrolyte which leads to deterioration of the battery box. In addition to the existing requirement that battery cells be insulated from the battery box walls, § 7.44(h) clarifies that the wall insulating material must extend to the top of the battery box to prevent electrical tracking. Tracking is a current-leakage or fault path created across the surface of an insulating material due to buildup of carbon. Paragraph (i) retains the existing requirement that cell connectors be burned on and continues to allow use of two-bolt type bolted connectors on end terminals. "Burning" is a manufacturing method by which the connectors and the battery terminal posts, both of which are lead, are heated

during assembly so that the two are fused together.

Proposed § 7.44(j) retained the existing requirement in 30 CFR 18.44 that battery connections be designed so that the total battery potential is not available between adjacent cells. This reduces the possibility of arcing and shorting across the terminals. One commenter suggested limiting the voltage potential between bordering cells to a maximum of 48 volts. The existing 240 volts DC limitation for the maximum voltage of battery powered equipment in Part 18, as well as battery designed constraints to accommodate machine designs, result in a practical inherent limitation of adjoining cell voltage differences. Therefore, the current requirement that total battery potential not be available between adjacent cells is maintained in the final rule.

Paragraph 7.44(k) requires battery cables to be accepted by MSHA as flame resistant under Part 18 and protected against abrasion. Commenters objected to that part of proposed paragraph (k) that required the cables within the battery box to be flame resistant. This requirement was included to ensure consistency of these cables with other machine cables. This is considered necessary since these cables are electrically unprotected against damage and overheating.

Paragraph 7.44(l) requires that a strain-relief device be installed on cables outside the box when the battery plug and receptacle are not located on or within the battery box. Strain on the battery terminals during charging can loosen the connections and result in arcing or sparking. Cables must be insulated from the strain-relief device with MSHA-accepted flame-resistant insulating material so that damage to the cable jacket does not allow energization of the strain-relief device. Comments on this aspect of the proposal suggested that the connector receptacle housing be specified in addition to the battery box. Since the definition of the battery box includes the connector receptable housing, this modification is not necessary.

Section 7.44(m) is a new provision which requires that at least a ½-inch air space be between the underside of the battery cover and the top of the battery. This design provides protection against impact damage to the battery cells. Commenters objected that the proposed paragraph (m) was design restrictive and should be modified to allow insulated parts within the ½-inch air space. The ½-inch air space between the underside of the battery cover and the top of the battery is a feature found in all currently certified battery assemblies and was used as a basis for the testing and acceptance requirements in the impact test of § 7.46. The final rule retains this requirement without change.

Critical Characteristics

Section 7.45 lists the critical characteristics that must be inspected or tested on each battery assembly before it is shipped for used. These characteristics include: (1) The thickness of covers and boxes, (2) the application and resistance of insulating materials, (3) the size and location of vent openings, (4) the method of cell terminations, (5) the installation of strain relief devices on cables and (6) the type, location and physical protection of cables.

Some commenters suggested that the final rule include, in this section, a requirement for maintenance of written records of inspection or testing of critical characteristics. Under § 7.5 of Subpart A of this Part, approval-holders are required to perform certain quality assurance functions, including inspection or testing of critical characteristics. Further, applicants are required to certify that they will in fact perform these functions. False certification by applicants is subject to criminal sanctions under the Mine Act. MSHA believes that this will serve as sufficient incentive for approval-holders to comply with the inspection or testing requirements. Therefore, the Agency has not required approval-holders to maintain records demonstrating that this function has been performed.

Impact Test

The final rule requires four preconditioned covers installed on the battery box design submitted for approval to be tested by application of a 200 foot pounds dynamic force at prescribed locations. The battery assembly is considered acceptable if the test does not result in bent intercell connectors, cracked or broken filler caps, cracks in the cell cover, cells, or filler material, cracked or bent supports, or cracked or splintered battery covers.

Commenters suggested that proposed § 7.46(a)(1) be revised allowing one cover to be preconditioned at both of the prescribed temperatures, −13°F (−25°C) and 122°F (50°C), in order to relieve the manufacturer of the redundancy and expense of conditioning four covers. The failure of covers which would be evaluated under this test procedure during field testing have demonstrated the need for conditioning covers at temperatures simulating actual temperature extremes which might be encountered during storage or non-use periods. Two samples at each conditioning temperature were chosen as a representative number which would ensure reliability of the test results.

Commenters also requested definition of an acceptable test temperature range, the "dynamic force of 200 foot-pounds" and "filler material located between the individual cells." In response to comments received, the test parameters have been more clearly defined. The test temperature range and maximum impacting surface area of the test weight are specified by the final rule. Additionally, the support blocks for battery covers, when used, are allowed to contact partitions as well as filler material in the battery assembly.

Deflection Temperature Test

This section outlines the test procedures for determining the deflection temperature for nonmetallic material used for battery boxes and covers. In this test, two samples are preconditioned, then their deflection under a given load is recorded as the test temperature is increased at a uniform rate. The deflection of the samples resulting from heating must be less than .010 inch at a temperature of 180 °F (82 °C).

Commenters requested that MSHA use an ASTM testing procedure, if one exists, rather than creating a new test writeup. MSHA has developed the test procedure in the final rule by incorporating appropriate ASTM testing procedures. In this way, several ASTM procedures are not required to be referenced for size of sample, preconditioning, test procedures and instrumentation accuracy. The results of the deflection temperature test are important to proper evaluation of the nonmetallic material since performance of the material at the elevated temperatures could nullify the results obtained in the impact test. This test ensures that a certain level of rigidity is inherent in the material.

Commenters questioned the allowable time interval between conditioning and immersing the sample in the heat transfer medium as required in § 7.47(a)(2) and suggested that "room temperature" be further defined. The time interval between conditioning and immersion does not affect the test results and, therefore, is not defined in the final rule. However, the final rule does specify a test temperature range of 65 °F–80 °F (18.3 °C–26.7 °C) to replace "room temperature."

In response to comments received, the accuracy of the deflection measuring device has been defined. The initial holding period has been corrected to

allow compensation for creep due to loading.

Acid Resistance Test

This section sets forth the procedures for determining the acid resistant qualities of the insulated surfaces of the battery box and cover. Under § 7.48 a representative sample is to be covered with a sulfuric acid solution for 7 days to ensure the insulation does not exhibit any blistering, discoloration, cracking, swelling, tackiness, rubberiness, or loss of bond.

Commenters requested that a ¼" thickness of material be used instead of a representative sample. Since the thickness of the battery box and cover can vary, the suggested ¼ inch dimension is an arbitrary value. The thickness of the insulation is the critical element to be tested. With this in mind, the test procedures have been reworded in the final rule to require the insulation thickness to be representative of that used on the battery box and cover. In addition, certain editorial changes were made in § 7.48(a) (1) and (2) to clarify the intent of the provisions.

One comment received recommended that the size of the sample be specified by a square inch area dimension. The sample size was maintained as proposed to ensure a minimum size and configuration of the sample to address variations of the product due to the manufacturing process.

Approval Marking

This section requires a legible and permanent approval plate, with the assigned MSHA approval number inscribed on it, to be securely attached to each battery box. This allows identification of approved battery assemblies in the mines.

Post-Approval Product Audit

This section requires an approval holder to make an approved battery assembly available for audit at a mutually agreeable site and time. The approval holder may be required to provide, at no cost to MSHA, an approved battery assembly no more than once a year, except for cause. However, MSHA can obtain battery assemblies for audit from the approval-holder or other sources such as mine suppliers or distributors at any time at MSHA expense.

Approval Checklist

This section requires the approval holder to provide, with each approved battery assembly, a description of what is necessary to maintain it n approved condition. This description can be a list of items to be checked by the user and must accompany every approved battery bearing an MSHA approval plate.

New Technology

Section 7.52 allows approval of battery assemblies that incorporate technology for which the specific requirements of Subpart C are not appropriate, if MSHA determines that the battery assembly is as safe as those which meet the requirements of the subpart. This applies to new technology was well as to new applications of existing technology. To implement this provision, MSHA will prescribe appropriate technical requirements and test procedures when such an approval is sought.

IV. Drafting Information

The principal persons responsible for preparing this final rule are: Robert E. Marshall, Office of Technical Support, MSHA, and Linda B. Fort, Office of the Solicitor, Department of Labor.

V. Executive Order 12291 and Regulatory Flexibility Act

In accordance with E.O. 12291, MSHA has prepared an analysis to identify potential costs and benefits associated with Part 7. This analysis has formed the basis for the Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, MSHA has determined that the final rule will not result in major cost increases nor have an incremental effect of $100 million or more on the economy. Therefore, the rule is not within the criteria for a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulatory proposals. This final rule does not significantly alter the existing technical requirements for any of the products.

The final rule increases private-sector involvement in the approval of mining equipment. For the first time, in lieu of testing only by MSHA, the manufacturers or independent laboratories will test certain mining equipment. The Agency anticipates that this new procedure will reduce duplicate testing of products in some cases and eliminate associated costs and potential delays in equipment approvals. In addition, the procedure is expected to enhance the safety of miners through the more rapid introduction of technological advances in mining products.

An option has been introduced in battery assemblies which allows for a reduction in thickness for covers of small batteries. This may reduce costs for some small manufacturers. Any necessary testing of products required by MSHA either is not substantially different from that currently undertaken or it does not impose significant costs compared to the sales value of the product. Furthermore, the tests are performance-oriented so that manufacturers can choose the most cost effective option. The application procedures, quality assurance program and annual audit do not impose significant costs. Part 7 greatly clarifies the standards which must be met by industry for approval of these products and makes the approval process more efficient, thereby reducing costs for large as well as small business.

The estimated total costs for Part 7 are specifically related to the subparts for which revised or new technical specifications are being finalized. Estimates, therefore, have been developed only for those subparts. Estimated costs for additional products will be analyzed as the subparts are proposed.

The total annual incremental costs for Subpart B, Brattice Cloth and Ventilation Tubing, will range from a savings of $7,011 to $13,291. The current annual cost for testing and acceptance is estimated to be $63,746 based on the fee schedule under 30 CFR Part 5. The annual cost of the program under the final rule will be a range of $50,455 to $56,735.

The total annual incremental cost for Subpart C, Battery Assemblies, has been revised since the preliminary analysis. The initial analysis was based upon draft fee schedules that were subsequently revised in the final rule for 30 CFR Part 5. In addition, the initial analysis was based upon a maximum application fee. The revised analysis was based upon an average fee. As a result of these changes, MSHA now estimates the annual incremental costs to battery-assembly manufacturers to be $3,000–$4,000. The total annual cost of the current program is estimated to be $812,375. The program under the final rule is estimated to range in cost from $815,647 to $816,577, also based on the fee schedule in Part 5. The revised application fee will be considerably less under Part 7 than it would be under the current regulation.

The total annual incremental costs for Part 7, Subparts B and C are estimated to range from a savings of $2,809 to $10,019. The aggregated annual costs for the current programs for these products is estimated to be $876,121, whereas the total annual costs of the program under the final rule for these products is

estimated to be a range of $866,102 to $873,312.

VI. Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Under the final rule, §§ 7.3, 7.23 and 7.43 require applicants seeking product approval to submit an application including certification of compliance with the technical requirements. For brattice cloth and ventilation tubing, MSHA estimates there will be 77 applications a year, each requiring 30 minutes to prepare. At an estimated cost of $31 per hour, 77 applications will require 38.5 hours and cost $1,194. In addition, MSHA estimates an application fee for brattice cloth and ventilation tubing of $310 each totaling $23,870 for 77 applications. For battery assemblies, MSHA estimates 36 applications a year and 1.25 hours to prepare at an hourly cost of $31 per hour for a total of 45 hours and $1,395. MSHA further estimates a fee of $44 each for 4 applications, $262 each for 18 applications, and $174 each for 14 applications for a total fee of $7,328 for all battery assembly applications.

Under the final rule, §§ 7.4(a), 7.27(a)(8), 7.28(a)(7), 7.46(a)(3), 7.47(a)(6), and 7.48(a)(3) require records of test results and procedures which must be retained for three years. Standard testing protocols used by the scientific community include the keeping of records of product testing. Therefore, MSHA estimates there will be no additional cost for applicants to maintain these records.

Section 7.7(d) requires applicants to report to MSHA any knowledge of a product distributed with critical characteristics not in accordance with the approval specifications. MSHA estimates that, based on a worst-case analysis, each of 57 approval-holders of brattice cloth and ventilation tubing may need to make a report once a year, and that each report may require 15 minutes to call or write a letter, totaling about 14.25 hours. At $31 an hour, the cost for all reports will be about $442 a year. For battery assemblies, it is estimated that, based on a worst-case analysis, each of 15 approval-holders will make one or two reports a year for an average of 1.5 reports, and that each report would require 15 minutes, for a total of 5.6 hours. At $31 an hour, the cost for reports on battery assemblies will be $174 a year.

Under the final rule, § 7.6(c) requires applicants to maintain records on the distribution of each unit with an approval marking. This provision does not specify the type of record and MSHA believes applicants will use existing sales records systems to comply. Therefore, MSHA has assigned no cost to this requirement.

Section 7.51 of the final rule requires the applicant to include an approval checklist with each battery assembly sold. MSHA estimates that it will require two hours to develop the checklist. At $31 an hour, the onetime cost will be two hours or $62 for each of 15 applicants or a total of 30 hours and $930. MSHA estimates that the time required to insert a copy of the checklist in each battery sold is insignificant relative to the time involved in developing the checklist since it only takes a few seconds and there are only about 1000 battery assemblies sold annually industry-wide.

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35), the collection of information requirements contained in the final rule have been approved by OMB under control number 1219-0100.

List of Subjects in 30 CFR Part 7

Mine safety and health, Underground mining.

Date: June 14, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

Title 30 is hereby amended as follows:

PART 18—[AMENDED]

1. The authority citation for Part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

2. Amend § 18.44 by adding a new paragraph (l) to read as follows:

§ 18.44 [Amended]

* * * * *

(l) Battery-powered equipment shall use battery assemblies accepted or certified under this part or approved under Part 7 of this chapter.

3. Revise § 18.44, effective August 22, 1989, to read as follows:

§ 18.44 Non-intrinsically safe battery-powered equipment.

(a) Battery-powered equipment shall use battery assemblies approved under Part 7 of this chapter, or battery assemblies accepted or certified under this part prior to August 22, 1989.

(b) Battery box covers shall be secured in a closed position.

(c) Each wire or cable leaving a battery box on storage battery-operated equipment shall have short-circuit protection in an explosion-proof enclosure located as close as practicable to the battery terminals. A short-circuit protection device installed within a nearby explosion-proof enclosure will be acceptable. In no case shall the exposed portion of the cable from the battery box to the enclosure exceed 36 inches in length. Each wire or cable shall be protected from damage.

§ 18.63 [Removed and Reserved]

4. Remove § 18.63, effective August 22, 1989, and reserve § 18.63.

5. Add a new Part 7 to Subchapter B, Chapter I, Title 30 of the Code of Federal Regulations as follows:

Part 7—Testing by Applicant or Third Party

Subpart A—General Provisions

Sec.

7.1 Purpose and scope.
7.2 Definitions.
7.3 Application procedures and requirements.
7.4 Product testing.
7.5 Issuance of approval.
7.6 Approval marking and distribution record.
7.7 Quality assurance.
7.8 Post-approval product audit.
7.9 Revocation.

Subpart B—Brattice Cloth and Ventilation Tubing

7.21 Purpose and effective date.
7.22 Definitions.
7.23 Application requirements.
7.24 Technical requirements.
7.25 Critical characteristics.
7.26 Flame test apparatus.
7.27 Test for flame resistance of brattice cloth.
7.28 Test for flame resistance of rigid ventilation tubing.
7.29 Approval marking.
7.30 Post-approval product audit.
7.31 New technology.

Subpart C—Battery Assemblies

7.41 Purpose and effective date.
7.42 Definitions.
7.43 Application requirements.
7.44 Technical requirements.
7.45 Critical characteristics.
7.46 Impact test.
7.47 Deflection temperature test.
7.48 Acid resistance test.
7.49 Approval marking.
7.50 Post-approval product audit.
7.51 Approval checklist.
7.52 New technology.

Authority: 30 U.S.C. 957.

Subpart A—General

§ 7.1 Purpose and scope.

This part sets out requirements for MSHA approval of certain equipment and materials for use in underground mines whose product testing and evaluation does not involve subjective analysis.These requirements apply to

roducts listed in the subparts following his Subpart A. After the dates specified n the following subparts, requests for pproval of products shall be made in ccordance with this Subpart A and the pplicable subpart.

7.2 Definitions.

The following definitions apply in this art.

Applicant. An individual or rganization that manufactures or ontrols the assembly of a product and hat applies to MSHA for approval of hat product.

Approval. A document issued by ISHA which states that a product has et the requirements of this part and hich authorizes an approval marking dentifying the product as approved.

Authorized company official. An ndividual designated by applicant who as the authority to bind the company.

Critical characteristic. A feature of a roduct that, if not manufactured as pproved, could have a direct adverse ffect on safety and for which testing or nspection is required prior to shipment o ensure conformity with the technical equirements under which the approval was issued.

Extention of approval. A document ssued by MSHA which states that the hange to a product previously pproved by MSHA under this part eets the requirements of this part and hich authorizes the continued use of he approval marking after the ppropriate extension number has been dded.

Post-approval product audit. Examination, testing, or both, by MSHA f approved products selected by MSHA o determine whether those products eet the applicable technical equirements and have been anufactured as approved.

Technical requirements. This design nd performance requirements for a roduct, as specified in a subpart of this art.

Test procedures. The methods pecified in a subpart of this part used o determine whether a product meet the erformance portion of the technical equirements.

7.3 Application procedures and equirements.

(a) *Application.* Requests for an pproval or extension of approval shall e sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR 1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059.

(b) *Fees.* Fees calculated in ccordance with Part 5 of this title shall e submitted in accordance with § 5.40.

(c) *Original approval.* Each application for approval of a product shall include—

(1) A brief description of the product;

(2) The documentation specified in the appropriate subpart of this part;

(3) The name, address, and telephone number of the applicant's representative responsible for answering any questions regarding the application;

(4) If appropriate, a statement indicating whether, in the applicant's opinion, testing is required. If testing is not proposed, the applicant shall explain the reasons for not testing; and

(5) If appropriate, the place and date for product testing.

(d) *Subsequent approval of a similar product.* Each application for a product similar to one for which the applicant already holds an approval shall include—

(1) The approval number for the product which most closely resembles the new one;

(2) The information specified in paragraph (c) of this section for the new product, except that any document which is the same as one listed by MSHA in prior approvals need not be submitted, but shall be noted in the application;

(3) An explanation of any change from the existing approval; and

(4) A statement as to whether, in the applicant's opinion, the change requires product testing. If testing is not proposed, the applicant shall explain the reasons for not testing.

(e) *Extension of an approval.* Any change in the approved product from the documentation on file at MSHA that affects the technical requirements of this part shall be submitted to MSHA for approval prior to implementing the change. Each application for an extension of approval shall include—

(1) The MSHA-assigned approval number for the product for which the extension is sought;

(2) A brief description of the proposed change to the previously approved product;

(3) Drawings and specifications which show the change in detail;

(4) A statement as to whether, in the applicant's opinion, the change requires product testing. If testing is not proposed, the applicant shall explain the reasons for not testing;

(5) The place and date for product testing, if testing will be conducted; and

(6) The name, address, and telephone number of the applicant's representative responsible for answering any questions regarding the application.

(f) *Certification statement.* (1) Each application for original approval, subsequent approval, or extension of approval of a product shall include a certification by the applicant that the product meets the design portion of the technical requirements, as specified in the appropriate subpart, and that the applicant will perform the quality assurance functions specified in § 7.7. For a subsequent approval or extension of approval, the applicant shall also certify that the proposed change cited in the application is the only change that affects the technical requirements.

(2) After completion of the required product testing, the applicant shall certify that the product has been tested and meets the performance portion of the technical requirements, as specified in the appropriate subpart.

(3) All certification statements shall be signed by an authorized company official.

(Approved by the Office of Management and Budget under control number 1219–0100)

§ 7.4 Product testing.

(a) All products submitted for approval under this part shall be tested using the test procedures specified in the appropriate subpart unless MSHA determines, upon review of the documentation submitted, that testing is not required. Applicants shall maintain records of test results and procedures for three years.

(b) Unless otherwise specified in the subpart, test instruments shall be calibrated at least as frequently as, and according to, the instrument manufacturer's specifications, using calibration standards traceable to those set by the National Bureau of Standards, U.S. Department of Commerce or other nationally recoginzed standards and accurate to at lease one significant figure beyond the desired accuracy.

(c) When MSHA elects to observe product testing, the applicant shall permit an MSHA official to be present at a mutually agreeable date, time, and place.

(d) MSHA will accept product testing conducted outside the United States where such acceptance is specifically required by international agreement.

(Approved by the Office of Management and Budget under control number 1219–0100)

§ 7.5 Issuance of approval.

(a) An applicant shall not advertise or otherwise represent a product as approved until MSHA has issued the applicant an approval.

(b) MSHA will issue an approval or a notice of the reasons for denying approval after reviewing the application, and the results of product testing, when applicable. An approval will identify the

documents upon which the approval is based.

§ 7.6 Approval marking and distribution record.

(a) Each approved product shall have an approval marking, as specified in the appropriate subpart of this part.

(b) For an extension of approval, the extension number shall be added to the original approval number on the approval marking.

(c) Applicants shall maintain records of the initial sale of each unit having an approval marking. The record retention period shall be at least the expected shelf life and service life of the product.

(Approved by the Office of Management and Budget under control number 1219–0100)

§ 7.7 Quality assurance.

Applicants granted an approval or an extension of approval under this part shall—

(a) Inspect or test, or both, the critical characteristics in accordance with the appropriate subpart of this part;

(b) Unless otherwise specified in the subparts, calibrate instruments used for the inspection and testing of critical characteristics at least as frequently as, and according to, the instrument manufacturer's specifications, using calibration standards traceable to those set by the National Bureau of Standards, U.S. Department of Commerce or other nationally recognized standards and use instruments accurate to at least one significant figure beyond the desired accuracy.

(c) Control production documentation so that the product is manufactured as approved;

(d) Immediately report to the MSHA Approval and Certification Center, any knowledge of a product distributed with critical characteristics not in accordance with the approval specifications.

(Approved by the Office of Management and Budget under control number 1219–0100)

§ 7.8 Post-approval product audit.

(a) Approved products shall be subject to periodic audits by MSHA for the purpose of determining conformity with the technical requirements upon which the approval was based. Any approved product which is to be audited shall be selected by MSHA and be representative of those distributed for use in mines. The approval-holder may obtain any final report resulting from such audit.

(b) No more than once a year except for cause, the approval-holder, at MSHA's request, shall make an approved product available at no cost to MSHA for an audit to be conducted at a mutually agreeable site and time. The approval-holder may observe any tests conducted during this audit.

(c) An approved product shall be subject to audit for cause at any time MSHA believes that it is not in compliance with the technical requirements upon which the approval was based.

§ 7.9 Revocation.

(a) MSHA may revoke for cause an approval issued under this part if the product:

(1) Fails to meet the applicable technical requirements; or

(2) Creates a hazard when used in a mine.

(b) Prior to revoking an approval, the approval-holder shall be informed in writing of MSHA's intention to revoke approval. The notice shall:

(1) Explain the specific reasons for the proposed revocation; and

(2) Provide the approval-holder an opportunity to demonstrate or achieve compliance with the product approval requirements.

(c) Upon request, the approval-holder shall be afforded an opportunity for a hearing.

(d) If a product poses an imminent hazard to the safety or health of miners, the approval may be immediately suspended without a written notice of the agency's intention to revoke. The suspension may continue until the revocation proceedings are completed.

Subpart B—Brattice Cloth and Ventilation Tubing

§ 7.21 Purpose and effective date.

This subpart establishes the specific requirements for approval of brattice cloth and ventilation tubing. It is effective August 22, 1988. Applications for approval or extension of approval submitted after August 22, 1989, shall meet the requirements of this part.

§ 7.22 Definitions.

The following definitions apply in this subpart:

Brattice cloth. A curtain of jute, plastic, or similar material used to control or direct ventilating air.

Denier. A unit of yarn size indicating the fineness of fiber of material based on the number of grams in a length of 9,000 meters.

Film. A sheet of flexible material applied to a scrim by pressure, temperature, adhesion, or other method.

Scrim. A substrate material of plastic or fabric laminated between or coated with a film.

Ventilation tubing. Rigid or flexible tubing used to convey ventilating air.

§ 7.23 Application requirements.

(a) *Brattice cloth.* A single application may address two or more products if the products differ only in: weight of the finished product; weight or weave of the same fabric or scrim; or thickness or layers of the same film. Applications shall include the following information:

(1) Trade name.

(2) Product designations (for example, style and code number).

(3) Color.

(4) Type of brattice (for example, plastic or jute).

(5) Weight of finished product.

(6) Film: type, weight, thickness, supplier, supplier's stock number or designation, and percent of finished product by weight.

(7) Scrim: Type, denier, weight, weave, the supplier, supplier's stock number or designation, and percent of finished product by weight.

(8) Adhesive: type, supplier, supplier's stock number or designation, and percent of finished product by weight.

(b) *Flexible ventilation tubing.* Applications shall include the product description information in paragraph (a) of this section and list the type of supporting structure, if applicable; inside diameters; and configurations.

(c) *Rigid ventilation tubing.* A single application may address two or more products if the products differ only in diameters, lengths, configuration, or average wall thickness. Applications shall include the following information:

(1) Trade name.

(2) Product designations (for example, style and code numbers).

(3) Color.

(4) Type of ventilation tubing (for example, fiberglass, plastic, or polyethylene).

(5) Inside diameter, configuration, and average wall thickness.

(6) Suspension system (for example, metal hooks).

(7) Base material: type, supplier, the supplier's stock number, and percent of finished product by weight.

(8) Resin: type, supplier, the supplier's stock number, and percent of finished product by weight.

(9) Flame retardant, if added during manufacturing: type, supplier, the supplier's stock number, and percent of finished product by weight.

(Approved by the Office of Management and Budget under control number 1219–0100)

§ 7.24 Technical requirements.

(a) Brattice cloth shall be flame resistant when tested in accordance with the flame resistance test in § 7.27.

(b) Flexible ventilation tubing shall be manufactured using an MSHA-approved

brattice cloth. If a supporting structure is used, it shall be metal or other noncombustible material which will not ignite, burn, support combustion or release flammable vapors when subjected to fire or heat.

(c) Rigid ventilation tubing shall be flame resistant when tested in accordance with the flame resistance test in § 7.28.

§ 7.25 Critical characteristics.

A sample of each batch or lot of brattice cloth and ventilation tubing shall be flame tested or a sample of each batch or lot of the materials that contribute to the flame-resistance characteristic shall be inspected or tested to ensure that the finished product will meet the flame-resistance test.

§ 7.26 Flame test apparatus.

The principal parts of the apparatus used to test for flame-resistance of brattice cloth and ventilation tubing shall be constructed as follows:

(a) A 16-gauge stainless steel gallery lined on the top, bottom and both sides with ½ inch thick Marinite or equivalent insulating material yielding inside dimensions approximately 58 inches long, 41 inches high, and 30 inches wide;

(b) Two ⅜-inch diameter steel J hooks and a 9/16-inch diameter steel rod to support the sample located approximately 2 3/16-inches from the front and back ends of the test gallery, 1½-inches from the ceiling insulation and centrally located in the gallery along its length. Samples shall be suspended to preclude folds or wrinkles;

(c) A tapered 16-gauge stainless steel duct section tapering from a cross sectional area measuring 2 feet 7 inches wide by 3 feet 6 inches high at the test gallery to a cross-sectional area 1 foot 6 inches square over a length of 3 feet. The tapered duct section must be tightly connected to the test gallery;

(d) A 16-gauge stainless steel fan housing, consisting of a 1 foot 6 inches square section 6 inches long followed by a 10 inch long section which tapers from 1 foot 16 inches square to 12 inches diameter round and concluding with a 12 inch diameter round collar 3 inches long. A variable speed fan capable of producing an air velocity of 125 ft./min. in the test gallery must be secured in the fan housing. The fan housing must be tightly connected to the tapered duct section;

(e) A methane-fueled impinged jet burner igniting source, measuring 12 inches long from the threaded ends of the first and last jets and 4 inches wide with 12 impinged jets, approximately 1⅜-inches long and spaced alternately along the length of the burner tube. The burner jets must be canted so that they point toward each other in pairs and the flame from these pairs impinge upon each other.

§ 7.27 Test for flame resistance of brattice cloth.

(a) *Test procedures.* (1) Prepare 6 samples of brattice cloth 40 inches wide by 48 inches long.

(2) Prior to testing, condition each sample for a minimum of 24 hours at a temperature of 70±10 °F (21±5.5 °C) and a relative humidity of 55±10%.

(3) For each test, suspend the sample in the gallery by wrapping the brattice cloth around the rod and clamping each end and the center. The brattice cloth must hang 4 inches from the gallery floor.

(4) Use a front exhaust system to remove smoke escaping from the gallery. The exhaust system must remain on during all testing, but not affect the air flow in the gallery.

(5) Set the methane-fueled impinged jet burner to yield a flame height of 12 inches as measured at the outermost tip of the flame.

(6) Apply the burner to the front lower edge of the brattice cloth and keep it in contact with the material for 25 seconds or until 1 foot of material, measured horizontally, is consumed, whichever occurs first. If the material shrinks during application of the burner flame, move the burner flame to maintain contact with 1 foot of the material. If melting material might clog the burner orifices, rotate the burner slightly during application of the flame.

(7) Test 3 samples in still air and 3 samples with an average of 125 ft./min. of air flowing past the sample.

(8) Record the propagation length and duration of burning for each of the 6 samples. The duration of burning is the total burning time of the specimen during the flame test. This includes the burn time of any material that falls on the floor of the test gallery during the igniting period. However, the suspended specimen is considered burning only after the burner is removed. Should the burning time of a suspended specimen and a specimen on the floor coincide, count the coinciding burning time only once.

(9) Calculate the average duration of burning for the first 3 samples (still air) and the second 3 samples (125 ft./min. air flow).

(b) *Acceptable performance.* The brattice cloth shall meet each of the following criteria:

(1) Flame propagation of less than 4 feet in each of the six tests.

(2) An average duration of burning of less than 1 minute in both groups of three tests.

(3) A duration of burning not exceeding two minutes in each of the six tests.

(Approved by the Office of Management and Budget under control number 1219–0100)

§ 7.28 Test for flame resistance of rigid ventilation tubing.

(a) *Test procedures.* (1) Prepare 6 samples of ventilation tubing 48 inches in length with all flared or thickened ends removed. Any sample with a cross-sectional dimension greater than 24 inches must be tested in a 24-inch size.

(2) For each test, suspend the sample in the center of the gallery by running a wire through the 48-inch length of tubing.

(3) Use a front exhaust system to remove smoke escaping from the gallery. The exhaust system must remain on during all testing but not affect the air flow in the gallery.

(4) Set the methane-fueled impinged jet burner to yield a flame height of 12 inches as measured at the outermost tip of the flame.

(5) Apply the burner to the front lower edge of the tubing so that two-thirds of the burner is under the tubing and the remaining third is exposed to allow the flames to curl onto the inside of the tubing. Keep the burner in contact with the material for 60 seconds. If melting material might clog the burner orifices, rotate the burner slightly during application of the flame.

(6) Test 3 samples in still air and 3 samples with an average of 125 ft./min. of air flowing past the sample.

(7) Record the propagation length and duration of burning for each of the 6 samples. The duration of burn is the total burning time of the specimen during the flame test. This includes the burning time of any material that falls on the floor of the test gallery during the igniting period. However, the suspended specimen is considered burning only after the burner is removed. Should the burning time of a suspended specimen and a specimen on the floor coincide, count the coinciding burn time only once.

(8) Calculate the average duration of burning for the first 3 samples (still air) and the second 3 samples (125 ft./min. air flow).

(b) *Acceptable performance.* The ventilation tubing shall meet each of the following criteria:

(1) Flame propagation of less than 4 feet in each of the 6 tests.

(2) An average duration of burning of less than 1 minute in both groups of 3 tests.

(3) A duration of burning not exceeding 2 minutes in each of the 6 tests.

(Approved by the Office of Management and Budget under control number 1219–0100)

§ 7.29 Approval marking.

(a) Approved brattice cloth shall be legibly and permanently marked with the assigned MSHA approval number at intervals not exceeding ten feet. If the nature of the material or method of processing makes such marking impractical, permanent paint or ink may be used to mark the edge with an MSHA-assigned color code.

(b) Approved ventilation tubing shall be legibly and permanently marked on each section with the assigned MSHA approval number.

(c) An approved product shall be marketed only under a brand or trade name that has been furnished to MSHA.

§ 7.30 Post-approval product audit.

Upon request by MSHA but no more than once a year except for cause, the approval-holder shall supply to MSHA at no cost up to fifty feet of each approved design of brattice cloth and ventilation tubing for audit.

§ 7.31 New technology.

MSHA may approve brattice cloth and ventilation tubing that incorporates technology for which the requirements of this subpart are not applicable, if the Agency determines that the product is as safe as those which meet the requirements of this subpart.

Subpart C—Battery Assemblies

§ 7.41 Purpose and effective date.

This subpart establishes the specific requirements for MSHA approval of battery assemblies intended for incorporation in approved equipment in underground mines. It is effective August 22, 1988. Applications for approval or extensions of approval submitted after August 22, 1989, shall meet the requirements of this part.

§ 7.42 Definitions.

The following definitions apply in this subpart:

Battery assembly. A unit or units consisting of cells and their electrical connections, assembled in a battery box or boxes with covers.

Battery box. The exterior sides, bottom, and connector receptacle compartment, if any, of a battery assembly, excluding internal partitions.

§ 7.43 Application requirements.

(a) An application for approval of a battery assembly shall contain sufficient information to document compliance with the technical requirements of this subpart and include a composite drawing with the following information:

(1) Overall dimensions of the battery assembly, including the minimum distance from the underside of the cover to the top of the terminals and caps.

(2) Composition and thicknesses of the battery box and cover.

(3) Provision for securing covers.

(4) Documentation of flame-resistance of insulating materials and cables.

(5) Number, type, and rating of the battery cells.

(6) Diagram of battery connections between cells and between battery boxes, except when connections between battery boxes are a part of the machine's electrical system.

(7) Total weight of the battery, charged and ready for service.

(8) Documentation of materials and configurations for battery cells, intercell connectors, filler caps, and battery top:

(i) If nonmetallic cover designs are used with cover support blocks; or

(ii) If the cover comes into contact with any portion of the cells, caps, filler material, battery top, or intercell connectors during the impact test specified by § 7.46.

(b) All drawings shall be titled, dated, numbered, and include the latest revision number.

(Approved by the Office of Management and Budget under control number 1219–0100)

§ 7.44 Technical requirements.

(a)(1) Battery boxes and covers constructed of AISI 1010 hot rolled steel shall have the following minimum thicknesses based on the total weight of a unit of the battery assembly charged and ready for service:

Weight of battery unit	Minimum required thickness
1,000 lbs. maximum	10 gauge or ⅛" nominal
1,001 to 2,000 lbs.	7 gauge or 3/16" nominal
2,001 to 4,500 lbs.	3 gauge or ¼" nominal
Over 4,500 lbs.	0 gauge or 5/16" nominal

(2) Battery boxes not constructed of AISI 1010 hot rolled steel shall have at least the tensile strength and impact resistance of battery boxes for the same weight class, as listed in paragraph (a)(1) of this section.

(3) Battery box covers constructed of materials with less than the tensile strength and impact resistance of AISI 1010 hot rolled steel or constructed of nonmetallic materials shall meet the acceptable performance criteria for the impact test in § 7.46. Nonmetallic covers shall be used only in the battery assembly configuration in which they pass the impact test.

(4) Nonmetallic materials for boxes and covers shall—

(i) Be accepted by MSHA as flame-resistant material under Part 18 of this chapter; and

(ii) Meet the acceptable performance criteria for the deflection temperature test in § 7.47.

(b) All insulating material shall have a minimum resistance of 100 megohms at 500 volts d.c. and be accepted by MSHA as flame resistant under Part 18 of this chapter.

(c) Battery box and cover insulating material shall meet the acceptable performance criteria for the acid resistance test in § 7.48.

(d) Covers shall be lined with insulating material permanently attached to the underside of the cover, unless the cover is constructed of insulating material.

(e) Covers, including those used over connector receptacle housings, shall be provided with a means of securing them in a closed position.

(f) Battery boxes shall be provided with vent openings to prevent the accumulation of flammable or toxic gases or vapors within the battery assembly. The size and location of openings shall prevent direct access to cell terminals and other uninsulated current carrying parts. The total minimum unobstructed cross-sectional area of the ventilation openings shall be no less than the value determined by the following formula:

$$\frac{(N)\,(R)}{950} = M$$

N=Number of cells in battery box.

R=Rated 6 hour battery capacity in ampere hours.

M=Total minimum ventilation area in square inches per battery box.

(g) Battery boxes shall have drainage holes to prevent accumulation of water or electrolyte.

(h) Battery cells shall be insulated from the battery box walls, partitions and bottom by insulating material, unless such part of the battery box is constructed of insulating material. Battery box wall insulating material shall extend to the top of the wall.

(i) Cell terminals shall be burned on, except that bolted connectors using two or more bolts may be used on end terminals.

(j) Battery connections shall be designed so that total battery potential is not available between adjacent cells.

(k) Cables within a battery box shall be accepted by MSHA as flame resistant under Part 18 of this chapter. The cables shall be protected against abrasion by insulation, location, clamping, or other effective means.

(l) When the battery plug and receptacle are not located on or within the battery box, strain on the battery terminals shall be prevented by a strain-relief device on the cable. Insulating material shall be placed between the strain-relief device and cable, unless the device is constructed of insulating material.

(m) At least a ½-inch air space shall be provided between the underside of the battery cover and the top of the battery, including the terminals and connectors.

§ 7.45 Critical characteristics

The following critical characteristics shall be inspected or tested on each battery assembly to which an approval marking is affixed:

(a) Thickness of covers and boxes.

(b) Application and resistance of insulating material.

(c) Size and location of ventilation openings.

(d) Method of cell terminations.

(e) Strain relief devices for cables leaving boxes.

(f) Type, location, and physical protection of cables.

§ 7.46 Impact test.

(a) *Test procedures.* (1) Prepare four covers for testing by conditioning two covers at −13°F (−25°C) and two covers at 122°F (50°C) for a period of 48 hours.

(2) Mount the covers on a battery box of the same design with which the covers are to be approved, including any support blocks, with the battery cells completely assembled. If used, support blocks must contact only the filler material or partitions between the individual cells. At the test temperature range of 65°F –80°F (18.3 ° C –26.7 ° C), apply a dynamic force of 200 ft. lbs. to the following areas using a hemispherical weight with a 6" maximum radius:

(i) The center of the two largest unsupported areas;

(ii) The areas above at least two support blocks, if used;

(iii) The areas above at least two intercell connectors, one cell, and one filler cap; and

(iv) Areas on at least two corners. If the design consists of both inside and outside corners, test one of each.

(3) Record the condition of the covers, supports, intercell connectors, filler caps, cell covers, and filler material.

(b) *Acceptable performance.* Impact tests of any of the four covers shall not result in any of the following:

(1) Bent intercell connectors.

(2) Cracked or broken filler caps, except plastic tabs which extend from the body of the filler caps.

(3) Cracks in the cell cover, cells, or filler material.

(4) Cracked or bent supports.

(5) Cracked or splintered battery covers.

(Approved by the Office of Management and Budget under control number 1219–0100)

§ 7.47 Deflection temperature test.

(a) *Test procedures.* (1) Prepare two samples for testing that measure 5 inches by ½ inch, by the thickness of the material as it will be used. Prior to testing, condition the samples at 73.4± 3.6 °F (23±2 °C) and 50±5% relative humidity for at least 40 hours.

(2) Place a sample on supports which are 4 inches apart and immersed in a heat transfer medium at a test temperature range of 65 °F−80 °F (18.3 °C −26.7 °C). The heat transfer medium must be a liquid which will not chemically affect the sample. The testing apparatus must be constructed so that expansion of any components during heating of the medium does not result in deflection of the sample.

(3) Place a temperature measuring device with an accuracy of 1% into the heat transfer medium within ⅛ inch of, but not touching, the sample.

(4) Apply a total load, in pounds, numerically equivalent to 11 times the thickness of the sample, in inches, to the sample midway between the supports using a ⅛ inch radius, rounded contact. The total load includes that weight used to apply the load and any force exerted by the deflection measurement device.

(5) Use a deflection measuring device with an accuracy of ±.001 inch to measure the deflection of the sample at the point of loading as the temperature of the medium is increased at a uniform rate of 3.6±.36 °F/min. (2±0.2 °C/min.). Apply the load to the sample for 5 minutes prior to heating, to allow compensation for creep in the sample due to the loading.

(6) Record the deflection of the sample due to heating at 180 °F (82 °C).

(7) Repeat steps 2 through 6 for the other sample.

(b) *Acceptable performance.* Neither sample shall have a deflection greater than .010 inches at 180 °F (82 °C).

(Approved by the Office of Management and Budget under control number 1219–0100)

§ 7.48 Acid resistance test.

(a) *Test procedures.* (1) Prepare one sample each of the insulated surfaces of the battery box and of the cover that measure at least 4 inches by 8 inches, by the thickness of the sample which includes the insulation plus the battery cover or box material. The insulation thickness shall be representative of that used on the battery box and cover. If the insulation material and thickness of material are identical for the battery box and cover, only one sample need be prepared and tested.

(2) Prepare a 30 percent solution of sulfuric acid (H_2SO_4) by mixing 853 ml of water with 199 ml of sulfuric acid (H_2SO_4) with a specific gravity of 1.84. Completely cover the samples with the acid solution at the test temperature range of 65 °F−80 °F (18.3 °C−26.7 °C) and maintain these conditions for 7 days.

(3) After 7 days, record the condition of the samples.

(b) *Acceptable performance.* At the end of the test, the insulation shall not exhibit any blistering, discoloration, cracking, swelling, tackiness, rubberiness, or loss of bond.

(Approved by the Office of Management and Budget under control number 1219–0100)

§ 7.49 Approval marking.

Each approved battery assembly shall be identified by a legible and permanent approval plate inscribed with the assigned MSHA approval number and securely attached to the battery box.

§ 7.50 Post-approval product audit.

Upon request by MSHA, but no more than once a year except for cause, the approval-holder shall make an approved battery assembly available for audit at no cost to MSHA.

§ 7.51 Approval checklist.

Each battery assembly bearing an MSHA approval plate shall be accompanied by a description of what is necessary to maintain the battery assembly as approved.

(Approved by the Office of Management and Budget under control number 1219–0100)

§ 7.52 New technology.

MSHA may approve a battery assembly that incorporates technology for which the requirements of this subpart are not applicable, if the Agency determines that the battery assembly is as safe as those which meet the requirements of this subpart.

[FR Doc. 88–13702 Filed 6–21–88; 8:45 am]
BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7 and 25

Multiple-Shot Blasting Units

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement new procedures and requirements for testing and approval of multiple-shot blasting units used in underground coal mines and certain metal and nonmetal mines. The proposed revisions would upgrade existing provisions in 30 CFR Part 25 to include current terminology, eliminate duplicative or unnecessary provisions, and provide alternative methods of compliance where possible. The proposal would also recognize advances in technology and would be consistent with Part 75, Subpart N revisions currently under review in a separate rulemaking to update the Agency's safety standards for the use of explosives in underground coal mines.

DATE: Written comments must be received on or before August 22, 1988.

ADDRESS: Send written comments to the Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

This proposal, in one year, would replace the current regulations covering the testing and approval of multiple-shot blasting units found in 30 CFR Part 25. These revisions are proposed pursuant to section 508 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 957).

On July 9, 1982, MSHA published an Advanced Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** announcing a comprehensive review of the Agency's underground coal mining safety standards, 30 CFR Part 75, Subpart N, (47 FR 30025). As part of that review, MSHA specifically sought comments on its blasting and explosives standards and related approval regulations.

On June 5, 1984, MSHA published a notice of availability of its preproposal draft revisions concerning approval requirements for blasting units, 30 CFR Part 25, and scheduled a public conference (49 FR 23281). The public conference, held July 11, 1984, in Pittsburgh, Pennsylvania, was well attended by representatives of the mining community. MSHA has also received written comments from manufacturers of blasting units and other segments of the mining community.

The preproposal draft retained the existing procedures for MSHA testing of multiple-shot blasting units submitted for approval. Under this proposal, multiple-shot blasting units would be evaluated for approval under the procedures of MSHA's new Part 7, Product Testing by Applicant or Third Party. Blasting units meet the criteria for applicant or third party testing because they are a product possessing characteristics that can be objectively tested in a routine and readily reproducible manner with no elements of subjective analysis.

As explained in that rulemaking, Part 7 would initiate a revised role for MSHA in the evaluation and testing of selected products used in underground mines. Products approved under Part 7 are required to be tested by the applicant or by a third party selected by the applicant to conduct the testing. All testing is to be conducted using MSHA specified test procedures with certification of test results by the applicant. In addition, the Agency has the right to observe all product testing. When requesting approval, the applicant is required to submit certain product information. This includes, for example, drawings and specifications to document compliance with the technical requirements. Based upon an evaluation of the technical documentation, MSHA observations of product testing, and a review of the certification statements, MSHA will issue an approval or notice denying approval of the product.

Once a product is approved under proposed Part 7, an approval-holder is required to inspect or test critical characteristics of the product as part of its quality assurance program. MSHA will perform periodic audits of products approved under Part 7 to ensure that they are being manufactured as approved. If a product fails to meet the technical requirements of Part 7 or creates a hazard related to its use, MSHA will take immediate action to address the problem including revocation of the approval if necessary.

As a new Subpart D to Part 7, this proposal specifies the technical requirements and test procedures for the approval of multiple-shot blasting units. The proposal is derived from existing Part 25. The purpose of this proposed revision is to provide objective criteria for applicant or third party testing. The proposal would replace subjective technical requirements with performance-oriented tests and introduce charts which specify maximum electrical values. These proposed tests are based on MSHA's engineering experience with the subjective criteria in the existing approval requirements. Except where indicated, they are not intended to introduce more stringent testing methods, but rather to more explicitly state the tests used in MSHA's current testing program which have proven to be effective. By using these test procedures, manufacturers can measure, evaluate and certify compliance of their product with the requirements of this subpart in order to receive an MSHA approval. The proposal would also delete obsolete requirements for generator-powered blasting unit designs which are no longer used in underground mines.

MSHA is proposing new requirements and test procedures for the energy output of blasting units. Although these requirements are more stringent than the existing requirements, they address state-of-the-art design technology incorporated in most blasting units currently approved for use. The requirements would address potential safety hazards where MSHA believes that the incorporation of advanced technology improves safety at negligible increased cost.

Because of the difficulty inherent in isolating causal factors after explosives accidents occur, few data exist to indicate a decided problem with the performance of blasting units on the market today. There are three elements present in an electric blasting circuit, the explosive, the electric detonator, and the blasting unit. Degraded performance of any one of these elements has the potential to contribute to a blasting accident such an incomplete or premature detonation. In the absence of specific data, the Agency has based this proposal on its field experience, testing done under the existing approval standards, developmental research and the availability of improved technology. MSHA requests comments on the appropriateness of all provisions in this proposal.

Public comments received on the preproposal draft revisions to existing Part 25, proposed Part 7, and from MSHA's proposed Part 7 hearings conducted on July 24 and 29, 1986 (51 FR 23559) have been taken into account in developing this proposal. The proposal is consistent with Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

II. Discussion and Summary of the Proposed Rule

MSHA's existing regulations governing the approval of blasting units (30 CFR Part 25) were last revised in 1980. Since that time, technological advances in electronic components and circuitry have led to the development of improved blasting units suitable for use in underground mines have potentially explosive atmospheres.

The proposed rule does not contain regulations concerning the fees to be charged for approval of blasting units. On May 8, 1987, in a separate rulemaking, MSHA promulgated a new 30 CFR Part 5 (52 FR 17506), Fees for Testing, Evaluation and Approval of Mining Products, which replaced the approval fee provisions in 30 CFR Parts 15 through 36. The new fee system which became effective October 1, 1987, is applicable to all products submitted to MSHA for approval, including blasting units.

III. Section-by-Section Discussion

Section 7.61 Purpose and effective date.

This section is derived from existing § 25.1 and provides that multiple-shot blasting units would be approved under Part 7. It would apply to blasting units used in both underground coal mines and certain underground metal and nonmetal mines, as defined in existing Subpart T of 30 CFR Part 57, where MSHA approved blasting units are required (52 FR 24924, July 1, 1987; 52 FR 41394, October 27, 1987).

The proposal would be effective 60 days after publication of the final rule. It would require, one year after the effective date of the final rule, that all new applications for approval of blasting units and any extensions of approval for blasting units already approved, be submitted in accordance with Part 7 and this Subpart D. After one year, Subpart D would replace 30 CFR Part 25.

Several commenters asked how the new rules, if adopted, would affect the approval status of blasting units that are currently approved. They recommended that a "grandfather clause" be added to permit the continued manufacturer and sale of currently approved units until MSHA issues an approval under the new approval requirements. MSHA does not intend to revoke any approvals previously granted under 30 CFR 25. A phase-in period of one year will enable the manufacturers and third-party laboratories to make arrangements to conduct the necessary blasting unit testing. During the one year phase-in period, the existing approval provisions or acceptance programs applicable to blasting units will remain in effect. Thus, applicants can choose to submit applications for approval under either the existing approval regulations for blasting units to be tested by MSHA or under this subpart where the obligation to test will be with the applicant. Also, once this subparty is in place and has taken effect, manufacturers can still manufacture and sell Part 25 blasting units approved under the existing Part 25 regulations or under the new Subpart D.

MSHA realizes that manufacturers holding approvals at the time of the promulgation of this subpart may be in the process of making a modification of their already-approved blasting units. Rather than require these manufacturers to submit the modified blasting unit for a new approval under this subpart and to avoid confusion during the phase-in period, applicants must submit the extensions of approval under the existing Part 25 blasting unit approval regulations in which the approval was granted.

However, after the one year phase-in period for this subpart and the removal of Part 25, approvals for blasting units will be granted only under this subpart. At the expiration of the one year phase-in period, all applications for extensions of approval of blasting units will be treated as new applications, and applicants will be required to apply for an original approval under this subpart.

Section 7.62 Definitions.

The following terms, with the exception of the term "blasting unit", are new and were not defined in the preproposal draft or existing § 25.2.

Blasting circuit. This definition would identify the items connected to the firing line terminals of the blasting unit. It is necessary to identify these items in order to determine the electrical parameters used in the output energy test of § 7.66.

Blasting unit. This definition essentially would retain the definition given in existing Part 25. The definition is necessary to make clear that the requirements of this subpart would apply only to electric initiating systems which are the only types permitted in underground coal and gassy metal and nonmetal mines under MSHA's safety regulations.

Normal operation. This definition would specify the electrical parameters to be used by the applicant to determine if the maximum power, voltage, current and temperature attainable under these conditions are in compliance with § 7.64 (f), (g), and (h).

General definitions, such as "applicant", "approval", and "post-approval product audit" which were contained in existing Part 25 or in the Part 25 preproposal draft have not been included in this subpart. They are defined in Subpart A of Part 7, Testing by Applicant or Third Party, and apply to all subsequent subparts.

The following definitions, which appear in existing Part 25 or the preproposal draft, are not retained in the proposal. The acronyms "MESA" and MSHA" are not defined in the proposal since these terms are defined in 30 CFR Part 1. The terms "permissible," "short-delay electric detonator," and "manufacturing site surveys" are not used in the proposal and, therefore, are not defined. The proposal would delete existing § 25.9 which concerns observers at test and evaluations. This provision is now addressed by the new product testing requirements in Part 7, § 7.4. The blasting unit approval revocation procedure, addressed in § 25.19 of the preproposal draft, is not included in the proposal because the revocation process for approvals is now governed by Part 7, § 7.9.

Section 7.63 Application requirements.

This section is derived from existing § 25.6.

Paragrarph (a) prescribes the documentation to be submitted with each multiple-shot blasting unit approval application. It is derived from existing § 25.6(c). The required drawings and specifications would demonstrate compliance with the proposal and would identify the blasting unit.

The overall assembly drawing required by the proposal is one that would describe, pictorially, how the unit is assembled, its physical-dimensions, and the location of major subassemblies. The proposed requirement for a schematic diagram and parts list would demonstrate compliance with the electrical performance requirements of this proposal. The component layout drawing would demonstrate compliance with the technical requirements proposed in § 7.64 and would facilitate conducting post-approval audits of the blasting unit. Applicants could submit drawings specifically prepared for approval applications or submit the actual drawings used in the assembly of the blasting unit. In either case, the drawings would be required to represent the blasting unit exactly as it would be manufactured.

Paragraph (b) is derived from existing § 25.6(c). Paragraph (c) is new. This proposal is intended to ensure that the

drawings on file at MSHA represent the blasting unit exactly as it will be manufactured. Each drawing would be required to be titled, numbered, dated, and to include the latest revision. Applications for approval would also have to include a list of the drawings submitted.

The proposal would also permit drawings to be combined into composites. An example of a composite drawing is a parts list printed on a schematic diagram. All drawings that would be required by this proposal could be combined into a single composite drawing. Composite drawings would reduce the number of drawings that must be maintained both by the applicant and by MSHA.

Paragraph (d), which is derived from existing §§ 25.6 (a) and (b), 25.7(d), and 25.21(a), would require a description of the operation and use of the blasting unit to be submitted with the application. Use instructions are necessary to establish the conditions under which normal operation of the blasting unit would be determined.

The preproposal draft would have required that the applicant submit a quality control plan and quality control inspection and testing instructions as part of each application for approval. Any changes in the inspection and testing instructions by the manufacturer would also have been subject to MSHA evaluation. In addition, the preproposal draft provided that MSHA would conduct manufacturing site surveys before and after issuance of approval to determine applicant compliance with the approval quality control program.

Commenters objected to these draft provisions, stating that quality control plans contain proprietary information and that practices in an applicant's manufacturing facilities are not an appropriate area for Agency concern. This issue was also raised in the Part 7 rulemaking and is addressed in the preamble to that final rule. Under the proposal, issues of quality control for approved products are addressed by the general requirements of Part 7 and the post-approval product audit provisions of proposed § 7.70. Submission of these documents is no longer required, which is consistent with the elimination of this requirement in Subpart A of Part 7.

A provision addressing "consultation" between a prospective applicant and personnel at MSHA's Approval and Certification Center, which appears in existing § 25.3, has been omitted from the proposal. MSHA will continue to provide appropriate consultation services, but the Agency does not believe that this is a matter which needs to be addressed by regulation.

Section 7.64 Technical requirements.

This proposal would revise and update the existing technical requirements for the approval of blasting units. The preproposal draft provisions that appeared under the heading "technical" and "performance" requirements in §§ 25.8 and 25.9 have been consolidated in this section of the proposal.

Paragraph (a) is derived from existing §§ 27.7 (g) and (h). The energy output of the blasting unit would be determined from the test in § 7.66. The acceptable performance criteria of that test would increase the minimum firing current from 1.5 amperes to 2 amperes and decrease the maximum voltage cutoff time from 15 milliseconds, as required in existing Part 25, to 10 milliseconds. Increasing the current from the blasting unit would reduce the likelihood of misfires in the blasting circuit. Decreasing the maximum voltage cutoff time would reduce the likelihood that an incendive spark, created by the post-firing contact of wires in the blasting circuit, would ignite an explosive methane-air atmosphere. A blasting unit meeting the acceptable performance criteria of this section can be used to reliably initiate electric detonators of the type currently used in underground coal mines in the United States.

The existing Part 25 regulations limit the number of shots approved blasting units can fire to a maximum of 20 shots. The preproposal draft § 25.9 specified separate categories for blasting units. This proposal would not retain a distinction between multiple-shot blasting units and large capacity units nor would the proposal retain the limitation on the number of shots a blasting unit could be designed to fire. Under the proposal, the capacity of blasting units would be determined based on the maximum blasting circuit resistance with which the blasting unit could be used, as specified by the applicant for approval. This will allow units capable of firing more than twenty shots to be approved.

Under paragraph (b), which is derived from existing § 25.25, the maximum blasting circuit resistance of a blasting unit is the highest value of resistance that can be connected to the firing line terminals of a blasting unit without exceeding its capacity. When a blasting unit is connected to a blasting circuit having a resistance that exceeds the unit's capacity, all detonators may not fire. This could result in dangerous conditions, such as partially detonated rounds of explosives or erratic timing resulting in blown out shots.

While applicants for approval would specify the maximum value of blasting circuit resistance for their blasting units, units with a maximum circuit resistance capacity of less than 150 ohms would not be approved. The aspect of the proposal is derived from existing § 25.25, which requires that blasting units be capable of firing twenty electric detonators connected in a single series with a total resistance of 150 ohms. The proposed requirement that the maximum firing resistance be at least 150 ohms would ensure that the blasting units approved under the proposal have at least the same energy output as blasting units now approved under existing Part 25.[1]

Paragraph (c)(1) is derived from existing § 25.7(f). It would require a blasting unit to have a visual indicator to alert the user that the unit is ready to be operated. In a typical blasting unit design, the visual indicator would be activated when the unit's energy storage capacitors have been charged to the voltage necessary to produce the required firing current through the blasting circuit. Before the blasting unit is ready for use, the unit may not be capable of providing sufficient energy to the blasting circuit to initiate all the detonators. Under proposed § 7.64(h), a visual indicator could not be an incandescent lamp or other type of lamp having a temperature greater than 302 °F (150 °C) because of thermal ignition hazards.

In response to comments, the words "voltage necessary" were added to clarify "required firing current". This change is also made in proposed § 7.64(d)(2).

Paragraph (c)(2), which is new, is proposed in response to comments. It would require a visual indicator to warn the blasting unit user when the resistance of the blasting circuit to which the unit is connected exceeds the maximum blasting circuit resistance of the unit. This indicator would reduce the risk of misfires caused by a high resistance blasting circuit.

Paragraph (d)(1) is derived from existing §§ 25.7 (e) and (f) and 25.8(b)(3); paragraph (d)(2) is derived from existing

[1] The maximum number of detonators, wired in a series circuit, that can be fired by the blasting unit, can be calculated as follows:

(a) Subtract the resistance of the firing cable, which is the wire used to connect the detonators to the blasting unit, from the specified maximum blasting circuit resistance;

(b) Divide the remainder by the resistance value of a single detonator.

(c) The quotient is the maximum number of detonators wired in a series circuit that can be fired by the blasting unit.

§ 25.7(f), and paragraph (d)(3) is new. These rules would require three safety features for the firing switch of blasting units. First, the firing switch would be required to operate only by deliberate action to prevent accidental firing. Recessing the switch in the blasting unit enclosure or protecting it with a raised guard are examples of switches which require a deliberate action. The second and third safety features for the firing switch would be that it not operate when the voltage necessary to produce the required firing current is not available to the blasting circuit and when the resistance of the blasting circuit is greater than the specified maximum blasting circuit resistance for the blasting unit. The firing switch may be made inoperative by either mechanical or electrical means. These safety features are also directed at preventing misfires, which occur when an excessive blasting circuit resistance reduces that current necessary to initiate each electric detonator in the blasting circuit. Because the blasting circuit is external to the blasting unit, the design of the unit cannot prevent misfires when excessive resistance exists in the blasting circuit. Paragraphs (c)(2) and (d)(3) would provide the capability to detect such excessive resistance. The proposed provisions are in response to requests by commenters for additional safeguards.

Paragraph (e)(1) is new and would require that the blasting unit firing line terminals provide a secure, low resistance connection as measured by the firing line terminals test in proposed § 7.68. Although this requirement is new, it would not introduce a more stringent requirement than already exists. Paragraph 7.64(e)(1) would introduce minimum performance requirements to clarify ambiguous language such as "suitable materials" and "sound engineering principles" in § 25.7(a) and "adequacy of design and construction," "practicality in operation" and "suitability for underground service" in § 25.7(c). Poor connections at the firing line terminals can create additional resistance and increase the risk of misfires. Performance requirements proposed under § 7.68 provide that the contact resistance through each firing line terminal not exceed 1 ohm.

Under paragraph (e)(2), which is derived from existing § 25.7(c) ("kind and durability of materials"), the firing line terminals would be required to be constructed of corrosion-resistant material, such as nickel or chromium-plated copper. Blasting units are exposed to corrosive agents in underground mines which could cause deterioration of metal in the firing terminals. This condition could result in a high resistance connection to the blasting circuit and contribute to the risk of misfires.

One commenter stated that the phrase "corrosion-resistant material" was too vague and needed further specification. Rather than specify particular materials for firing line terminals, however, MSHA's intention at this stage of the rulemaking process is to allow flexibility in the selection of material for the terminals, preserving the opportunity for manufacturers to use new, corrosion-resistant materials in the future.

Paragraph (e)(3), which is derived from existing § 25.7(k), would require that the firing line terminals be insulated so that no metal conductors are exposed. This would protect the user from electrical shock. Examples of well-insulated firing line terminals include binding posts which are covered with plastic or rubber, or spring-loaded connectors recessed into an insulated blasting unit enclosure.

Paragraph (e)(4) is also derived from existing § 25.7(k). It would require that an insulated barrier separate the firing line terminals of a blasting unit to prevent the uninsulated ends of the blasting cables from contacting each other when connected to the unit and short-circuiting the firing line terminals. Under the preproposal draft, firing line terminals could be separated by a distance of at least 2 inches as an alternative to an insulated barrier. This alternative is not retained in the proposal. At this stage in the rulemaking process, MSHA does not believe that such an alternative would provide adequate protection.

Paragraph (f) is derived from existing §§ 25.7(c) and 25.8(b)(1). It would require that in the normal operation of the blasting unit, no electric components, other than the batteries, be operated at more than 90% of their electrical ratings. The preproposal draft would have required that electric components operate at not more than two-thirds of their rated capacity. The proposed change responds to commenters who stated that the preproposal draft provision was too restrictive and electric components could not be practically or economically obtained in some situations. However, MSHA continues to believe that electric components should be operated at less than their power rating to protect against component failures within the blasting unit which would render it unsafe. MSHA further believes that the 90% rating will provide this protection.

Paragraphs (g) and (h) are derived from existing §§ 25.7 (d) and (c). These provisions would address the hazard of blasting units releasing sufficient energy to cause a methane ignition or fire. Blasting units, having the capacity necessary to reliably fire electric detonators, generate incendive energy that can cause such an ignition and may have components that operate at temperatures sufficient to ignite coal dust. The proposed requirements would be evaluated in the "normal operation" of the blasting unit.

Paragraph (g) would retain the existing requirement that blasting units be incapable of igniting an explosive mixture of methane-air when electric energy is released by making and breaking moveable electric contacts in the unit. Although the energy stored within the blasting unit is capable of igniting explosive gas mixtures, the energy would not be released under normal conditions, except at operating electric contacts. The proposal would also require that the energy released at the operating electric contacts be incapable of igniting a methane-air atmosphere. To determine compliance with this requirement, the proposal provides electric current and voltage limitations. These limitations are described by curves which relate electric current and voltage to that which will ignite an explosive mixture of methane and air. The curves appear as Figures D–1, D–2, and D–3 in the proposal. The curves address the electric current through an electric contact that interrupts a circuit not containing an inductive component; the voltage applied across an electric contact that discharges a capacitor; and the electric current through an electric contact that interrupts a circuit containing an inductive component. These specifications are derived from minimum ignition curves for methane-air mixtures published in the U.S. Department of the Interior, Bureau of Mines Report of Investigation RI 9048, 1986. The specifications, which were not included in the preproposal draft, have been included in the proposal to provide an objective basis upon which the applicant can determine that the blasting unit would not be capable of causing ignition of an explosive methane atmosphere and thus certify that this requirement has been met.

Paragraph (h) is derived from existing § 25.7(c) ("suitability for underground service"). It would address the risk of fire caused by blasting units and would require that the maximum temperature of any electric component not exceed 302 °F (150 °C). This is the maximum

surface temperature for electric equipment approved by MSHA under 30 CFR Part 18, § 18.23, and is the minimum ignition temperature of a coal dust layer. Compliance with the proposed requirement could be evaluated by using a pyrometer or a similar device to detect "hot spots" in blasting units and by measuring the temperature of components with a thermocouple or similar device.

Paragraph (i) is derived from existing § 25.8(b)(2). It would require that blasting units be equipped with an automatic means to dissipate any electric charge remaining in any capacitor after the blasting unit is deenergized and not in use. Dissipating the electric charge in the capacitors in blasting units reduces the risk of the energy stored in the capacitor being discharged and accidentally causing an ignition. One commenter or the preproposal draft suggested that this requirement would necessitate the use of a shorting connection. Although this would satisfy the proposed requirement, a bleeder resistor would also be sufficient to comply with the proposal.

Paragraph (j) is derived from existing § 25.7(c). It would require that blasting units meet the acceptable performance criteria of the construction test in proposed § 7.67(b). Details of these criteria are described in the explanation of proposed § 7.67. These criteria are directed at determining whether a blasting unit is sufficiently substantial to remain in safe operating condition when used in the underground mine environment. The enclosure of a blasting unit needs to be substantially constructed to prevent dust and moisture from being deposited on the electric circuits. Water and corrosive dusts can cause an internal short-circuit, and combustible coal dust on heat-producing electric components can cause a fire.

Paragraph (k) is derived from existing § 25.7(e). It would require that blasting units be equipped with a locking device to prevent unauthorized use. A device such as a key-operated firing switch, lockable cover, a padlock, or a removable firing pin over the firing switch would meet the requirements of this paragraph.

One commenter on the preproposal draft stated that if a locking device on an approved blasting unit is lost, the mine operator could be tempted to use a nonpermissible means of blasting. Existing requirements for approval of blasing units require that a locking device be provided on blasing units. MSHA is unaware of any information or data which indicates that locking devices create problems that outweigh their safety benefit.

Paragraph (l)(1) would revise existing § 25.7(m) which requires that blasting units be sealed to prevent tampering. The proposal would allow two alternative methods of compliance. Blasting unit enclosures, except for batteries, could be permanently sealed, for example, by continuous welding around the enclosure so that the unit would be destroyed if entered. Alternatively, the electric components could be sealed in a solidified insulating material, such as an epoxy. With this option, the proposal would require that the enclosure be assembled with tamper-resistant hardware so that it could only be opened with special tools. Either method would provide protection against improper repair, such as substitution of inadequate electric components or improper adjustment of potentiometer settings in a blasting unit that would adversely affect its timing or energy output. Such changes in performance could lead to misfires or potential ignition hazards of methane or coal dust. Repair and calibration of blasting units should only be made by authorized representatives of the blasting unit manufacturer.

One commenter stated that requiring the permanent sealing of the electrical components would result in a higher cost per unit. MSHA recognizes that the enclosure of a blasting unit may account for a significant percent of the total cost of the unit and that the enclosure may be destroyed when repairs are necessary. Under the proposal, the manufacturer would be permitted to design the enclosure to facilitate replacing the electronic circuit within the blasting unit without destroying the enclosure.

Paragraph (l)(2) is derived from existing §§ 25.7(m), 25.8(b)(4), and 25.11(a). These rules would require that a marking be placed on the exterior of blasting units to warn against disassembling or removing components within the enclosure. Instructions for replacing batteries and specifying the type of battery to be used would also be required to be included on the blasting unit enclosure.

Paragraph (m) (1) and (2), which are derived from existing § 25.7(d), would require that a blocking diode, or equivalent device, be in series with the battery and that the charging connector be recessed into the blasting unit enclosure, for blasting units that have rechargeable batteries. A blocking diode would prevent electric energy in the battery from being available at the charging connector, which could cause an ignition of a methane-air atmosphere. It also would prevent the presence of electric energy from the battery at the charging connector. The charging connector would also be required to be recessed into the blasting unit enclosure to prevent short-circuiting of the connector while the unit is on an electrically conductive surface, such as a metal work table.

Paragraph (m)(3), which is new, would require that a marking be placed adjacent to the charging connector to warn that the battery is to be charged only in a fresh-air location. The marking would warn the user of the hazard created by easily ignitable and explosive hydrogen gas, which may be present when batteries are charged. This warning is included on other MSHA-approved instruments containing rechargeable batteries.

Section 7.65 Critical characteristics.

This section is derived from existing § 25.11(d). It lists the critical characteristics which would be required to be inspected or tested on each blasting unit with an approval marking. As defined in Part 7, Subpart A, a "critical characteristic" is a feature of a product that, if not manufactured as approved, could have a direct adverse affect on safety. The characteristics identified for inspection are the blasting unit's output current; voltage cutoff time; the components that control the voltage and current through each making and breaking electric contact; and the operation of visual indicators and the firing switch. MSHA believes the inspection and testing of the critical characteristics of blasting units to be an essential element of an effective quality assurance program. For the reasons discussed under proposed § 7.64(g), the characteristics identified for inspection are considered to be critical safety elements for blasting units used in a potentially explosive atmosphere.

Section 7.66 Output energy test.

The output energy test is not part of the critical characteristics in § 7.65 but rather part of the product testing done by the applicant in order to certify that the design of the blasting unit meets the requirements of the subpart. Several performance characteristics of the blasting unit which are tested using the test procedures of the output energy test are also critical characteristics which must be inspected or tested on each approved blasting unit. However, when testing critical characteristics, the applicant does not necessarily have to follow the same procedures established for product testing under the output

energy test. The tests prescribed by this section would be used to determine whether blasting units have energy output sufficient to safely initiate all of the detonators in a round of explosives.

Paragraph (a) specifies test procedures for determining the output energy by connecting various resistive loads to the blasting unit. There would be three different blasting circuit resistance conditions within the range of the capacity of the blasting unit and one test exceeding its capacity. The latter test, which is new, would be used to determine whether the visual indicators are operational and would determine whether the firing switch is inoperative when the blasting circuit resistance exceeds the unit's capacity.

Paragraph (b) would provide the criteria for acceptable performance under the blasting circuit resistance tests. Paragraph (b)(1) would revise existing § 25.7(g), which requires that voltage be unavailable at the firing line terminals 15 milliseconds after operation of the firing switch. The proposal would reduce this to 10 milliseconds. An approved blasting unit should cut off electric energy to the blasting circuit as quickly as possible to reduce the risk of generating a spark by the post-firing contact of wires in the firing circuit. This can happen easily as the force of the blast disturbs the surrounding area. The blast also releases gas and raises and suspends explosive coal dust which could be ignited if such sparks are generated.

The proposed 10 milliseconds rule would provide ample time for the blasing unit to initiate electric detonators and allows for timing variations caused by component tolerances, temperature variations, and component aging. Three of the four blasting units submitted for approval under Part 25 since 1977 have contained the 10 millisecond cutoff capability at no appreciable cost increase for the production of the unit. MSHA believes, therefore, that existing technology makes it possible and economically feasible to reduce the voltage cutoff time of the blasting unit to 10 milliseconds, thus decreasing the risk of generating a spark by the post-firing contact of wires in the firing circuit.

Paragraphs (b)(2) (i) and (ii) are derived from existing §§ 25.7(d) and 25.7(l). Paragraph (b)(2)(i) would require that no electric current in excess of 50 milliamperes be available except during firing of the blasting unit. Paragraph (b)(2)(ii) would require that the electric current be available only through the firing line terminals. Fifty milliamperes would be the maximum test current for blasting circuit continuity tests and represents approximately ⅛ of the maximum no-fire current for electric detonators. This would minimize the potential hazard of electrical shock to the user and would prevent the user from accidentally or deliberately firing electric detonators from any location on the blasting unit other than at the firing line terminals.

Under paragraph (b)(2)(iii), which is derived from existing § 25.7(h), a blasting unit would be required to produce a firing current of at least two amperes during the first five milliseconds after operation of the firing switch. The test would be conducted with resistive loads up to the maximum blasting circuit resistance. Two amperes for five milliseconds represents the current and time necessary to consistently fire a typical electric detonator.

The 2-ampere firing current mimimum is an increase over the 1.5 amperes specified in existing Part 25. Increasing the minimum firing current would reduce the likelihood of misfires and improve the compatability of blasting units consistent with modern detonators.

Paragraph (b)(2)(iv) is derived from existing §§ 25.7 (d) and (j), and 25.26(b). It would require that the electric current from the blasting unit not exceed an average of 100 amperes during the first ten milliseconds after the blasting unit is operated to prevent arcing in the detonator. An electric current greater than an average of 100 amperes through a typical electric detonator could result in erratic detonator timing, a damaged detonator shell, or an ejected detonator sealing plug.

Paragraph (b)(3) is new and would require that the safety features required by proposed § 7.67 operate properly when the maximum blasting current resistance for the blasting unit is exceeded. The unit would be required to provide visual indication that the blasting circuit resistance exceeds the blasting unit's capacity and the firing switch would have to be inoperative.

Section 7.67 Construction test.

This section is derived from existing § 25.7(c). It would require that blasting units be tested to determine if they will perform reliably when exposed to the physical stresses of the underground mining environment.

Paragraph (a) sets forth the procedures for testing blasting units. The proposed drop test would provide an objective criterion for determining whether a blasting unit is sufficiently rugged for use in mining. The first test would be conducted by dropping the blasting unit from a height of three feet onto a concrete floor, which simulates the mine floor, so that each surface, corner, and edge strikes the floor first at least one time. Three feet is the height at which a blasting unit is normally carried. If the blasting unit is not rugged, internal circuitry could be damaged, and safe performance of the unit could be adversely affected, causing misfires. Batteries or other components that are ejected from the unit or exposed could provide an ignition source. Under the proposal, five units would be required to be dropped at least twenty times each.

The proposal is substantively unchanged from the preproposal draft, which several commenters stated was too severe. At this stage in the rulemaking process, MSHA continues to believe that the drop test is representative of the mining environment in which blasting units are used. MSHA currently uses a three foot drop test to determine the ruggedness of blasting units as well as other hand-held devices submitted for approval such as methane detectors, portable transceivers and dust sampling devices. Criteria for the drop test has been developed in this proposed approval requirement to provide uniform testing.

The proposal would also require testing of blasting units for moisture resistance and the ability to operate properly at various temperatures. The same five blasting units used for the drop test would be required to be submerged for one hour under one foot of water. For two of the units, the water temperature would be required to be maintained between 35 °F and 45 °F. The water temperature for two other units would be required to be maintained between 95 °F and 105 °F, and for the one remaining unit, the water temperature would be required to be maintained between 65 °F and 75 °F. Operating the blasting units at a temperature range of approximately 35 °F to 105 °F is representative of the broad range of temperatures that may occur in an underground mining environment.

The submersion test, in which a blasting unit is submerged under one foot of water for one hour, would provide an assessment criterion for the requirement of existing § 25.7(c) that the blasting unit be resistant to moisture. The proposed test would be uncomplicated and does not require special or expensive test equipment to perform. The test would assure that the unit is resistant to moisture which could cause corrosion, short-circuiting, and physical damage to the components.

The requirement that the blasting unit meets the acceptable performance

criteria of this section, after it has been operated with the firing line terminals open-circuited and short-circuited, has been retained from the preproposal draft. Operating the blasting unit under these conditions is a common event and should not cause damage to the unit.

The preproposal draft provision that blasting units be operated 25 times within an 8-hour period has not been retained in the proposal. Upon further review, MSHA believes that this test is not necessary to determine the safety or effective use of the blasting units.

Paragraph (b) would provide the criteria for evaluating the blasting units tested under this section. Each unit would be required to meet the output energy test of proposed § 7.66. The proposal would also require that there be no damage to the firing line terminals which would expose an electric conductor; that the visual indicators be operational; that no batteries be separated from the blasting unit; and that no water be present inside the blasting unit enclosure. Any of these conditions would indicate a reduction in the ability of the blasting unit to perform reliably and safely in underground mines.

Section 7.68 Firing line terminals test.

This section is new and would require that firing line terminals on blasting units be tested to establish that they provide a secure, low resistance connection, as required by proposed § 7.64(e)(1).

Paragraph (a) would require that the contact resistance through each firing line terminal be determined and that a 10-pound pull be applied to a No. 18 gauge wire that has been connected to each firing line terminal according to the manufacturer's instructions. A No. 18 gauge wire is commonly used for blasting cables. The 10-pound pull test would permit the evaluation of the gripping strength of the connection at the firing line terminal to maintain electric contact.

Paragraph (b) sets forth the acceptable performance criteria for these tests. Contact resistance through the firing line terminals would be required to be less than 1 ohm. This would minimize output energy losses that could reduce the total energy available to the blasting circuit. In the pull test, the wire connected to the blasting unit firing line terminals would be required to remain connected.

Section 7.69 Approval marking.

This section is derived from existing § 25.11. It would require that all blasting units be identified as permissible and MSHA-approved with a permanent, legible marking. The approval marking would include the maximum blasting circuit resistance with which the unit can be used. The inclusion of the maximum resistance in the approval marking is new and would notify the user of the blasting unit's capabilities. Approval markings facilitate the identification of approved blasting units in the field.

Section 7.70 Post-approval product audit.

Consistent with Part 7, Subpart A, this section is new and would require an approval-holder to provide the Agency an approved blasting unit at no cost upon request. The purpose of acquiring the blasting unit would be to audit compliance with the approval requirements of this subpart. Auditing of approved blasting units would be conducted under the general audit provision of Part 7, Subpart A. MSHA will conduct the product audit as often as necessary, but no more than once a year at the manufacturer's cost, except for cause.

Approved blasting units would be obtained for audit from the approval-holder or from other sources, such as mine suppliers or distributors. MSHA could obtain blasting units at anytime at MSHA expense. In accordance with Part 7, Subpart A, all approved blasting units audited by MSHA would be selected by the Agency as representative of those distributed for use in mines. The approval-holder would be permitted to obtain any final evaluation report resulting from such audits. When an approved blasting unit is requested by MSHA for audit, the Agency will arrange with the approval-holder to examine and evaluate the unit at a mutually agreed upon time and location and permit the approval-holder to observe any audit-related tests conducted. This examination and evaluation can take place at a MSHA facility; at the manufacturer's plant or distribution center; or at any other place agreed upon by MSHA and the approval-holder.

When determining which blasting units to audit, MSHA would consider a variety of factors. These may include, for example, whether the manufacturer has previously produced the approved blasting unit or similar blasting units; whether the approved blasting unit is new or part of a new line; or whether the approved blasting unit is intended for a unique application or limited distribution. Other considerations may be blasting unit complexity; the manufacturer's previous blasting unit audit results; blasting unit population in the mining community; and the time since the last audit or since the blasting unit was first approved.

Based on MSHA's experience, the Agency anticipates few instances in which more than one approved blasting unit will be required from any one manufacturer in any one year. There are several events, however, which may demonstrate or cause MSHA to believe that a blasting unit does not meet the technical requirement upon which the approval was based. For example, MSHA may have complaints about the safe functioning of a blasting unit; have evidence of changes that have not been approved; need to retest a blasting unit with which an audit test indicated a problem; or need to verify that corrective action required previously by MSHA has been taken. Because the use of the approval marking obligates the approval-holder to manufacture the blasting unit according to the technical requirements upon which the approval was based, MSHA believes that, when there is cause, the approval-holder must provide additional approved blasting units so the Agency can ensure that the approval-holder is meeting this obligation.

When deficiencies are found during MSHA audits of approved blasting units, MSHA will require that the manufacturer take all necessary corrective actions to address the deficiencies. These actions could include, but are not limited to, the approval-holder recalling or retrofitting the approved blasting units involved, and issuing user notices. Consistent with Part 7, § 7.9, revocation of the approval by MSHA may result when discrepancies in approved blasting units are not successfully corrected.

Section 7.71 Approval checklist.

This section is new and would require that manufacturers provide, with each blasting unit, a description of what is necessary to maintain the blasting unit in an approved condition. Maintaining blasting units in an approved condition is fundamental to their safe use in underground mines and is required of all mine operators.

Section 7.72 New technology.

The proposed technical requirements for blasting units include both design and performance requirements. MSHA is aware that design requirements can, at times, limit the introduction of technological improvements or hinder new applications of existing technology. To address this, the proposal includes a "new technology" provision which applies to either new technology or new

applications of existing technology to blasting units.

Several commenters indicated a desire to have a provision which would allow MSHA to approve blasting units that incorporate technology for which the specific requirements of this subpart are not appropriate. Although at an earlier stage in the rulemaking, MSHA believed that the specific requirements of this subpart would be appropriate for any future technology, the Agency recognizes that technology not now envisioned may at some time in the future be applied to blasting units. The proposal therefore allows approval of blasting units that incorporate technology for which the specific requirements of this subpart are not appropriate if MSHA determines that the blasting units are as safe as those which met the requirements of this Subpart D. To implement this provision, MSHA will prescribe appropriate technical requirements and test procedures when such approval is sought.

Once MSHA approves a blasting unit under this section, the Agency would make the modified tests and requirements used by MSHA to evaluate a particular technology available to manufacturers and other interested persons. If over a period of time MSHA receives a number of applications for the same type of technology or newly adopted technology, MSHA would revise the blasting unit approval regulations through the rulemaking process to recognize such developments.

Derivation Table

The following derivation table lists: (1) Each section number of the proposed rule (New Section) and (2) the section number of the existing standard from which the proposed section is derived (Old Section).

New section	Old section
7.61	25.1
7.62	25.2
7.63(a)(1)–(4), (b).	25.6(c)
7.63(c)	New
7.63(d)	25.6(b), 25.7(d), 25.21(a) and 25.26(a)
7.64(a)	25.7(g), (h)
7.64(b)	25.25
7.64(c)(1)	25.7(f)
7.64(c)(2)	New
7.64(d)(1)	25.7(e) and 25.8(b)(3)
7.64(d)(2)	25.7(f)
7.64(d)(3)	New
7.64(e)(1)	New
7.64(e)(2)	25.7(c)
7.64(e)(3)	25.7(k)
7.64(e)(4)	25.7(k)
7.64(f)	25.7(c) and 25.8(b)(1)
7.64(g)(1)–(3)	25.7(d)
7.64(h)	25.7(c)
7.64(i)	25.8(b)(2)
7.64(j)	25.7(c)
7.64(k)	25.7(e)
7.64(l)(1)(j), (ii)	25.7(m)
7.64(1)(2)	25.8(b)(4), 25.7(m) and 25.11(a)
7.64(m)(1), (2)	25.7(d)
7.64(m)(3)	New
7.65(a)–(d)	25.11(d)
7.66(a)(1)–(4)	New
7.66(b)(1)	25.7(g)
7.66(b)(2)(i)(ii)	25.7(d), 25.7(1)
7.66(b)(2)(iii)	25.7(h)
7.66(b)(2)(iv)	25.7(d), 25.7(j) and 25.26(b)
7.66(b)(3)(i), (ii)	New
7.67	25.7(c)
7.68	New
7.69	New
7.70	25.11
7.71	New
7.72	New

Distribution Table

The following distribution table lists: (1) Each section number of the existing Part 25 standard (Old Section) and (2) each section number of proposed Subpart D of Part 7 (New Section). New section numbers marked with an asterisk (*) refer to Subpart A—General Provisions of Part 7 published elsewhere in this issue of the **Federal Register.**

New section	Old section
25.1	7.61, 7.1*
25.2	7.62, 7.2*
25.3	Removed
25.4	7.3(b)*
25.5	Removed
25.6(a)	7.3(b)*
25.6(b)	7.63(d)
25.6(c)	7.63(a)(1)–(4), (b), 7.3*
25.7(a)	Removed
25.7(b)	7.6(b)*
25.7(c)	7.64(e)(2), 7.64(f), 7.64(h), 7.64(j) and 7.67(a)(1)–(b)(5)
25.7(d)	7.63(d), 7.64(g)(1)–(3), 7.64(m)(1), (2), 7.66(b)(2)(i), (ii) and 7.66(b)(2)(iv)
25.7(e)	7.64(d)(1), 7.64(h) and 7.64(k)
25.7(f)	7.64(c)(1) and 7.64(d)(2)
25.7(g)	7.64(a), 7.66(b)(1)
25.7(h)	7.64(a), 7.66(b)(2)(i), (ii)
25.7(i)	Removed
25.7(j)	7.66(b)(2)(iv)
25.7(k)	7.64(e)(3) and 7.64(e)(4)
25.7(l)	7.66(b)(2)(i), (ii)
25.7(m)	7.64(l)(1)(i), (ii) and 7.64(l), (2)
25.7(n)	Removed
25.8(a)	Removed
25.8(b)(1)	7.64(f)
25.8(b)(2)	7.64(i)
25.8(b)(3)	7.64(d)(1)
25.8(b)(4)	7.64(l)(2)
25.9	7.4*
25.10(a), (b), (c).	7.6(b)*
25.11(a), (b), (c).	7.70, 7.7*
25.11(d)	7.5*
25.12(a)	7.3(e)*
25.12(b)	7.3(e)(4), (5)
25.12(c)	7.6(b)*
25.13	7.9*
25.20	Removed
25.21(a), (b)	Removed
25.25	Removed
25.26(a)	Removed
25.26(b)	7.66(b)(2)(iv)

IV. Drafting Information

The principal persons responsible for preparing this proposed rule are: Kenneth A. Sproul and Arthur E. Page, Approval and Certification Center, MSHA; Helen B. Caraway, Office of Standards, Regulations and Variances, MSHA; and Carolyn D. Sims, Office of the Solicitor, Department of Labor.

V. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an initial analysis to identify the potential costs and benefits associated with proposed Subpart D. This analysis has formed the basis for the Initial Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, MSHA has determined that the proposed rule would not result in major cost increases nor have an incremental effect of $100 million or more on the economy. Therefore, the rule is not within the criteria for a major rule, and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulatory proposals. This proposed rule does not significantly alter the existing technical requirements for multiple-shot blasting units.

This new proposal would increase private-sector involvement in the approval of mining equipment. For the first time, in lieu of testing only by MSHA, the applicant or a third party selected by the applicant would test multiple-shot blasting units. The Agency anticipates that this new procedure would reduce duplicate testing of products in some cases and eliminate associated costs and potential delays in equipment approvals. In addition, the procedure is expected to enhance the safety of miners through the more rapid introduction of technological advances in mining products.

Any necessary testing of products required by MSHA either is not substantially different from that currently undertake nor does not impose significant costs compared to the sales value of the product. The application procedures, quality assurance program, and annual audit do not impose

significant costs. This proposed Subpart D clarifies the standards which must be met by industry for approval of multiple-shot blasting units and makes the approval process more efficient, thereby reducing costs for large as well as small businesses.

The Agency estimates that incremental cost increases totaling $18,700 are offset by a cost savings of approximately $4,200. The total annual incremental cost impact, therefore, is expected to be $14,600.

VI. Paperwork Reduction Act

This proposal contains information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Proposed § 7.63 would require applicants seeking approval of multiple-shot blasting units to submit an application for approval. MSHA estimates there will be 1 application per year, requiring 4 hours to prepare. At an estimated cost of $31 per hour, 1 application would require 4 hours and cost $124. Under the revised fee schedule, an application fee of $100 is being charged for a total cost of $224 per year.

Under this proposal, Part 7, Subpart A, § 7.4(a) would require records of test results and procedures which must be retained for at least three years. Standard testing protocols used by the scientific community include the keeping of records of product testing. Therefore, MSHA estimates there will be no additional cost for applicants to maintain these records.

Under this proposal, Part 7, Subpart A, § 7.5(d) would, likewise, require applicants to report to MSHA any knowledge of a product distributed with critical characteristics not in accordance with the approval specifications. MSHA estimates that less than one report per year from all manufacturers would be submitted. Therefore, MSHA has assigned no additional costs to this requirement.

The proposal would require applicants to maintain records on the distribution of each blasting unit bearing an approval marking as set forth in Part 7, Subpart A, § 7.7(c). This provision does not specify the type of record, and MSHA believes applicants will use existing sales record systems to comply. Therefore, MSHA has assigned no cost to this requirement.

Proposed § 7.71 would require the applicant to include an approval permissibility checklist with each blasting unit bearing an approval marking. MSHA estimates that it would require two hours to develop the checklist. At $31 an hour, the onetime cost would be two hours or $62 for each approved blasting unit. MSHA has also investigated the cost of inserting the checklist with each blasting unit and has determined that the cost is minimal. It takes only a few seconds to insert the checklist; and only 1000 blasting units are sold annually.

MSHA specifically solicits comments on the merits and impact of these requirements. Comments should be submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget marked. "Attention: Desk Officer for Mine Safety and Health Administration". The final rule will respond to any comments on the information collection requirements.

List of Subjects

30 CFR Part 7

Blasting units, Mine safety and health, Underground mining.

30 CFR Part 25

Explosives, Mine safety and health, Research.

Date: June 14, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

It is proposed that Subchapter B, Chapter I, Title 30 of the Code of Federal Regulations be amended as follows:

PART 7—TESTING BY APPLICANT OR THIRD PARTY

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

Authority: 30 U.S.C. 957.

2. A new Subpart D is added to Part 7 to read as follows:

Subpart D—Multiple-Shot Blasting Units

Sec.

7.6 Purpose and effective date.
7.62 Definitions.
7.63 Application requirements.
7.64 Technical requirements.
7.65 Critical characteristics.
7.66 Output energy test.
7.67 Construction test.
7.68 Firing line terminals test.
7.69 Approval marking.
7.70 Post-approval product audit.
7.71 Approval checklist.
7.72 New technology.

§ 7.61 Purpose and effective date.

This subpart establishes the requirements for MSHA approval of multiple-shot blasting units. It is effective [insert effective date of final rule]. Applications for approval or extensions of approval submitted after [insert date one year from the effective date of final rule] shall meet the requirements of this subpart.

§ 7.62 Definitions.

The following definitions apply in this subpart:

Blasting circuit. A circuit that includes one or more electric detonators connected in a single series and the firing cable used to connect the detonators to the blasting unit.

Blasting unit. An electric device used to initiate electric detonators.

Normal operation. Operation of the unit according to the manufacturer's instructions with fully-charged batteries; with electric components at any value within their specified tolerances; and with adjustable electric components set to any value within their range.

§ 7.63 Application requirements.

(a) Each application for approval of a blasting unit shall include the following:

(1) An overall assembly drawing showing the physical construction of the blasting unit;

(2) A schematic diagram of the electric circuit;

(3) A parts list specifying each electric component and its electrical rating, including tolerances; and

(4) A layout drawing showing the location of each component and wiring.

(b) All drawings shall be titled, numbered, dated, include the latest revision number, and may be combined into composites.

(c) The application shall contain a list of all the drawings submitted, including drawing titles, numbers, and revisions.

(d) A detailed technical description of the operation and use of the blasting unit shall be submitted with the application.

§ 7.64 Technical requirements.

(a) *Energy output.* Each blasting unit shall meet the acceptable performance criteria of the output energy test in § 7.66.

(b) *Maximum blasting circuit resistance.* The maximum value of the resistance of the blasting circuit that can be connected to the firing line terminals of the blasting unit, without exceeding its capacity, shall be specified by the applicant. The specified maximum blasting circuit resistance shall be at least 150 ohms.

(c) *Visual indicators.* The blasting unit shall provide a visual indication to the user prior to the operation of the firing switch when—

(1) The voltage necessary to produce the required firing current is attained; and

(2) The resistance of the blasting circuit exceeds the specified maximum blasting circuit resistance for the unit.

(d) *Firing switch.* The switch used to initiate the application of energy to the blasting circuit shall—

(1) Require deliberate action for its operation to prevent accidental firing.

(2) Operate only when the voltage necessary to produce the required firing current is available to the blasting circuit; and

(3) Operate only when the resistance of the blasting circuit does not exceed the specified maximum blasting circuit resistance of the unit.

(e) *Firing line terminals.* The terminals used to connect the blasting circuit to the blasting unit shall—

(1) Provide a secure, low-resistance connection to the blasting circuit as determined by the firing line terminals test in § 7.68;

(2) Be corrosion-resistant;

(3) Be insulated to protect the user from electrical shock; and

(4) Be separated from each other by an insulated barrier.

(f) *Ratings of electric components.* No electric component of the blasting unit, other than batteries, shall be operated at more than 90 percent of any of its electrical ratings in the normal operation of the blasting unit.

(g) *Non-incentive electric contacts.* In the normal operation of a blasting unit, the electric energy discharged by making and breaking electric contacts shall not be capable of igniting a methane-air atmosphere, as determined by the following:

(1) The electric current through an electric contact shall not be greater than that determined from Figure D–1.

(2) The maximum voltage that can be applied across an electric contact that discharges a capacitor shall not be greater than that determined from Figure D–2.

(3) The electric current through an electric contact that interrupts a circuit containing an inductive component shall not be greater than that determined from Figure D–3. Inductive components include inductors, chokes, relay coils, motors, transformers and similar electric components that have an inductance greater than 100 micro-Henries. No inductive component in a circuit with making and breaking electric contacts shall have an inductance value greater than 100 milli-Henries.

BILLING CODE 4510-43-M

FIGURE D–1

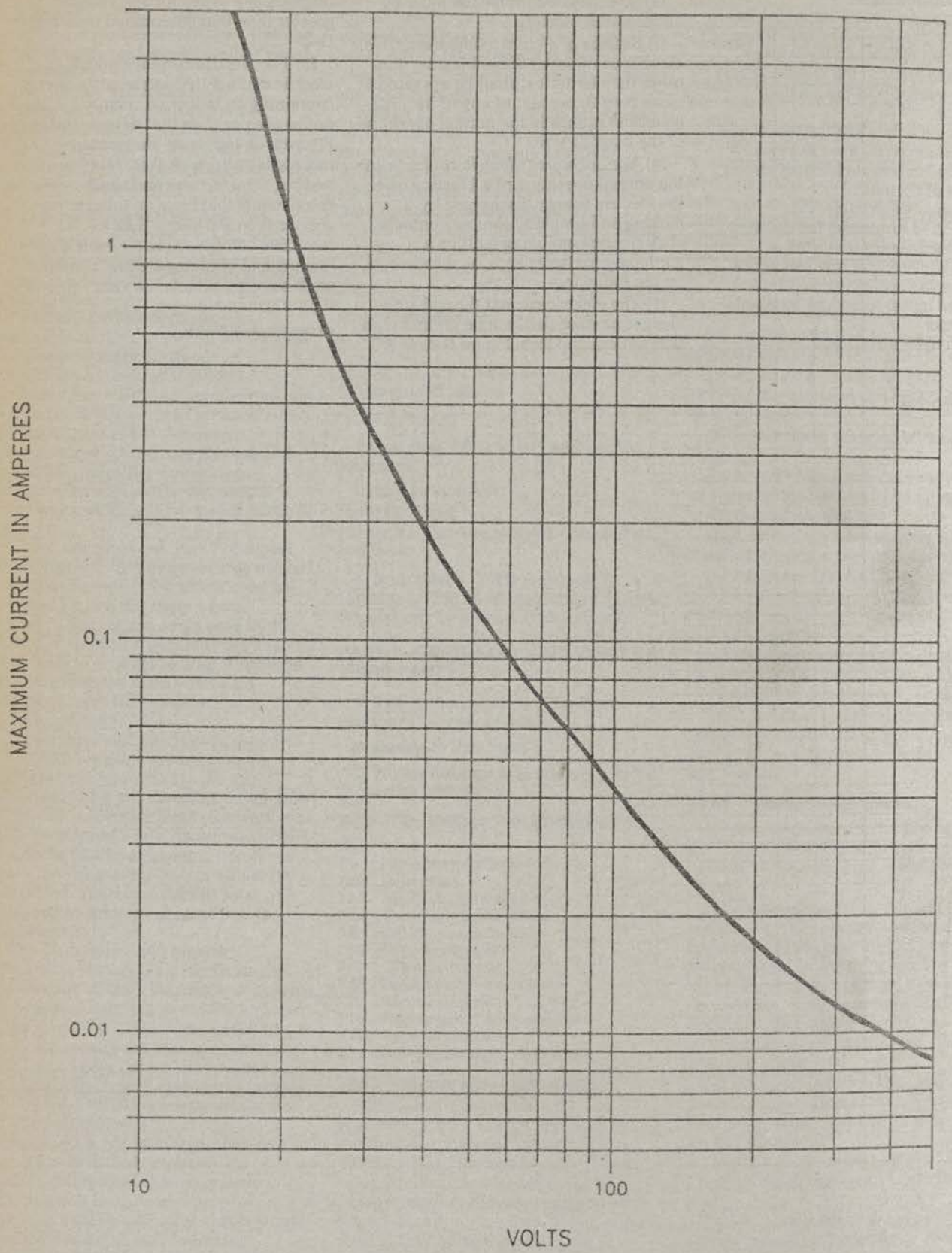

MAXIMUM CURRENT IN AMPERES
1
0.1
0.01
10
100
VOLTS
MAXIMUM CAPACITANCE IN MICROFARADS

FIGURE D–2

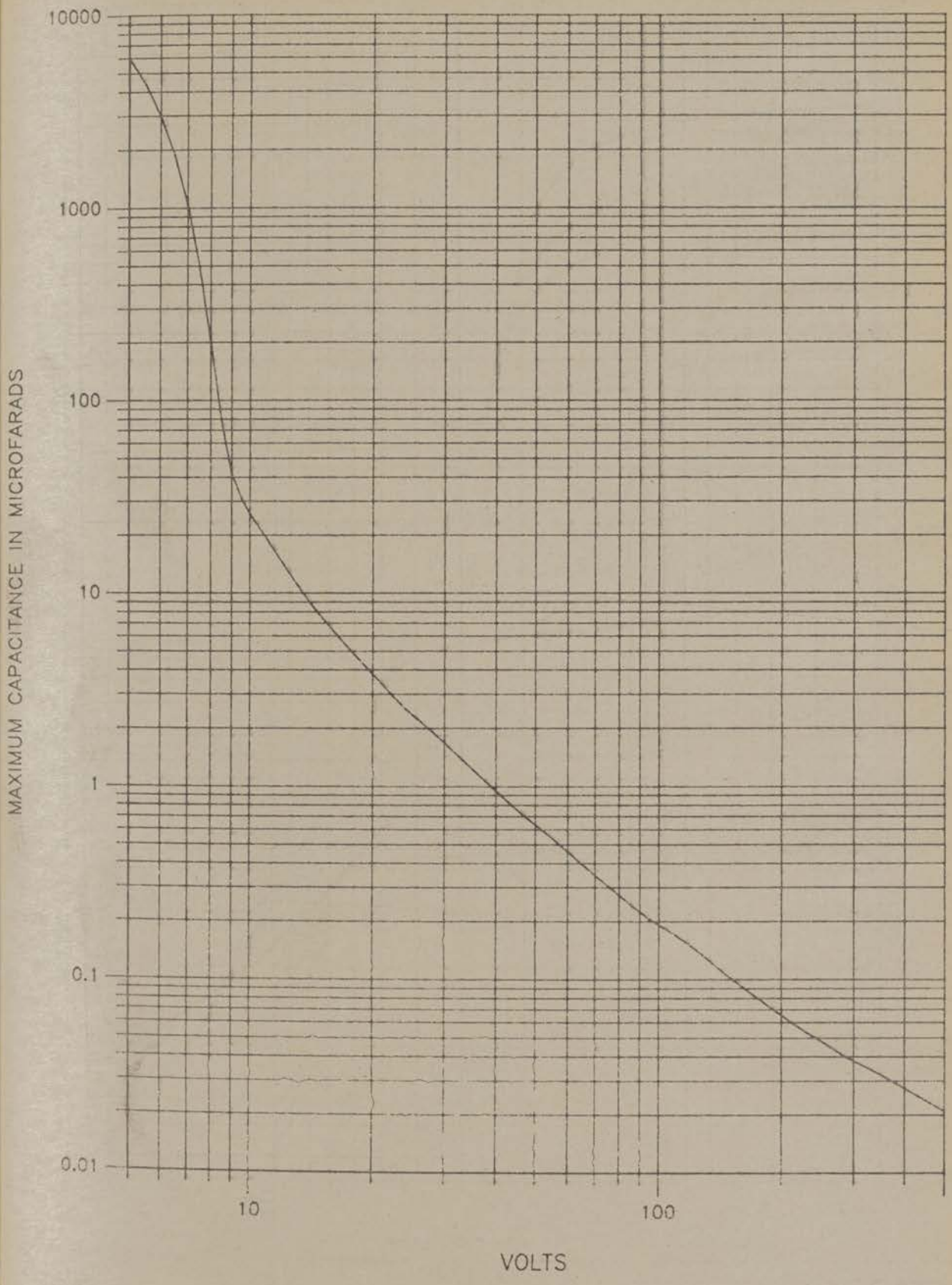
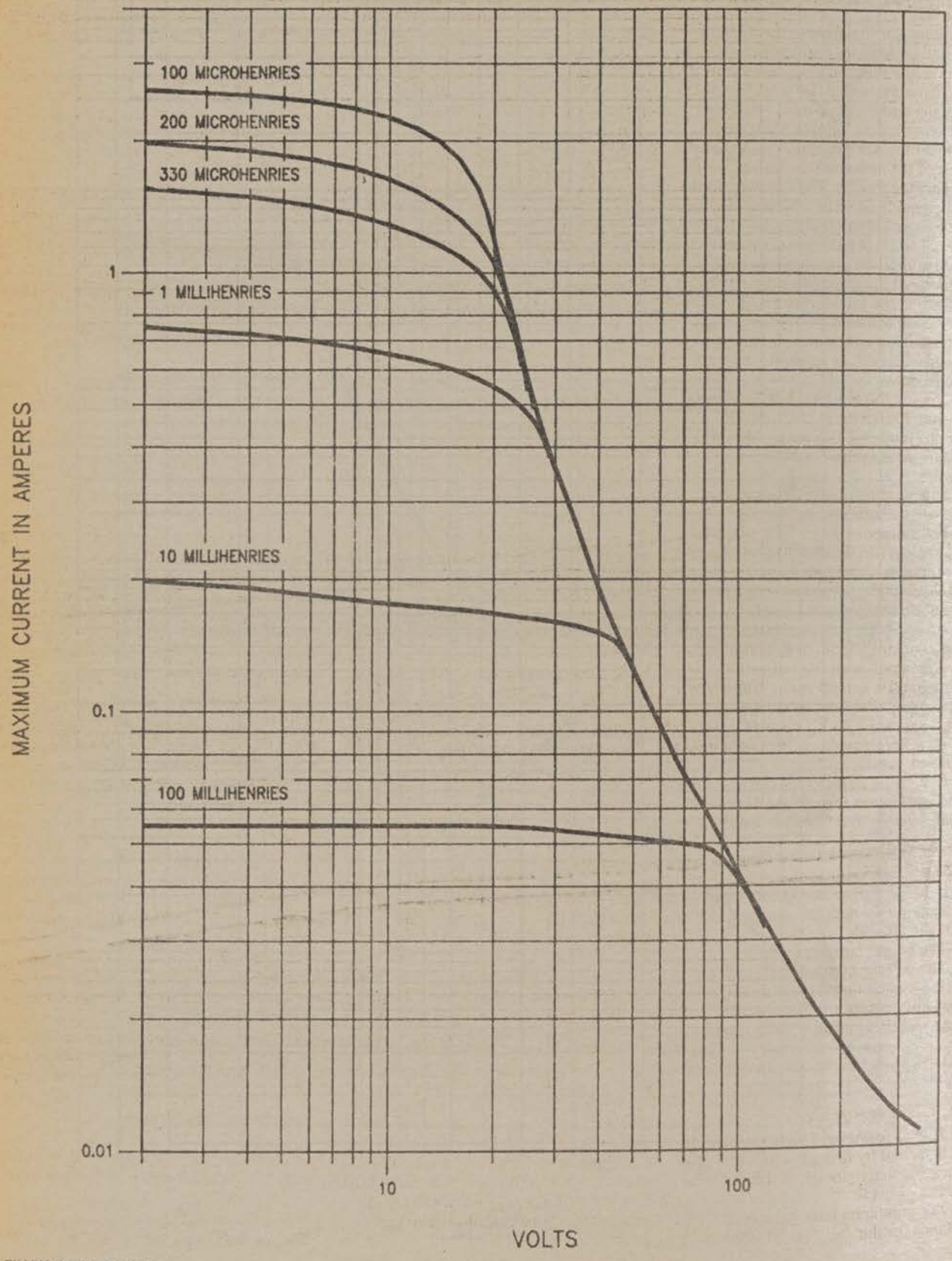

10000
1000
100
10
1
0.1
0.01
MAXIMUM CAPACITANCE IN MICROFARADS
10
100
VOLTS

FIGURE D–3



BILLING CODE 4510-43-C

(h) *Maximum temperature.* In the normal operation of the blasting unit, the maximum temperature of any electric component shall not exceed 302 °F (150 °C).

(i) *Capacitor discharge.* The blasting unit shall include an automatic means to dissipate any electric charge remaining in any capacitor after the blasting unit is deenergized and not in use.

(j) *Construction.* The blasting unit shall meet the acceptable performance criteria of the construction test of § 7.67.

(k) *Locking device.* The blasting unit shall be equipped with a locking device to prevent unauthorized use.

(l) *Enclosure.* (1) The blasting unit enclosure shall be protected against unauthorized disassembly by—

(i) Sealing the enclosure, except the battery compartment for replaceable batteries, using continuous welding, brazing, soldering, or equivalent methods; or

(ii) Sealing the electric components, other than batteries, in a solidified insulating material and assembling the enclosure with tamper resistant hardware.

(2) The blasting unit enclosure shall be marked to indicate that the unit contains components that are not to be disassembled or removed and to specify replacement battery types.

(m) *Battery charging.* Blasting units that contain rechargeable batteries shall have—

(1) A blocking diode, or equivalent device, in series with the battery to prevent electric energy in the battery from being available at the charging connector;

(2) The charging connector recessed into the enclosure; and

(3) A marking adjacent to the charging connector to warn that the battery is to be charged only in a fresh-air location.

§ 7.65 Critical characteristics.

The following critical characteristics shall be inspected or tested for each blasting unit to which an approval marking is affixed:

(a) The output current;

(b) The voltage cutoff time;

(c) The components that control voltage and current through each making and breaking electric contact; and

(d) Operation of visual indicators and the firing switch.

§ 7.66 Output energy test.

(a) *Test procedures.* The blasting unit shall be tested by firing into each of the following resistive loads, within a tolerance of ±1%:

(1) The maximum blasting circuit resistance for the unit plus 10 ohms;

(2) The maximum blasting circuit resistance for the unit minus 10 ohms;

(3) Any resistive load between 3 ohms and the maximum blasting circuit resistance for the unit minus 20 ohms; and

(4) One ohm.

(b) *Acceptable performance.* (1) The voltage shall be zero at the firing line terminals 10 milliseconds after operation of the firing switch.

(2) The electric current from the blasting unit shall be—

(i) Less than 50 milliamperes except during firing of the blasting unit;

(ii) Available only through the firing line terminals;

(iii) At least 2 amperes during the first 5 milliseconds following operation of the firing switch when connected to each resistive load from 1 ohm up to and including the maximum blasting circuit resistance for the unit minus 10 ohms; and

(iv) Not exceed an average of 100 amperes during the first 10 milliseconds following operation of the firing switch.

(3) When connected to the maximum blasting circuit resistance for the unit plus 10 ohms—

(i) The blasting unit shall visually indicate that the blasting circuit resistance exceeds the specified maximum blasting circuit resistance; and

(ii) The firing switch shall be inoperative.

§ 7.67 Construction test.

(a) *Test procedures.* (1) The blasting unit shall be dropped from a height of 3 feet onto a horizontal concrete floor until each surface, edge, and corner of the unit has struck the floor first at least one time. Independent of the number of external surfaces, edges, or corners, five samples shall be dropped a minimum of twenty times each.

(2) The five blasting units used in the drop test shall be submerged in one foot of water for one hour as follows:

(i) Two of the samples in water with the temperature maintained at 40 °F, ±5° (4.4 °C, ±2.8°);

(ii) Two of the samples in water maintained at a temperature of 100 °F ±5° (37.8 °C, ±2.8°); and

(iii) The remaining sample in water with the temperature maintained at 70 °F, ±5° (21 °C ±2.8°).

(3) Immediately after removing each blasting unit from the water, operate the unit with the firing line terminals open-circuited, then operate it again with the firing line terminals short-circuited, and test the output energy of each sample according to the output energy test in § 7.66.

(b) *Acceptable performance.* (1) Each blasting unit shall meet the acceptable performance criteria of the output energy test in § 7.66;

(2) There shall be no damage to the firing line terminals that exposes an electric conductor;

(3) The visual indicators shall be operational;

(4) The batteries shall not be separated from the blasting unit; and

(5) There shall be no water inside the blasting unit enclosure.

§ 7.68 Firing line terminals test.

(a) *Test procedures.* (1) The contact resistance through each firing line terminal shall be determined.

(2) A 10-pound pull shall be applied to a No. 18 gauge wire that has been connected to each firing line terminal according to the manufacturer's instructions.

(b) *Acceptable performance.* (1) The contact resistance shall not be greater than 1 ohm.

(2) The No. 18 gauge wire shall not become disconnected from either firing line terminal.

§ 7.69 Approval marking.

Each approved blasting unit shall be identified as permissible by a legible and permanent marking securely attached, stamped, or molded to the outside of the unit. This marking shall include the assigned MSHA approval number and the maximum blasting circuit resistance.

§ 7.70 Post-approval product audit.

Upon request by MSHA, but not more than once a year except for cause, the approval-holder shall make an approved blasting unit available for audit at no cost to MSHA.

§ 7.71 Approval checklist.

Each blasting unit bearing an MSHA approval marking shall be accompanied by a description of what is necessary to maintain the blasting unit as approved.

§ 7.72 New technology.

MSHA may approve a blasting unit that incorporates technology for which the requirements of this subpart are not applicable if the Agency determines that the blasting unit is as safe as those which meet the requirements of this subpart.

PART 25—[REMOVED]

3. Part 25 is removed effective [insert date one year from the effective date of final rule].

[FR Doc. 88-13703 Filed 6-21-88; 8:45 am]
BILLING CODE 4510-43-M

Federal Register

Wednesday
June 22, 1988

Part III

Department of the Interior

Office of Surface Mining and Reclamation Enforcement

30 CFR Part 701

Permanent Regulatory Program; Definitions; Support Facilities; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 701

Permanent Regulatory Program; Definitions; Support Facilities

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) proposes to remove the definition of *support facilities* from its regulations because a definition is not needed in order to ensure that such facilities are regulated under the Surface Mining Control and Reclamation Act (SMCRA). OSMRE has determined that the identification of facilities that support surface coal mining operations has been conducted in a manner consistent with the intent of SMCRA during those periods when there has been no definition in Federal regulations (prior to the 1983 introduction of a definition and since the 1985 suspension of the definition).

DATES:

Comments: OSMRE will accept written comments on the proposed rule until 5 P.M. Eastern time on August 8, 1988.

Public hearings: Upon request, OSMRE will hold public hearings on the proposed rule in Washington, DC on August 1, 1988; in Denver, Colorado on August 1, 1988; and in Knoxville, Tennessee on August 1, 1988. Upon request, OSMRE will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, 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 July 13, 1988. 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:

Comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L St., NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131A, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public Hearings: If public hearings are scheduled in Washington, DC., Denver, or Knoxville, (see **"DATES"**: *Public Hearings*), such hearings will be held at the Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th St., Denver, Colorado; and the Hyatt, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

Request for public hearings: Submit requests orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–5950 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

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 three copies of their comments. Comments received after the close of the comment period (see **"DATES"**) or delivered to an address other than those listed above (see **"ADDRESSES"**) may not necessarily 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 dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The 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. Sheffield (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing of the desired hearing location by 5:00 p.m. Eastern time July 13, 1988. If no one has contacted Mr. Sheffield 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 to ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (SMCRA), sets forth general regulatory requirements governing surface coal mining and the surface impacts of underground coal mining. Sections 701(28) (A) and (B) of the Act define "surface coal mining operations" subject to regulation under the Act to include (A) specific activities conducted in connection with a coal mine and (B) "the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities." The definition of "surface coal mining operations" is incorporated in the permanent regulatory program at 30 CFR 700.5.

OSMRE had initially proposed a definition of "resulting from or incident to" on September 18, 1978 (43 FR 41801). However, following review of comments on the proposed definition, OSMRE decided not to include it in the final regulations issued on March 13, 1979. In the preamble to those final regulations (44 FR 14915), OSMRE stated that "a meaningful definition which would cover all situations is not possible."

Instead, the determination as to whether an off-site area or facility would be subject to regulation under section 701(28)(B) of SMCRA would be made on a case-by-case basis. Further guidance was provided in the discussion of permitting requirements for support facilities and coal processing plants at § 785.21 (44 FR 15095). In that discussion, OSMRE stated that regulatory authorities would be required to extend their permit requirements to include all facilities on the mine site and all facilities incident to the mine at or near the site.

On May 5, 1983, in an attempt to further clarify which facilities were subject to regulation under section 701(28)(B) of SMCRA, OSMRE defined the term *support facilities* (48 FR 20401). In the 1983 definition, OSMRE included in regulations an interpretation of the phrase in section 701(28)(B) of SMCRA, "resulting from or incident to," to connote an element of geographic proximity. Facilities regulated as *support facilities* were to be determined, in part, based upon their location relative to a regulated activity.

The 1983 definition was challenged in the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation II*, No. 79–114 (D.D.C. July 6, 1984) (*In Re: Permanent II*). Plaintiffs maintained that there was no lawful basis for a geographic limitation in the definition, and that the statutory language, "resulting from or incident to," connotes a functional relationship. The court determined that there was no evidence to support OSMRE's conclusion that areas that result from or are incident to activities must be located near those activities. The court found that a limitation based solely on proximity could not stand. *In Re: Permanent (II)*, Slip op. at 20–23.

On July 10, 1985, in response to the court's finding, OSMRE published an interim final regulation (50 FR 28186) suspending the definition of *support facilities*. At the same time, OSMRE proposed the removal of the definition (50 FR 28180). OSMRE further stated in those rulemakings that it had determined that no definition of *support facilities* was needed, and that there was no need to amplify the language of section 701(28)(B) of the Act with respect to the meaning of the phrase "resulting from or incident to" a regulated activity.

Nine comments were received from representatives of the coal industry, environmental organizations, and State regulatory authorities on the proposal to delete the definition of *support facilities*. All commenters favored retention of a definition to clarify which types of facilities would be subject to regulation as *support facilities*. Because of the expressed interest in having a regulatory definition, OSMRE reconsidered possible definitions. On May 11, 1987, OSMRE stated in the preamble to a final regulation defining "coal preparation" (52 FR 17724) that it would propose a new definition of *support facilities*. However, for reasons discussed later in this preamble (see "Discussion of Proposed Rule"), OSMRE will not be proposing a new definition.

In order to ensure full consideration of opinions on this issue, OSMRE undertook an extensive outreach effort involving the participation of interested parties from industry, environmental groups, State regulatory authorities and professional societies. This included holding facilitated outreach meetings to provide interested parties with an opportunity to comment on draft rule language and to fully discuss issues relative to this proposed rulemaking.

In addition to embarking on the outreach effort and reconsidering possible definitions, responsible officials in each of OSMRE's field offices were consulted to determine if *support facilities* have been adequately identified by States. The results of that consultation, as well as the outreach effort, are discussed in the following section of this preamble, "Discussion of Proposed Rule."

Finally, on January 29, 1988, the U.S. Court of Appeals issued a decision which overturned the decision in *In Re: Permanent (II)* concerning whether proximity could be considered in determining SMCRA's jurisdiction over off-site facilities. (*NWF v. Hodel*, No. 84–5743 at 148–150 (DC Cir., January 29, 1988)). The court of appeals affirmed the Secretary's incorporation of a consideration of proximity in the 1983 definition of *support facilities*. Specifically, the court stated that the "phrase" 'resulting from or incident to' clearly suggests a causal connection, which, while not indicating an element of geographic proximity, certainly does require some type of limiting principle of proximate causation * * *." (*NWF v. Hodel*, No. 84–5743 at 104). The court of appeals reinstated the provision which stated that "resulting from or incident to an activity connotes an element of proximity to that activity."

III. Discussion of Proposed Rule

Based on the January 29, 1988, ruling of the court of appeals, OSMRE will remove, by separate notice, the July 10, 1985, suspension of the definition of *support facilities*.

Although comments on the 1985 proposed removal of the definition of *support facilities* (50 FR 28180) favored having a definition, generally because it would help in interpreting which facilities should be subject to regulations, outreach discussions with commenting parties indicated that the interest in having a definition was not strong. The 1987 outreach consultations focused, in particular, on an effort to identify those categories of facilities which would always be considered *support facilities* and those which would never be *support facilities*. OSMRE was unable to develop a definition of *support facilities* based upon categories of facilities. Any such definition would involve high potential for finding one or more instances within each category in which the criteria of "resulting from or incident to" would appear to be either under- or over-inclusive.

In addition, the outreach participants expressed the concern that having a definition could be harmful in that it would limit the ability of regulatory authorities to make case-by-case determinations of what is "resulting from or incident to." Indeed, during the discussions there developed considerable support for making the proposed removal of the definition final.

Concurrent with the outreach effort, responsible officials in each of OSMRE's field offices were consulted to determine if *support facilities* have been adequately identified by States. While only one approved State program contains a definition of *support facilities*, rarely have objections been raised to OSMRE concerning the administration of State programs on this issue. In fact, there have been only two instances where OSMRE has issued a ten-day notice to a State with an approved program questioning whether or not particular facilities should be regulated as *support facilities*.

In consideration of OSMRE's experience with this issue, it appears that regulatory authorities are capable of identifying off-site facilities that should be subject to the provisions of SMCRA without having a definition of *support facilities* in Federal regulations. In fact, there appears to be no discernible difference in the administration of State programs with or without a Federal definition. OSMRE believes that the term "resulting from or incident to," in the context of the rest of the language of section 701(28) of SMCRA, provides adequate guidance to regulatory authorities in the identification of facilities that support surface coal mining operations. Having

considered the court's decision, OSMRE will again recognize that the consideration of proximity, as well as function, is valid in determining whether facilities are "resulting from or incident to" regulated activities.

The agency is dealing with industrial practices of great complexity (*NWF v. Hodel*, No. 84–5743 at 104–105). It is imperative that OSMRE's regulations provide reasonable flexibility to implement the statute in a manner that considers the myriad site-specific situations that cannot be fully anticipated in a Federal regulation. Hence, for the reasons given above, OSMRE proposes to remove the definition of *support facilities*.

Removal is being reproposed rather than taking final action on the similar proposal of 1985 (50 FR 28180) because of the public expectation that a new definition would be forthcoming following OSMRE's statement to that effect in the final rulemaking defining "coal preparation" (52 FR 17724). This will allow all interested parties to consider again the proposed removal and comment on it prior to any final effect.

If this proposed rule is adopted, OSMRE will continue to monitor, through existing oversight and annual evaluation mechanisms, the interpretation by regulatory authorities of the term "resulting from or incident to." If, as a result of this monitoring, it is determined that there has developed a need for additional guidance or regulatory action, OSMRE will take appropriate action.

Effect in Federal Program States and on Indian Lands

The proposed rule would apply 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 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 respectively. OSMRE has proposed (52 FR 39594; October 22, 1987) to implement a Federal program for the State of California. The proposed rule also would apply through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR 750. Comments are specifically solicited as to whether unique conditions exist in any of these States or on Indian lands relating to this proposal which should be reflected either as changes to the national rules or as specific amendments to any or all of the Federal programs.

Effect on State Programs

Following promulgation of the final rule, OSMRE will evaluate permanent State regulatory programs approved under section 503 of SMCRA to determine whether any changes in these programs will be necessary. If the Director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

IV. Procedural Matters

Federal Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

Executive Order 12291

The Department of the Interior has determined, in accordance with the criteria of Executive Order 12291 (February 17, 1981), that this rule is not major and does not require a regulatory impact analysis because it would not affect existing costs to the coal industry and coal consumers, and would not adversely affect competition, employment, investment, productivity, or innovation.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule would not have a significant economic effect on a substantial number of small entities.

National Environmental Policy Act

OSMRE has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft EA is on file in the OSMRE Administrative Record at the address specified previously (see "**ADDRESSES**"). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal author of this rule is Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–5950 (Commerical or FTS).

List of Subjects in 30 CFR Part 701

Coal mining, surface mining, underground mining.

Accordingly, it is proposed to amend 30 CFR Part 701 as set forth below.

Date: April 29, 1988.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34.

§ 701.5 [Amended]

2. Section 701.5 is amended by removing the definition of "support facilities".

[FR Doc. 88–13925 Filed 6–21–88; 8:45 am]

BILLING CODE 4310–05–M

Federal Register

Wednesday
June 22, 1988

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 785 and 827

Permanent Regulatory Program; Coal Preparation Plants Not Located Within the Permit Area of a Mine; Proposed Rule

DEPARTMENT OF THE INTERIOR

30 CFR Parts 785 and 827

Permanent Regulatory Program; Coal Preparation Plants Not Located Within the Permit Area of a Mine

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) proposes to amend its regulations to clarify the circumstances under which coal preparation plants located outside of the permit area of a mine are subject to the performance standards and permitting requirements of the Surface Mining Control and Reclamation Act (SMCRA).

OSMRE is concerned that the regulations, as currently written, might be misconstrued, particularly in light of the May 11, 1987, promulgation of a new definition of "coal preparation" (52 FR 17724). By more closely tracking the language of SMCRA in the proposed rule, OSMRE intends to ensure that coal preparation activities that are carried out "in connection with" a coal mine are appropriately regulated under SMCRA.

DATES:

Comments: OSMRE will accept written comments on the proposed rule until 5 p.m. Eastern time on August 8, 1988.

Public hearings: Upon request, OSMRE will hold public hearings on the proposed rule in Washington, DC on August 1, 1988; in Denver, Colorado on August 1, 1988; and in Knoxville, Tennessee on August 1, 1988. Upon request, OSMRE will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, 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 July 13, 1988. 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 Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L St. NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131A, 1951 Constitution Avenue, NW., Washington DC 20240.

Public Hearings: If public hearings are scheduled in Washington, DC, Denver, or Knoxville (see **"DATES"**: *Public Hearings*), such hearings will be held at the Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th St., Denver, Colorado; and the Hyatt, 500 Hill Avenue SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

Request for public hearings; Submit requests orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT:

Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–5950 (Commercial of FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

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 three copies of their comments. Comments received after the close of the comment period (see **"DATES"**)or delivered to an address other than those listed above (see **"ADDRESSES"**) may not necessarily 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 dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**.) The 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. Sheffield (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing of the desired hearing location by 5:00 p.m. Eastern time July 13, 1988. If no one has contacted Mr. Sheffield 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 to ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (SMCRA), sets forth general regulatory requirements governing surface coal mining and the surface impacts of underground coal mining. Section 701(28)(A) of the Act defines "surface coal mining operations" as "activities conducted on the surface of lands in connection with" a coal mine. The definition goes on to specify numerous such activities, including "leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation." These activities thus, when conducted "in connection with" a coal mine, are "surface coal mining operations" and are subject to regulation under the Act as are the areas affected by these activities.

The processing and preparation activities mentioned above are usually conducted at the mine site and are covered by OSMRE's permitting requirements at 30 CFR Parts 780 and 784 and also by the performance standards at 30 CFR Parts 816 and 817. However, such activities sometimes occur at a preparation plant not located at a mine site. To ensure that off-site coal preparation is appropriately regulated, OSMRE established a speical category of permitting requirements for coal preparation plants not located within the permit area of a mine at 30 CFR 785.21 and also established special performance requirements for such facilities at 30 CFR Part 827.

Final regulations published on March 13, 1979 (44 FR 15317) defined a "coal processing plant" as a facility "where run-of-the-mine coal is subjected to chemical or physical processing *and*

separated from its impurities" (emphasis added). In the preamble to those definitions, OSMRE discussed the rationale for the need to reach processing plants not located at the mine site (44 FR 15292). "Coal processing plants are usually located at the mine mouth, but frequently one central preparation plant may serve several mines as a focal point for coal preparation and shipment to market. The coal may be transported to this central plant without removal of the rock and other impurities contained in the run-of-mine coal."

In revising the permanent program regulations on May 5, 1983, OSMRE defined "coal preparation plant" and added a complementary definition of "coal preparation or coal processing." Both of the 1983 definitions described the activity being conducted as "cleaning, concentrating, or other processing or preparation" (48 FR 20400). This definition retained the concept of separation of coal from its impurities as an integral element of processing or preparation.

Also on May 5, 1983, OSMRE made final the addition of limiting language in §§ 785.21 and 827.1 to exclude facilities "at the site of ultimate coal use." (48 FR 20401). In addition, OSMRE stated that it would treat "all facilities which handle coal as either 'in connection with' a mine or 'in connection with' an end user." OSMRE continues to believe that regulation of facilities operated by or for the end user of coal at the point of such use is not required under SMCRA because, by virtue of their association with the end user of the coal, such facilities are not operated "in connection with" a mine.

The 1983 definitions of "coal preparation or coal processing" and "coal preparation plant," as well as the Secretary's jurisdiction to regulate off-site processing plants, were challenged in the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144 slip op. (D.D.C. July 6, 1984) (*In Re: Permanent (II)*). The court concluded that these definitions were based on a misreading of the statute. The court rejected OSMRE's interpretation that coal preparation activities necessarily involve the separation of coal from its impurities. *In Re: Permanent II*, Slip op. at 15–20. However, the court affirmed the Secretary's jurisdiction to regulate off-site processing plants. *In Re: Permanent II* Slip op. at 17, note 12.

In response to the court's decision, OSMRE redefined "coal preparation" and "coal preparation plant" in an interim final rule and, concurrently, in a proposed rule (July 10, 1985; (50 FR 28180)). The revised definitions included "chemical or physical processing" and "cleaning, concentrating, or other processing or preparation." Most significantly, the condition that coal preparation must include the separation of coal from its impurities was deleted from the definitions. These definitions were published as a final rule on May 11, 1987 (52 FR 17724).

The new definitions of "coal preparation" and "coal preparation plant" include activities and facilities in addition to those that involve the separation of coal from its impurities. These activities are not necessarily conducted at the point of ultimate use, nor are they necessarily conducted "in connection with" a mine. As a result, OSMRE can no longer treat all facilities which handle coal as either "in connection with" a mine or "in connection with" an end user as it could when all coal preparation had to meet a definition which was based on the separation of coal from its impurities. For example, facilities such as the docks at Baltimore, MD; Hampton Roads, VA; Mobile, AL; and Long Beach, CA, that may occasionally crush or size coal, may conduct "coal preparation" under the new definition. However, for the reasons cited in the following "Discussion of Proposed Rule," OSMRE does not believe that the activities being conducted at such facilities are "in connection with" a mine or that the Act was intended to regulate the activities at such facilities.

On January 29, 1988, the U.S. Court of Appeals upheld the decision in *In Re: Permanent (II)* affirming the Secretary's jurisdiction to regulate off-site processing plants. (*NWF v. Hodel*, No. 84–5743 at 98–104 (D.C. Cir., January 29, 1988)). This decision and its effect on OSMRE's interpretation of the phrase "in connection with" are discussed later in the preamble.

In light of the broadened definitions of "coal preparation" and "coal preparation plant," it is necessary to ensure that the performance standards in 30 CFR Part 827 and the permitting requirements in 30 CFR 785.21 are applied only to facilities conducting coal preparation "in connection with" a coal mine. The limitation to coal preparation conducted "in connection with" a coal mine is necessarily implied in Parts 785 and 827 because of the statutory and regulatory use of that phrase in the definition of the term "surface coal mining operations." However, OSMRE believes it would clarify the provisions if the limitation were explicitly referenced and would help to ensure that the provisions are not misconstrued.

III. Discussion of Proposed Rule

OSMRE proposes to revise the language in 30 CFR 785.21, the permitting requirements for off-site preparation plants, and 30 CFR 827.1, the performance standards for off-site preparation plants, to make clear that those sections apply only to off-site coal preparation that is "in connection with" a coal mine.

The first sentence of § 785.21(a), which specifies the requirements for permits for coal preparation plants not located within the permit area of a mine, now reads, "This section applies to any person who operates or intends to operate a coal preparation plant outside the permit area, other than such plants which are located at the site of ultimate coal use." Under the proposal, this sentence would be replaced with, "This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal mine but outside the permit area." The second sentence of paragraph (a) would remain the same. Because the purpose of this rulemaking is to clarify that the rule applies only to coal preparation plants operated in connection with a coal mine, and OSMRE believes that this limitation necessarily excludes facilities at the site of ultimate use, the rule would delete the redundant phrase "other than such plants which are located at the site of ultimate coal use."

Section 827.1, which specifies the performance standards for coal preparation plants not located within the permit area of a mine, now reads, "This part sets forth requirements for coal preparation plants not within the permit area for a specific mine other than those plants which are located at the site of ultimate coal use." This language would be replaced with, "This part sets forth requirements for coal preparation plants operated in connection with a coal mine but outside the permit area." Again, for the reasons cited above, OSMRE proposes to delete the redundant phrase "other than those plants which are located at the site of ultimate coal use."

No definition of the term "in connection with" is proposed. Regulatory authorities will find ample guidance for making determinations as to whether a coal preparation plant is being operated in connection with a mine in the language in the definitions of "surface coal mining operations" in section 701(28) of SMCRA and 30 CFR 700.5, in case histories interpreting those

definitions, and in preamble discussions in OSMRE's related 1979 and 1983 rules. Any attempt to further define this phrase in a regulation would unduly restrict the discretion that regulatory authorities must have in order to make valid decisions about the applicability of the performance standards of SMCRA in individual cases. Categorical exclusions or inclusions would almost certainly result in inappropriate applications of the rule in some instances.

In explaining the reach of the 1979 rule at § 785.21, OSMRE stated, "OSM is only requiring regulatory authorities to extend their permit requirements as far into the stream of commerce as those activities over which mine operators and the coal handlers who directly serve them, such as coal processors, have or could have control of operations. This includes * * * coal processing plants no matter where located." (44 FR 15095). OSMRE believes that the ability of mine operators, or coal handlers directly servicing such operators, to have control of operations is essential in establishing that a plant is being operated in connection with a mine.

In identifying the relationship necessary for coal preparation to be "in connection with" a mine, the principle stated in the May 5, 1983, preamble to the definition of "coal preparation" should be referenced. In that preamble, OSMRE cited examples of facilities which could be considered to be "in connection with" a mine, including "facilities which receive a significant portion of their coal from a mine; facilities which receive a significant portion of the output from a mine; facilities which have an economic relationship with a mine; or any other type of integration that exists between a facility and a mine." Further, OSMRE stated that a "facility need not be owned by a mine owner to be in connection with a mine." (48 FR 20393; see also discussion at 52 FR 17726, May 11, 1987). These examples remain valid.

Finally, in determining the applicability of SMCRA to off-site facilities, OSMRE has considered the January 29, 1988, ruling of the court of appeals. That decision resulted from a challenge to the Secretary's authority asserting that the phrase "at or near the mine site" found in section 701(28)(A) of the Act limited the Act's regulatory jurisdiction over coal processing facilities. Without deciding the limits of jurisdiction over coal processing facilities under section 701(28)(A), the court affirmed OSMRE's authority to regulate off-site coal preparation activities under section 701(28)(B) of SMCRA, which extends the Secretary's authority to "processing areas" and other areas upon which are sited structures and facilities "resulting from or incident to" activities specified in section 701(28)(A).

In addition to affirming this authority, the court of appeals found that the phrase "resulting from or incident to" could be construed to connote an element of proximity. Specifically, the court of appeals stated that the "phrase 'resulting from or incident to' clearly suggests a causal connection, which, while not indicating an element of geographic proximity, certainly does require some type of limiting principle of proximate causation * * *." (*NWF v. Hodel*, No. 84-5743 at 104).

Because the court affirmed the Secretary's authority to regulate offsite coal processing under section 701(28)(B) of SMCRA, it is appropriate for OSMRE to consider the court's approval of the use of a proximity factor in determining the reach of 701(28)(B). Hence, OSMRE believes that the consideration of geographic proximity, as well as the functional relationship between mines and coal preparation plants, is a reasonable guide for regulatory authorities responsible for identifying those offsite preparation plants which operate in connection with a mine and, thus, are subject to regulation pursuant to SMCRA.

Effect in Federal Program States and on Indian Lands

The proposed rule would apply 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. OSMRE has proposed (52 FR 39594; October 22, 1987) to implement a Federal program for the State of California. The proposed rule also would apply through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR Part 750. Comments are specifically solicited as to whether unique conditions exist in any of these States or on Indian Lands relating to this proposal which should be reflected either as changes to the national rules or as specific amendments to any or all of the Federal programs.

Effect on State Programs

Following promulgation of the final rule, OSMRE will evaluate permanent State regulatory programs approved under section 503 of SMCRA to determine whether any changes in these programs will be necessary. If the Director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

IV. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in Part 785 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0040. Part 827 does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507*et seq.*

Executive Order 12291

The Department of the Interior has determined, in accordance with the criteria of Executive Order 12291 (February 17, 1981), that this rule is not major and does not require a regulatory impact analysis because it would not affect existing costs to the coal industry and coal consumers, and does not adversely affect competition, employment, investment, productivity, or innovation.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule would not have a significant economic effect on a substantial number of small entities.

National Environmental Policy Act

OSMRE has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft EA is on file in the OSMRE Administrative Record at the address specified previously (see "ADDRESSES"). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal author of this rule is Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-5950 (Commercial or FTS).

List of Subjects

30 CFR Part 785

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 827

Coal, Environmental protection, Surface mining.

Accordingly, it is proposed to amend 30 CFR Parts 785 and 827 as set forth below.

Date: April 29, 1988.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

1. The authority citation for Part 785 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34.

2. Section 785.21 is amended by revising paragraph (a) to read as follows:

§ 785.21 Coal preparation plants not located within the permit area of a mine.

(a) This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal mine but outside the permit area. Any person who operates such a preparation plant shall obtain a permit from the regulatory authority in accordance with the requirements of this section.

* * * * *

PART 827—PERMANENT PROGRAM PERFORMANCE STANDARDS—COAL PREPARATION PLANTS NOT LOCATED WITHIN THE PERMIT AREA OF A MINE

3. The authority citation for Part 827 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34.

4. Section 827.1 is revised to read as follows:

§ 827.1 Scope.

This part sets forth requirements for coal preparation plants operated in connection with a coal mine but outside the permit area.

[FR Doc. 88–13926 Filed 6–21–88; 8:45 am]

BILLING CODE 4310-05-M

federal register

Wednesday
June 22, 1988

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 772, 815, and 942

Requirements for Coal Exploration; Permanent Program Performance Standards—Coal Exploration; Tennessee Federal Program—Requirements for Coal Exploration; Proposed Rule

DEPARTMENT OF THE INTERIOR

30 CFR Parts 772, 815, and 942

Requirements for Coal Exploration; Permanent Program Performance Standards—Coal Exploration; Tennessee Federal Program—Requirements for Coal Exploration

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 pertaining to coal exploration operations. The amendments are being proposed to comply with recent court decisions, to clarify limitations on commercial use or sale of coal obtained by exploration, to increase regulatory control of exploration on certain lands where mining is prohibited or limited and to clarify which permit information requirements pertain to exploration. The exploration rules for the Tennessee Federal program would be revised to bring them into conformance with the notice requirements of the proposed rule. The rules for all other Federal program States cross-reference the coal exploration rules at 30 CFR Part 772; therefore all changes to the Federal rules would automatically apply in these States.

DATES:

Written Comments: OSMRE will accept written comments on the proposed rule until 5:00 p.m. Eastern time on August 8, 1988.

Public Hearings: Upon request, OSMRE will hold a public hearing on the proposed rule in Washington, DC on August 1, 1988, beginning at 9:30 a.m. Eastern time. Upon request, OSMRE will also hold hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington, at times and on dates to be announced prior to the hearings.

OSMRE will accept requests for a public hearing until 4:00 p.m. Eastern time on July 17, 1988. Individuals wishing to attend, but not testify at the 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 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, 1951 Constitution Ave. NW., Washington, DC 20240.

Public Hearing: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC. The addresses for any hearings requested to be scheduled at other locations will be announced prior to the hearings.

Request for Public Hearing: Submit orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Dr. Fred Block, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave. NW., Washington, DC 20240; Telephone: 202–343–4553 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

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 three copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) or delivered to addresses other than those listed above, may not necessarily 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, date and address for the hearing to be held in Washington, DC has been specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The times, dates and addresses for other hearings that may be requested at other locations have not yet been scheduled, but will be announced in the **Federal Register** at least seven days prior to any such hearings.

Any person interested in participating at a hearing should inform Dr. Block (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing by 4:00 p.m. Eastern time July 17, 1988. If no one has contacted Dr. Block to express an interest in participating in a hearing, 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. The hearing will be transcribed. To assist the transcriber and to ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, 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.

Persons interested in attending the hearing, but not testifying, should contact the individual listed under **"FOR FURTHER INFORMATION CONTACT"** prior to the scheduled hearing date to verify that the hearing will be held.

II. Background

General Requirements for Exploration

The Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, requires that each State or Federal program ensure that coal exploration operations that substantially disturb the natural land surface are conducted in accordance with exploration rules issued by the regulatory authority. Section 512 of SMCRA sets forth the notice, permit, reclamation, and other requirements for conducting coal exploration operations. In addition to the general requirements to file a notice of intent to conduct coal exploration, the removal of more than 250 tons of coal during exploration requires the specific written approval of the regulatory authority. The informational requirements for a notice of intent to explore and for an exploration permit are contained in 30 CFR 772.11 and 772.12, and are distinct from the more expansive permit requirements for a surface coal mining operation contained in 30 CFR Parts 773, 777–780, and 783–785 of the OSMRE regulations. These differing requirements reflect the fact that the definition of surface coal mining operations in section 701(28) of SMCRA excludes coal exploration operations, which are subject to the requirements of section 512 of SMCRA.

OSMRE first promulgated rules establishing general requirements for coal exploration at 30 CFR Part 776, and permanent program performance standards for coal exploration at 30 CFR Part 815, on March 13, 1979 (44 FR 15311). These 1979 exploration rules were revised on September 8, 1983 (48

FR 40622), and Part 776 was redesignated as Part 772.

III. Discussion of Proposed Rule

OSMRE has reviewed the legislative history of SMCRA, the Administrative Record for the rules, and the pertinent court opinions. As a result, OSMRE is proposing to revise its rules at § 772.11, 772.12, 772.14, and 942.772 and to add § 815.2 concerning notice and permit requirements for coal exploration under the OSMRE permanent program and the Federal program for Tennessee. Changes to these rules are discussed in detail below.

Section 772.11(a)—Notice requirements for exploration removing 250 tons or less of coal.

Section 776.11(a) of the 1979 rules required all persons who would conduct coal exploration during which 250 tons or less of coal would be removed to file a notice of intent to explore. Those who would extract in excess of 250 tons were required to obtain a coal exploration permit. The 1979 rules also required that any persons who conducted coal exploration activities under a notice of intent which substantially disturbed the natural land surface were to comply with the exploration performance standards under 30 CFR Part 815.

Section 772.11(a) as revised on September 8, 1983, required that any person who intends to conduct coal exploration operations outside a permit area during which 250 tons or less of coal will be removed *and which may substantially disturb the natural land surface* must file a notice of intent to explore with the regulatory authority. Thus, a notice of intent was not required in every case, but only where coal exploration may substantially disturb the land surface. The 1983 rules also required that exploration operations removing 250 tons or less of coal for which notices of intent are filed shall comply with 30 CFR Part 815.

The 1983 requirement that of those exploration operations removing 250 tons or less of coal only those which may substantially disturb the natural land surface must file a written notice of intent to explore was challenged in the District Court of the District of Columbia. The plaintiffs claimed that under the challenged rule coal operators were, in effect, in the position of making the determination of whether their operations would substantially disturb the land surface, a decision that should be made by the regulatory authority. The plaintiffs pointed to comments from three States who asserted that if the regulatory authority does not have notice of a proposed exploration, it would not know about the existence of the coal exploration operation and therefore could not enforce the provisions of SMCRA. The court remanded § 772.11(a) because it found that OSMRE had failed to explain adequately its departure from the previous rules or to address adequately the concerns raised by commenters. *In Re: Permanent Surface Mining Regulation Litigation II,* No. 79–1144, (D.D.C. July 15, 1985) (*In Re: Permanent (II)*).

As a result of the Court's decision, OSMRE suspended § 772.11(a) insofar as it limits the responsibiility to submit a notice of intent to explore to those persons who may substantially disturb the natural land surface (51 FR 41952, November 20, 1986). Consequently, all persons conducting exploration during which 250 tons or less of coal will be removed are required to submit a notice of intent to explore regardless of whether the exploration will substantially disturb the natural land surface.

In responding to the July 15, 1985 court ruling, OSMRE proposes to reinstate the requirement that any person who conducts operations where 250 tons or less of coal are removed must file a notice of intention to explore, rather than only those which may substantially disturb the natural land surface. OSMRE believes that coal operators should not be in a position of making a determination for the regulatory authority of whether or not their operations substantially disturb the natural land surface. Furthermore, for effective monitoring and enforcement, the regulatory authorities should know about all exploration occurring within their jurisdictions, and this can best be accomplished through notification by all who explore.

For the purposes of clarity, proposed § 772.11(a) would also provide that persons who intend to conduct coal exploration removing 250 tons or less of coal on lands designated as unsuitable for surface coal mining operations under Subchapter F, Areas Unsuitable for Mining, must apply for and receive an exploration permit under § 772.12. This additional language is needed to alert anyone contemplating exploration removing 250 tons or less of coal on those lands that the requirements of § 772.12 apply. This revision does not change or add any regulatory requirement. Section 772.12(a) currently requires a permit for any coal exploration which will take place on lands designated unsuitable for mining. Also for clarity, proposed § 772.11(a) contains a statement that exploration under a notice of intent shall be subject to the limitations on commercial sale or commercial use of coal obtained by exploration, as prescribed under § 772.14, and to the compliance requirements prescribed under § 772.13.

Section 772.11(b)(3)—Narrative or map in a coal exploration notice.

The 1979 rules required that a narrative and a map be submitted as a part of an exploration notice. In response to a challenge to these requirements, the District Court for the District of Columbia ruled that OSMRE had erred in its 1979 rules by requiring both a narrative description and a map. *In Re: Permanent Surface Mining Regulation Litigation,* No. 79–1144 (D.D.C. May 16, 1980). As a result, OSMRE revised its exploration regulations on September 8, 1983, to require "a narrative or map" under § 772.11(b)(3).

OSMRE's 1983 rule was challenged because it did not require a narrative description of the exploration area in all instances. The plaintiffs contended that a map alone is insufficient to describe a proposed exploration area. As a result of this challenge, the Court remanded OSMRE's rules.

However, the court noted in its decision that either a map or narrative would meet the statutory requirement of a "description" of the exploration area as required in section 512(a)(1) of the Act, but determined that the map provisions set forth in 30 CFR 772.11(b)(3) were not specific enough to satisfy the requirements of SMCRA. The decision stated that these rules contained no standards explaining the level of detail for a map to be used in place of a narrative describing the exploration area, and that it was not clear that any existing standards contained in other sections of the regulations were intended to be applied. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 139–140.

OSMRE suspended § 772.11(b)(3) insofar as it allows a coal exploration notice or application to be submitted which does not include a narrative describing the exploration area (51 FR 41952, November 20, 1986). As a result, notices of intent for coal exploration operations must include narratives.

Proposed § 772.11(b)(3) would continue to require either a narrative or a map describing the exploration area in a notice of intent to explore. In conformance with the court's ruling, the proposed rule would define the minimal information to be shown when a map is submitted in a notice of intent. At a minimum, such maps would be at a scale of 1:24,000 or larger, and would

include the proposed area of exploration, the location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines. These information requirements are being added to satisfy the court's concerns that the regulation explain the level of detail to be provided in a map which serves as the description of an exploration area.

Section 772.12(a)—Permit requirements for exploration removing more than 250 tons of coal.

Proposed § 772.12(a) would be revised by adding a statement to clarify that any coal exploration during which more than 250 tons of coal would be removed, or which will take place on lands designated as unsuitable for mining, would be subject to the limitations prescribed under § 772.14 concerning prohibitions on commercial sale or use of coal obtained through exploration and to the compliance requirements prescribed under § 772.13. This revision does not add or change any regulatory requirement.

Section 772.12(b)(3)—Narrative or map in a coal exploration permit application.

The 1979 rules required that a narrative and a map be submitted as a part of an exploration permit. As discussed under § 772.11(b)(3), in response to a challenge to these requirements, the District Court for the District of Columbia ruled that OSMRE had erred in its 1979 rules by requiring both a narrative description and a map. *In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C. May 16, 1980). As a result, OSMRE revised its exploration regulations on September 8, 1983, to require "a narrative of map" under § 772.12(b)(3). A subsequent challenge to this 1983 rule resulted in a Court decision (*In Re: Permanent (II)*, July 15, 1985 Mem. op. at 139–140) to remand § 772.12(b)(3). This decision is discussed above with respect to the remanded equivalent requirement under § 772.11(b)(3) for an exploration notice. Because the Court determined that the map provisions set forth in 30 CFR 772.12(b)(3) were not specific enough to satisfy the requirements of SMCRA, OSMRE suspended § 772.12(b)(3) insofar as it allows a coal exploration permit application to be submitted which does not include a narrative describing the exploration area (51 FR 41952, November 20, 1986). As a result, coal exploration permit applications must include narratives.

Proposed § 772.12(b)(3) would require a narrative describing the exploration area in an exploration permit application. The option to provide a map describing the proposed exploration area instead of a narrative would be deleted. Existing § 772.12(b)(12), which would be retained without revision, requires a map at a scale of 1:24,000 or larger showing the areas of land to be disturbed by the proposed exploration and reclamation. This map would include the essential features that would be required to satisfy the July 15, 1985, court decision concerning § 772.12(b)(3). Therefore, it is not necessary under § 772.12(b)(3) to provide for an optional map. OSMRE believes that the above proposed revisions satisfy the requirements of section 512(a) of SMCRA for a description of the exploration area.

Under the existing requirements of § 772.12(b)(12), maps must show the location of all areas to be disturbed by exploration, and shall specifically show existing roads, occupied dwellings, topographic and hydrologic features, roads and structures to be constructed, the location of land excavations, exploration holes, etc. Exploratory surveying and sampling areas that would not cause land to be disturbed would not necessarily be included on the map. However, any geochemical, soil, water, vegetation, or other sampling and survey activities would be included in the narrative description of the exploration area.

Sections 772.12(b)(14) and (d)(2)(iv)—Additional requirements for exploration in areas unsuitable for surface coal mining operations under section 522(e)(1) of SMCRA.

Sections 522(e) of SMCRA and 30 CFR 761.11 prohibit surface coal mining operations within certain designated lands, including units of the National Park System, unless the operator demonstrates valid existing rights (VER) to mine. However, under the existing regulatory provisions of § 762.14, coal exploration is not prohibited in these areas, and there is no requirement to prove VER prior to exploration. Thus, an operator could, through an exploration permit, extract coal that he might otherwise be prohibited from mining if VER could not be proved.

The National Park Service (NPS) of the Department of the Interior (DOI) has been concerned about exploration activities on lands covered by section 522(e). OSMRE and NPS have conferred on this issue. As a result, OSMRE is proposing new requirements at § 772.12(b)(14) and (d)(2)(iv) to assure that NPS units and other areas covered by section 522(e)(1) are protected from exploration activities where no valid existing right to mine has been proved.

Proposed § 772.12(b)(14) would require an applicant for an exploration permit within a 522(e)(1) area to provide documentation of valid existing rights under 30 CFR 761.11(a) to conduct surface coal mining operations in the proposed exploration area. Proposed section 772.12(d)(2)(iv) would add a requirement that the regulatory authority must, prior to approval of exploration in 522(e)(1) areas, determine in writing that the applicant possesses valid existing rights to conduct surface coal mining operations in the 522(e)(1) area.

Section 772.14 Commercial use or sale.

The commercial sale of coal obtained during exploration is generally prohibited under 30 CFR 772.14, unless a surface coal mining and reclamation operations permit is first obtained. Section 772.14 allows an exception to the requirement for this permit if the regulatory authority determines that the purpose of the sale is to test for coal properties necessary for the development of mining operations for which a permit application will be submitted at a later time. Concern has been raised about abuses occurring under such exceptions for "testing purposes." OSMRE has found that the current regulations do not require the applicant to provide sufficient information and assurances to enable the regulatory authority to determine whether the extraction of coal for commercial sale is necessary for testing purposes.

Therefore, OSMRE is proposing to revise the regulations at 772.14 by adding specific information requirements that must be met for approval of such testing.

Proposed § 772.14 would be retitled "Commercial Use or Sale" and expanded to include the commercial use of coal in addition to the sale of coal. Commercial use of coal encompasses those activities which provide a commercial benefit to the person conducting the exploration, such as when the owner of a power generating plant conducts coal exploration directly or indirectly through an agent or subsidiary company.

Proposed § 772.14(a) would provide that in addition to the prohibition on commercial sale, any person who intends to commercially use coal extracted during exploration under either a notice of intent to explore or an exploration permit must first obtain a surface coal mining and reclamation operations permit, unless otherwise

exempted by the proposed regulation under § 772.14(b). Commercial use or sale of coal would include any of its derivative forms, such as coke or liquid or gaseous fuel.

Under proposed § 772.14(b), an exception to § 772.14(a) would be provided when the purpose of the commercial use or sale is for the testing of coal for its quality. OSMRE is proposing new regulatory language under § 772.14(b) to prevent abuse of coal exploration rules allowing the use or sale of coal for such testing purposes. Proposed § 772.14(b) would provide that no surface coal mining and reclamation operations permit is necessary for coal extracted during exploration if the regulatory authority determines that the sale or use is for coal testing. An application for approval of the commercial use or sale of coal extracted for testing purposes would be required to demonstrate that the coal testing is necessary for the development of a surface coal mining an reclamation operation for which a permit application will be submitted in the near future, and that coal extraction is solely for the purposes of testing the quality of the coal.

Proposed § 772.14(b)(1) would require that the application contain the name of the firm at which the coal will be tested and the locations for testing. Proposed § 772.14(b)(2) would require that if the coal is sold directly to the intended end user, the end user submit a statement that provides the specific reasons for the test, including why the coal may be so different from the intended user's other coal supplies as to require the testing; the amount of coal necessary for the test and why a lesser amount is not sufficient; and a description of the specific tests that will be conducted. Proposed § 772.14(b)(3) would require that if the coal is sold indirectly to the intended end user through an agent or broker, the agent or broker must submit the statement as described above.

Paragraph (b)(4) would require that the application also contain evidence that sufficient reserves of coal are available to the operator for future commercial use or sale by the intended end user to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.

Finally, under proposed paragraph (b)(5), the application would be required to contain an explanation as to why other means of prospecting or exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of future surface coal mining operations.

The information required under proposed §§ 772.14(b)(2) and (b)(3) would be obtained from the intended end user (e.g. a utility) of the coal being tested or his/her agent or broker, as independent verification of the need for testing and the kind of testing necessary. The proposed rule recognizes that in some cases, such as when the coal is to be exported, a broker would obtain the coal for an end-user. The proposd rule would allow a broker to verify the validity of the testing at either the end-user's facilities or at an appropriate other location. Typically, a coal broker would assemble a test shipment by blending coal from various sources to suit the end-user's needs, and a test burn or other test may be needed to verify the coal quality for such shipments. Such testing of coal could be considered appropriate under the proposed rule. The required documentation on the need for the testing provided by a broker acting for an end-user, could also be considered sufficient.

The intent of these proposed new requirements is to continue to allow valid testing, while eliminating abusive practices whereby tesitng is used as a means to circumvent the prohibition of commercial use or sale of coal obtained during exploration. Any exploration operation which sells or uses coal commercially without a valid testing exemption would be in violation of these rules, unless a permit for a surface coal mining and reclamation operation were first obtained.

Section 815.2 Permitting information.

OSMRE is proposing to add a provision to 30 CFR Part 815, Exploration Performance Standards, that would clarify the extent of the information required to be submitted in an application for an exploration permit. The performance standards for coal exploration at 30 CFR 815.15 currently contain requirements which cross-reference certain requirements in 30 CFR Part 816. The cross-referenced rules in Part 816 contain further cross references to permit application requirements for surface coal mining operations and, in particular, to those at 30 CFR Part 780. However the cross-referenced permit application requirements are intended for surface coal mining operations and need not be applied to exploration operations because of the much more limited nature and scope of exploration activity.

The need for more careful specification of exploration permitting information was recently demonstrated by an administrative appeal to an exploration permit issued to Chatham Coal Co. The appeal alleged that the regulatory authority failed to require the Part 780 permitting information cross-referenced by the exploration performance standards. The Administrative Law Judge's decision held, in part, that, as written, the cross-referenced permit information requirements which were in question applied to coal exploration. Chatham County v. OSMRE, No. NX 7-1-A (August 24, 1987).

OSME is proposing to add a new provision to the exploration performance standards to clarify that notwithstanding cross-references in other parts which may be otherwise construed, Part 772 establishes the permit information requirements for coal exploration. As a result of the addition of this provision, the cross-references in Part 816 to the surface coal mining permit application requirements (which are cross-referenced in the exploration performance standards in 30 CFR 815.15) would not apply to exploration permits.

Section 942.772 Requirements for coal exploration in the Federal program for Tennessee.

The Tennessee Federal program, promulgated on October 1, 1984 (49 FR 38874), added a provision to the coal exploration rules for Tennessee at 30 CFR 942.772(b) requiring that any person who intends to use mechanized earth moving equipment or explosives to conduct coal exploration activities must file a written notice of intent with OSMRE. This provision is in addition to the requirements of 30 CFR 772.1(a) requiring a written notice of intention to explore from a person intending to conduct coal exploration activities that may substantially disturb the natural land surface. The additional provision in the Tennessee program rules was added to aid enforcement, and because the use of mechanized earth moving equipment or explosives is a fairly reliable indicator that substantial disturbance would be likely to occur during exploration. This provision, however, is inconsistent with the proposed revisions to the OSMRE permanent program regulations requiring all who would explore for 250 tons or less of coal to file a notice of intent. Therefore, OSMRE is proposing to revise the exploration rules for the Tennessee Federal program to make those provisions consistent with the proposed revisions to the OSMRE permanent program contained in this proposed rule.

Section 942.772 would be revised to state that Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts or

seeks to conduct coal exploration operations in Tennessee. The provisions under existing § 942.772(b) would be removed and replaced by a provision which would state that OSMRE shall make every effort to act on an exploration application within 60 days of its receipt, or such longer time as may be reasonably required, and if additional time is needed, OSMRE will notify the applicant that additional time is needed to complete the review, setting forth the reasons for the additional time that is needed. This provision is proposed to provide consistency with the exploration application processing provisions contained in the other Federal programs for States.

IV. Procedural Matters

Effect in Federal Program States

The proposed rules under 30 CFR Parts 772 and 815 would apply through cross-referencing in those States with Federal programs. These include 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 which should be reflected as changes to the national rules or as specific amendments to any or all of the Federal programs.

OSMRE has proposed to implement a Federal program for the State of California (52 FR 39594, October 22, 1987). The proposed exploration rules would apply through cross-referencing to the Federal program for California. Comments are also specifically solicited as to whether conditions exist in California that should be reflected in the proposed Federal program for that State.

Effect on State Programs

Following promulgation of the final rule, OSMRE will evaluate permanent State regulatory programs approved under section 503 of SMCRA to determine whether any changes in these programs will be necessary. If the Director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

Federal Paperwork Reduction Act

The information collection requirements in the proposed rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget. The information is needed to meet the requirements of section 512 of Pub. L. 95–87, and will be used by the regulatory authority to assess the impact of the proposed exploration operations on the environment. The obligation to respond is mandatory.

Executive Order 12291 and Regulatory Flexibility Act

The U.S. Department of the Interior (DOI) has determined that this proposed rule is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor and no incremental effects are anticipated as a result of the rule.

National Environmental Policy Act

OSMRE has prepared a draft environmental assessment (EA), and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a finding of no significant impact (FONSI) will be approved for the final rule in accordance with OSMRE procedures under NEPA. The EA is on file in the OSMRE Administrative Record at the address specified previously (see "ADDRESSES"). An EA will be completed on the final rule and a finding will be made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal author of this proposed rule is Dr. Fred Block, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington 20240; Telephone: 202–343–4553 (Commercial or FTS).

List of Subjects

30 CFR Part 772

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 815

Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 942

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR Parts 772, 815 and 942 as set forth below:

Dated: April 28, 1988.

James E. Cason,

Acting Assistant Secretary-Land and Minerals Management.

PART 772—REQUIREMENTS FOR COAL EXPLORATION

1. The authority citation for Part 772 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; 16 U.S.C. 470 *et seq.*; and Pub. L. 100–34.

2. Section 772.11 is amended by revising paragraphs (a) and (b)(3) and republishing paragraph (b) introductory text to read as follows:

§ 772.11 Notice requirements for exploration removing 250 tons of coal or less.

(a) Any person who intends to conduct coal exploration operations outside a permit area during which 250 tons or less of coal will be removed, shall, before conducting the exploration, file with the regulatory authority a written notice of intention to explore. Exploration which will take place on lands designated as unsuitable for surface coal mining operations under Subchapter F of this chapter, shall be subject to the permitting requirements under § 772.12. Exploration conducted under a notice of intent shall be subject to the requirements prescribed under §§ 772.13 and 772.14.

(b) The notice shall include—

* * * * *

(3) A narrative describing the proposed exploration area or a map at a scale of 1:24,000, or greater, showing the proposed area of exploration and the location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines;

* * * * *

3. Section 772.12 is amended by revising paragraphs (a) and (b)(3); adding paragraph (b)(14); revising the heading for paragraph (d); removing the word "and" at the end of paragraph (d)(2)(ii); replacing the period at the end of paragraph (d)(2)(iii) with "; and"; and

adding paragraph (d)(2)(iv), to read as follows:

§ 772.12 Permit requirements for exploration removing more than 250 tons of coal.

(a) *Exploration permit.* Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining under Subchapter F of this chapter, shall, before conducting the exploration, submit an application and obtain written approval from the regulatory authority in an exploration permit. Such exploration shall be subject to the requirements prescribed under §§ 772.13 and 772.14.

(b) *Application information.* * * *

* * * * *

(3) A narrative describing the proposed exploration area.

* * * * *

(14) For an application proposing coal exploration activities within an area covered by § 761.11(a) of this chapter, documentation that the person has valid existing rights to conduct surface coal mining operations in the proposed exploration area.

* * * * *

(d) *Decisions on applications for exploration.*

* * * * *

(2) * * *

* * * * *

(iv) For areas covered by § 761.11(a) of this chapter, be conducted by or on behalf of a person who possesses valid existing rights to conduct surface coal mining operations within the proposed exploration area.

* * * * *

4. Section 772.14 is revised to read as follows:

§ 772.14 Commercial use or sale.

(a) Except as provided under §§ 772.14(b) and 700.11(a), any person who intends to commercially use or sell coal extracted during coal exploration operations under a notice of intent to explore or under an exploration permit, shall first obtain a surface coal mining and reclamation operations permit for those operations from the regulatory authority under Parts 773–785 of this chapter.

(b) With the prior written approval of the regulatory authority, no surface coal mining and reclamation operations permit is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the regulatory authority. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining and reclamation operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

(1) The name of the testing firm and the location at which the coal will be tested.

(2) If the coal is sold directly, or commercially used directly, by the intended end user, a statement from the intended end user that provides:

(i) The specific reasons for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

(ii) The amount of coal necessary for the test and why a lesser amount is not sufficient; and

(iii) A description of the specific tests that will be conducted.

(3) If the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker that provides:

(i) The specific reasons for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

(ii) The amount of coal necessary for the test and why a lesser amount is not sufficient; and

(iii) A description of the specific tests that will be conducted.

(4) Evidence that sufficient reserves of coal are available to the operator for future commercial use or sale to the intended end user, or agent or broker of such user, identified above to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.

(5) An explanation as to why other means of prospecting or exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

PART 815—PERMANENT PROGRAM PERFORMANCE STANDARDS—COAL EXPLORATION

5. The authority citation for Part 815 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

6. Section 815.2 is added to read as follows:

§ 815.2 Permitting information.

Notwithstanding cross-references in other parts which may be otherwise construed, Part 772 establishes the notice and permit information requirements for coal exploration.

SUBCHAPTER T—PROGRAMS FOR THE CONDUCT OF SURFACE MINING OPERATIONS WITHIN EACH STATE

PART 942—TENNESSEE

7. The authority citation for Part 942 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

8. Section 942.772 is revised to read as follows:

§ 942.772 Requirements for coal exploration.

(a) Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such reviews, setting forth the reasons and the additional time that is needed.

[FR Doc. 88–13924 Filed 6–21–88; 8:45 am]

BILLING CODE 4310-05-M

Federal Register

Wednesday
June 22, 1988

Part VI

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Part 505

Labor Standards on Projects or Productions Assisted by Grants From the National Endowments for the Arts and Humanities; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 505

Labor Standards on Projects or Productions Assisted by Grants From the National Endowments for the Arts and Humanities

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is revising regulations 29 CFR Part 505 to extend the labor standards provisions now applicable to professional performers and related or supporting professional personnel employed on projects funded by the National Endowment for the Arts (NEA) to such performers and supporting personnel employed on projects funded by the National Endowment for the Humanities (NEH). Other revisions include broadening the definition of "amateur" to include those performers and supporting personnel who may receive reimbursement for expenses, simplification of the procedures for obtaining exceptions from the prevailing minimum compensation standards, and conforming the references to safety and health standards with currently applicable requirements.

EFFECTIVE DATE: July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 523-8305 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On September 21, 1987, the Department of Labor published in the **Federal Register** (52 FR 35447) proposed changes to 29 CFR Part 505, entitled "Labor Standards on Projects or Productions Assisted by Grants From the National Endowments for the Arts and Humanities." Persons interested in the rulemaking were allowed 30 days to submit comments. Two comments were received. This document provides the text of the final rule and explains the comments received on the proposal.

Background

Since issued in 1967, the existing regulations, 29 CFR Part 505, Labor Standards on Projects or Productions Assisted by Grants from the National Endowment for the Arts, have provided that the minimum compensation (including fringe benefits) set forth in collective bargaining agreements negotiated by ten national or international labor organizations or their local affiliates named in the regulations constitute the prevailing minimum compensation required to be paid under the Act to professional performers and related or supporting professional personnel employed on projects receiving financial assistance from the National Endowment for the Arts. Provisions were included to permit any professional performer, supporting personnel, or grant applicant to challenge that determination and obtain a variation from the negotiated rates upon written application to the Administrator of the Wage and Hour Division.

Congress amended the National Foundation of the Arts and the Humanities Act of 1965 (NFAHA) in 1976 (Sec. 105, Pub. L. 94-462, 90 Stat. 1971; 20 U.S.C. 956(g)), to provide that professional performers and related or supporting professional personnel employed under Humanities grants would also be subject to prevailing minimum compensation standards. The Department published a regulatory proposal in the **Federal Register** on December 19, 1980 (45 FR 83914) to carry out the provisions of these amendments. However, that proposal was subsequently withdrawn from the Department's Semiannual Agenda of Regulations of October 28, 1982 (47 FR 48538).

On December 20, 1985, the Arts, Humanities, and Museums Amendments of 1985, Pub. L. 99-194, 99 Stat. 1332, were enacted which, among other things, directed the Secretary of Labor to prescribe prevailing minimum compensation standards for professional performers and related or supporting professional personnel employed on projects or productions assisted by grants from the National Endowment for the Humanities. These revisions to 29 CFR Part 505 extend the existing prevailing minimum compensation standards now applicable to professional performers and related or supporting professional personnel employed on projects receiving financial assistance from the National Endowment for the Arts to such employees employed on projects receiving assistance from the National Endowment for the Humanities.

Other revisions will ease the administrative procedures and minimize burdens associated with obtaining approval to provide prevailing minimum compensation as an alternative to the compensation negotiated by the labor organizations named in the regulations.

In addition, the definition of amateur has been revised to include those performers and supporting personnel who may receive reimbursement for expenses but who do not work for compensation, and the references to safety and health standards have been conformed to currently applicable requirements.

Summary of Comments

The NEH recommended changes to proposed § 505.3(b)(4), pertaining to decisions of the Wage and Hour Administrator on requests for variances from the prevailing minimum compensation negotiated by the labor organizations named in § 505.3(a)(1). The section as proposed provided that the Administrator would respond to such requests within 30 days of receipt by issuing a determination of alternative prevailing minimum compensation or denying the request, or advising that additional time would be required for a decision. NEH suggested that the rule should specify the amount of additional time that may be required for a decision, and that the additional time should not exceed 14 days.

Requiring that a final decision be rendered in all cases within NEH's suggested timeframe is not feasible. While we anticipate that most decisions on variance requests will be rendered within the specified 30 days of receipt, there will necessarily be instances where more time is required to obtain additional data from the interested parties, verify information submitted, or resolve disputes over the factual basis on which the decision is to be made. It should also be recognized that NFAHA is only one of a number of labor standards programs administered by the Wage and Hour Division, and priority demands which are placed on the agency arising under these other programs would make the proposed 14-day timeframe under NFAHA unworkable. Therefore, the suggestion from NEH is not adopted.

The Department for Professional Employees (DPE), AFL-CIO, objected to the proposed revision to the definition of

he term "professional" in § 505.2(e), hich is replaced the phrase "teaching rocess" with "teaching profession" in escribing those persons employed as egular faculty members by educational stitutions who are excluded from verage. We believe the proposed hange is an appropriate clarification hich will more accurately convey the tended meaning and it will, therefore, e adopted.

The DPE also questioned the nterpretation of the language in 505.3(a)(2), which concerns stablishment of prevailing minimum ompensation by agreement of the ffected parties for employees who erform activities that are not covered y a collective bargaining agreement. he intent of this section is to provide a echanism for establishing prevailing inimum compensation for persons ngaged in activities that are not dentified under the terms of any of the pplicable collective bargaining greements (i.e., for *classifications* of mployees who are outside the scope of he agreements). If an activity to be erformed by professional performers or elated personnel is identified in one of he agreements negotiated by the labor rganizations named in § 505.3(a)(1), the ompensation provided for in that greement would be applicable to the ctivity in question.

The DPE opposed the revision to 505.7, regarding the listings of grantees ho, my virtue of their failure to comply ith the labor standards of NFAHA, ecome ineligible to receive future rants. The present regulations provide or an indefinite term of ineligibility, and emoval from the ineligible lists can be chieved only through appropriate pplication to the Secretary of Labor. he Department determined in its eview of the existing regulations that n indefinite term of ineligibility is nappropriate. Revisions were proposed o provide a maximum three-year term f ineligibility, or a shorter period if an neligible grantee applies to the ecretary for removal from the ineligible st and demonstrates that the violations ave been corrected and that the rantee possesses a current esponsibility to comply with NFAHA. his change was made to conform the FAHA regulations to the dministrative debarment provisions nder other labor standards programs dministered by the Wage and Hour ivision (see, e.g., the Davis-Bacon and elated Acts Regulations at 29 CFR 12), and it is in keeping with overnmentwide principles and uidelines for debarment and uspension procedures (see also the rocurement debarment and suspension system under the Federal Acquisition Regulations, at 48 CFR 9.406–4). Accordingly, this section will be adopted as proposed.

Classification—Executive Order 12291

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

Regulatory Flexibility Act

This rule, if promulgated will have no "significant economic impact on a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is based on the fact that the number of affected small entities receiving grants under which professional performers and related or supporting professional personnel are employed subject to the prevailing minimum compensation requirements is not believed to be substantial.

Paperwork Reduction Act

The recordkeeping and information collection requirements that are included in this regulation are a restatement of requirements contained in 29 CFR Part 516 (Records to be Kept by Employers Under the Fair Labor Standards Act), which have been previously cleared by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and assigned OMB control number 1215–0017.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 505

Arts and crafts, Education, Foundations, Grant programs, Minimum wages, Occupational safety and health.

Accordingly, 29 CFR Part 505 is revised as set forth below.

Signed at Washington, DC, on this 15th day of June 1988.

Ann D. McLaughlin,

Secretary of Labor.

Fred W. Alvarezs,

Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

PART 505—LABOR STANDARDS ON PROJECTS OR PRODUCTIONS ASSISTED BY GRANTS FROM THE NATIONAL ENDOWMENTS FOR THE ARTS AND HUMANITIES

Sec.

505.1 Purpose and scope.
505.2 Definitions.
505.3 Prevailing minimum compensation.
505.4 Receipt of grant funds.
505.5 Adequate assurances.
505.6 Safety and health standards.
505.7 Failure to comply.

Authority: Sec. 5(j), Pub. L. 89–209, 79 Stat. 848 (20 U.S.C. 954(i)); sec. 7(g), Pub. L. 94–462, 90 Stat. 1971, as amended by Sec. 107(4), Pub. L. 99–194, 99 Stat. 1337 (20 U.S.C. 956(g)); Secretary's Order 9–83 (48 FR 35736) and Secretary's Order 6–84 (49 FR 32473).

§ 505.1 Purpose and scope.

(a) The regulations contained in this part set forth the procedures which are deemed necessary and appropriate to carry out the provisions of section 5(i) and section 7(g) of the National Foundation on the Arts and Humanities Act of 1965, as amended, 20 U.S.C. 954(i), 20 U.S.C. 956(g). As a condition to the receipt of any grant, the grantees must give adequate assurances that all professional performers and related or supporting professional personnel employed on projects or productions assisted by grants from the National Endowment for the Arts and the National Endowment for the Humanities shall receive not less than the prevailing minimum compensation as determined by the Secretary of Labor.

(b) Regulations and procedures relating to wages on construction projects as provided in section 5(j) and section 7(j) of the National Foundation on the Arts and Humanities Act of 1965, as amended, may be found in Parts 3 and 5 of this title.

(c) Standards of overtime compensation for laborers or mechanics may be found in the Contract Work Hours and Safety Standards Act, 76 Stat. 357, 40 U.S.C. 327 *et seq.* and Part 5 of this title.

§ 505.2 Definitions.

(a) The term "Act" means the National Foundation on the Arts and the Humanities Act of 1965, as amended, 79

Stat 848, as amended, 20 U.S.C. 951 *et seq.*

(b) The term "Secretary" means the Secretary of Labor.

(c) The term "Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative, to whom is assigned the performance of functions of the Secretary pertaining to wages under the National Foundation on the Arts and the Humanities Act of 1965, as amended.

(d) The term "Assistant Secretary" means the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, or authorized representative, to whom is assigned the performance of functions of the Secretary pertaining to safety and health under the National Foundation on the Arts and the Humanities Act of 1965, as amended.

(e) "Professional" in the phrase "professional performer and related or supporting professional personnel" shall include all those who work for compensation on a project or production which is assisted by a grant from the National Endowment for the Arts or the National Endowment for the Humanities regardless of whether paid out of grant funds. It shall not include those whose status is "amateur" because their engagement for performance or supporting work contemplates no compensation. Compensation does not include reimbursement of expenses (i.e., meals, costumes, make-up etc.). The words "related or supporting . . . personnel" in the same phrase shall include all those whose work is related to the particular project or production such as musicians, stage hands, scenery designers, technicians, electricians and moving picture machine operators, as distinguished from those who operate a place for receiving an audience without reference to the particular project or production being exhibited, such as ushers, janitors, and those who sell and collect tickets. The phrase does not include laborers and mechanics employed by contractors or subcontractors on construction projects, whose compensation is regulated under section 5(j) and section 7(j) of the Act. The phrase "professional performers and related or supporting professional personnel" shall not include persons employed as regular faculty or staff of an educational institution primarily performing duties commonly associated with the teaching profession. It shall include persons employed by educational institutions primarily to engage in activities customarily performed by performing artists or by those who assist in the presentation of performances assisted by grants from the National Endowment for the Arts or the National Endowment for the Humanities.

§ 505.3 Prevailing minimum compensation.

(a)(1) In the absence of an alternative determination made by the Administrator under paragraph (b) of this section, and except as provided in paragraph (a)(2) of this section, the prevailing minimum compensation required to be paid under the Act to the various professional performers and related or supporting professional personnel employed on projects or productions assisted by grants from the National Endowment for the Arts and the National Endowment for the Humanities shall be the compensation (including fringe benefits) contained in collective bargaining agreements negotiated by the following national or international labor organizations or their local affiliates:

Actors' Equity Association.
Screen Actors Guild, Inc.
Screen Extras Guild, Inc.
American Guild of Musical Artists, Inc.
International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators.
American Federation of Musicians.
National Association of Broadcast Employees and Technicians.
American Federation of Television and Radio Artists.
International Brotherhood of Electrical Workers.
American Guild of Variety Artists.
Writers Guild.

(2) Professional performers and related or supporting professional personnel who are to perform activities which do not come within the jurisdiction of any collective bargaining agreement negotiated by the labor organizations named in paragraph (a)(1) of this section shall be paid minimum compensation as determined by agreement of the grant applicant or grantee and the personnel who will perform such activities or their representatives. Evidence of the agreement reached by the parties shall be submitted by the grant applicant to the grant agency, together with evidence of the prevailing minimum compensation for similar activities. If the parties do not agree on the minimum compensation to be paid to such personnel, the matter shall be referred to the Administrator of the Wage and Hour Division for final determination.

(b)(1) Interested parties, including grant applicants, grantees, professional performers or related or supporting professional personnel and their representatives, may at any time submit to the Administrator a request for a determination of prevailing minimum compensation. The Administrator will make a determination concerning each such request in accordance with paragraph (b)(4) of this section.

(2) Any request for a determination of prevailing minimum compensation shall include or be accompanied by information as to the locality or localities, the class or classes of professional performers or related or supporting professional personnel for the project or production in question, the names and addresses (to the extent known) of interested parties, and all available information relating to prevailing minimum compensation currently being paid to such persons or to persons employed in similar activities. No particular form is prescribed for submission of information under this section.

(3) If the information specified in paragraph (b)(2) of this section is not submitted with a request for an alternative determination of prevailing minimum compensation or is insufficient to permit a determination, the Administrator may deny the request or request additional information, at the Administrator's discretion. Pertinent information from any source may be considered by the Administrator in connection with any request.

(4) The Administrator will respond to a request for determination under this section within 30 days of receipt, by issuing a determination of alternative prevailing minimum compensation or denying the request or advising that additional time is necessary for a decision. If the Administrator determines from a preponderance of all relevant evidence obtained in connection with the request that the compensation provided for in the agreements negotiated by the labor organizations set forth in paragraph (a) of this section does not prevail for any professional performer or related or supporting professional personnel employed on similar activities in the locality, the Administrator will issue a determination of the prevailing minimum compensation required to be paid under the Act to such persons. If the Administrator finds that the compensation provided for in the agreements negotiated by the labor organizations set forth in paragraph (a) of this section does prevail for the professional performers or related or supporting professional personnel in

question, the requesting party will be so notified.

(c) All professional performers and related or supporting professional personnel (other than laborers or mechanics with respect to whom labor standards are prescribed in section 5(j) and 7(j) of the Act) employed on projects or productions which are financed in whole or in part under section 5 or section 7 of the Act will be paid, without subsequent deduction or rebate on any account, not less than the prevailing minimum compensation determined in accordance with paragraph (a) of this section, unless an alternative determination is made under paragraph (b) of this section. Pending the decision of the Administrator on a request for determination under paragraph (b) of this section, the grantee may be required to set aside in a separate escrow account sufficient funds to satisfy the difference between the compensation (including fringe benefits) actually paid to the employee(s) in question, and the compensation (including fringe benefits) required under the applicable collective bargaining agreement negotiated by the labor organization named in paragraph (a) of this section, or furnish a bond with a surety or sureties satisfactory to the Administrator for the protection of the compensation of the affected employees.

§ 505.4 Receipt of grant funds.

(a) The grantee shall not receive funds authorized by section 5 or section 7 of the Act until adequate initial assurances have been filed with the Chairperson of the National Endowment for the Arts or the Chairperson of the National Endowment for the Humanities, pursuant to sections 5(i) (1) and (2) and sections 7(g) (1) and (2) of the Act as provided in § 505.5(a), that all professional performers and related or supporting professional personnel will be paid not less than the prevailing minimum compensation and that the safety and health requirements will be complied with. Neither shall the grantee receive any such funds if and after the Chairperson of the National Endowment for the Arts or Chairperson of the National Endowment for the Humanities is advised by the Secretary that continuing assurances as provided in § 505.5(b) are inadequate or that labor standards contemplated by sections 5(i) (1) and (2) or sections 7(g) (1) and (2) of the Act have not been observed.

(b) In order to facilitate such assurances so that the grantee may receive the grant funds promptly, the Chairpersons of the National Endowment for the Arts and the National Endowment for the Humanities will transmit with the grant letter, to each grantee of a grant that will provide assistance to projects or productions employing professional performers or related or supporting professional personnel under section 5 or section 7 of the Act, a copy of these regulations together with two copies of the assurance form (Form No. ESA–38). The Chairperson will advise the grantee that before the grant may be received, the grantee must give assurances that all professional performers and related or supporting professional personnel (other than laborers or mechanics with respect to whom labor standards are prescribed in section 5(j) and section 7(j) of the Act), will be paid, without subsequent deduction or rebate on any account not less than the minimum compensation determined in accordance with § 505.3 (a) or (b) and that the safety and health requirements under § 505.6 will be met. The Chairpersons will maintain on file in Washington, DC, for a period of three (3) years and make available upon request of the Secretary the original signed Form ESA–38 and a copy of the grant letter together with any supplementary documents needed to give a description of the project or production to be financed in whole or in part under the grant.

§ 505.5 Adequate assurances.

(a) *Initial assurances.* The grantee shall give adequate initial assurances that not less than the prevailing minimum compensation determined in accordance with § 505.3 will be paid to all professional performers and related or supporting professional personnel, and that no part of the project or production will be performed under working conditions which are unsanitary or hazardous or dangerous to the health and safety of the employees, by executing and filing with the Chairperson of the National Endowment for the Arts or the Chairperson of the National Endowment for the Humanities, as appropriate, Form ESA–38.

(b) *Continuing assurances.* (1) The grantee shall maintain and preserve sufficient records as an assurance of compliance with section 5(i) (1) and (2) and section 7(g) (1) and (2) of the Act and shall make such reports therefrom to the Secretary as necessary or appropriate to assure the adequacy of the assurances given. Such records shall be kept for a period of three (3) years after the end of the grant period to which they pertain. These records shall include the following information relating to each performer and related or supporting professional personnel to whom a prevailing minimum compensation determination applies pursuant to § 505.3. In addition the record required in paragraph (b)(1)(vii) of this section shall be kept for all employees engaged in the project or production assisted by the grant.

(i) Name.

(ii) Home address.

(iii) Occupation.

(iv) Basic unit of compensation (such as the amount of a weeekly or monthly salary, talent or performance fee, hourly rate or other basis on which compensation is computed), including fringe benefits or amounts paid in lieu thereof.

(v) Work performed for each pay period expressed in terms of the total units of compensation fully and partially completed.

(vi) Total compensation paid each pay period, deductions made, and date of payment, including amounts paid for fringe benefits and the person to whom they were paid, and

(vii) Brief description of any injury incurred while performing under the grant and the dates and duration of disability.

(Approved by the Office of Management and Budget under control number 1215–0017)

(2) The grantee shall permit the Administrator and the Assistant Secretary or their representatives to investigate and gather data regarding the wages, hours, safety, health, and other conditions and practices of employment related to the project or production, and to enter and inspect such project or production and such records (and make such transcriptions thereof), interview such employees during normal working hours, and investigate such facts, conditions, practices, or matters as may be deemed necessary or appropriate to determine whether the grantee has violated the labor standards contemplated by section 5(i) and section 7(g) of the Act.

(c) *Determination of adequacy:* The Administrator and Assistant Secretary shall determine the adequacy of assurances given pursuant to paragraphs (a) and (b) of this section within each of their respective areas of responsibilities, and may revise any such determination at any time.

§ 505.6 Safety and health standards.

(a) *Standards.* Section 5(i)(2) and section 7(g)(2) of the Act provide that "no part of any project or production which is financed in whole or in part under this section will be performed or engaged in under working conditions which are unsanitary or hazardous or dangerous to the health and safety of

the employees engaged in such project or production. Compliance with the safety and sanitary laws in the State in which the performance or part thereof is to take place shall be prima facie evidence of compliance. * * *" The applicable safety and health standards shall be those set forth in 29 CFR Parts 1910 and 1926, including matters incorporated by reference therein. Evidence of compliance with State laws relating to health and sanitation will be considered prime facie evidence of compliance with the safety and health requirements of the Act, and it shall be sufficient unless rebutted or overcome by a preponderance of evidence of a failure to comply with any applicable safety and health standards set forth in 29 CFR Parts 1910 and 1926, including matters incorporated by reference therein.

(b) *Variances.* (1) Variances from standards applied under paragraph (a) of this section may be granted under the same circumstances in which variances may be granted under section 6(b)(6)(A) or 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 655). The procedures for the granting of variances and for related relief are those published in Part 1905 of this title.

(2) Any requests for variances shall also be considered requests for variances under the Williams-Steiger Occupational Safety and Health Act of 1970, and any variance from a standard applied under paragraph (a) of this section and in Part 1910 of this title shall be deemed a variance from the standards under both the National Foundation on the Arts and Humanities Act of 1965 and the Williams-Steiger Occupational Safety and Health Act of 1970.

§ 505.7 Failure to comply.

The Secretary's representatives shall maintain a list of those grantees who are considered to be responsible for instances of failure to comply with the obligation of the grantees specified in section 5(i) (1) and (2) and section 7(g) (1) and (2) of the Act, which are considered to have been willful or of such nature as to cast doubt on the reliability of formal assurances subsequently given and there shall be maintained a similar list where adjustment of the violations satisfactory to the Secretary was not properly made. Assurances from persons or organizations placed on either such list or any organization in which they have a substantial interest shall be considered inadequate for purposes of receiving further grants for a period not to exceed three (3) years from the date of notification by the Secretary that they have been placed on the lists unless, by appropriate application to the Secretary, they demonstrate a current responsibility to comply with section 5(i) (1) and (2) and section 7(g) (1) and (2) of the Act, and demonstrate that correction of the violations has been made.

[FR Doc. 88-13931 Filed 6-21-88; 8:45 am]
BILLING CODE 4510-27-M

federal register

Wednesday
June 22, 1988

Part VII

Environmental Protection Agency

40 CFR Part 250
Guideline for Federal Procurement of Paper and Paper Products Containing Recovered Materials; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 250

[SWH-FRL 3385-7]

Guideline for Federal Procurement of Paper and Paper Products Containing Recovered Materials

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is issuing a revised guideline for Federal procurement of paper and paper products containing recovered materials. The revised guideline supersedes the final paper procurement guideline promulgated by EPA on October 6, 1987 (52 FR 37293). It provides for the use of postconsumer recovered materials in most grades of paper; in the case of printing and writing papers, it provides for the use of waste paper, while in the case of cotton fiber papers, it provides for the use of recovered materials.

The guideline implements Section 6002(e) of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, which requires EPA (1) to designate items which can be produced with recovered materials and (2) to prepare guidelines to assist procuring agencies in complying with the requirements of Section 6002. Once EPA has designated an item, Section 6002 requires that any procuring agency using appropriated Federal funds to procure that item must purchase such items containing the highest percentage of recovered materials practicable.

This guideline designates paper and paper products as items for which the procurement requirements of RCRA Section 6002 apply. The guideline also contains recommendations for implementing the Section 6002 procurement requirements, as well as the requirements to revise specifications. Revisions to the guideline recommend the use of specific minimum content standards, define "waste paper" and "cotton fiber content papers," and make recommendations regarding data gathering to meet the annual review and monitoring requirement.

EFFECTIVE DATES: The revised guideline is effective June 22, 1988. Procuring agencies must implement the requirements of RCRA Section 6002 with respect to procurement of paper and paper products according to the following schedule:

Completion of specification revisions and development of affirmative procurement programs: June 22, 1989.

Commencement of procurement of paper and paper products in accordance with RCRA Section 6002: June 22, 1989.

ADDRESS: The public docket for this guideline may be inspected in Room LG-100, U.S. EPA, 401 M Street, SW., Washington, DC from 9:00 am to 4:00 pm, Monday through Friday, excluding holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. Materials may be copied from any regulatory docket at a cost of 15 cents per page. Copying totaling less than $15 is free.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll-free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact William Sanjour, Office of Solid Waste, WH-563, U.S. EPA, 401 M Street, SW., Washington, DC 20460, telephone: (202) 382-4502.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Introduction
  A. Purpose and Scope
  B. Requirements of Section 6002
  C. Rationale for Selecting Paper and Paper Products Containing Recovered Materials for a Procurement Guideline
III. Background Information on Using Recovered Materials in Paper and Paper Products
  A. Introduction
  B. Use of Recovered Materials in Paper and Paper Products
  C. Recovered Materials
  D. Performance
    1. Printing/Writing Papers
    2. Fiber Boxes
  E. Major Federal Purchasers
IV. Discussion of Guideline
  A. Purpose and Scope
  B. Applicability
    1. Procuring Agencies
    2. Direct Purchases
    3. Indirect Purchases
    4. The $10,000 Threshold
    5. Functionally Equivalent Items
  C. Requirements vs. Recommendations
  D. Organization of the Revised Guideline
  E. Definitions
    1. "Paperboard"
    2. "Practicable"
    3. "Waste Paper"
    4. "Mill Broke"
    5. "Cotton Fiber"
  F. Specifications
    1. General
      a. Federal agencies
      b. Procuring agencies
    2. Recommendations
    3. Exclusion of Products That Do Not Meet Performance Standards
    4. Specifications Related to Aesthetics
    5. New Specifications
  G. Affirmative Procurement Program
    1. Recovered Materials Preference Program
      a. Case-by-case approach
      b. Minimum content standards
        (1) Legal considerations
        (2) Methods for establishing minimum content standards
        (3) Basis of recommended minimum content standards
        (4) Archival papers
    2. Promotion Program
    3. Estimation, Certification, and Verification
      a. Estimation
      b. Certification
      c. Verification
    4. Annual Review and Monitoring
V. Price, Competition, Availability, and Performance
  A. Price
  B. Competition
  C. Availability
  D. Performance
VI. Implementation
VII. Summary of Supporting Analyses
  A. General
  B. Environmental and Energy Impacts
  C. Volume Reduction and Cost Impacts of Reducing Paper Disposal in Landfills
  D. Executive Order No. 12291
  E. Regulatory Flexibility Act

I. Authority

This revised guideline is issued under the authority of Sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962.

II. Introduction

A. Purpose and Scope

The Environmental Protection Agency (EPA) today is revising the final paper procurement guideline, which is one in a series of guidelines designed to encourage the use of products containing materials recovered from solid waste. Section 6002 of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA" or "Act"), 42 U.S.C. 6962, states that if a Federal, State, or local procuring agency uses Federal funds to purchase certain designated items, such items must be composed of the highest percentage of recovered materials practicable. EPA is required to designate such items and to prepare guidelines to assist procuring

agencies in complying with the requirements of Section 6002.

EPA issued the first of these guidelines, for cement and concrete containing fly ash, on January 28, 1983 (48 FR 4230; 40 CFR Part 249). A second guideline, for paper and paper products containing recovered materials, was issued on October 6, 1987 (52 FR 37293; 40 CFR Part 250); EPA concurrently proposed minimum recovered materials content standards for paper and paper products. A third guideline, for asphalt materials containing ground tire rubber, was proposed on February 20, 1986 (51 FR 6202). A fourth guideline, for engine lubricating oils, hydraulic fluids, and gear oils containing re-refined oils, was proposed on October 19, 1987 (52 FR 38838). EPA also proposed a guideline for procurement of retread tires on May 2, 1988 (53 FR 15624).

Today EPA is revising the final guideline for paper and paper products to incorporate the proposed amendments. Because EPA is changing its recommendation for the preference program component of the affirmative procurement program and this change affects all other requirements and recommendations, the revised guideline supersedes the previous (October 6, 1987) final guideline. Note that most provisions of the October 6, 1987 final guideline are not changed in the revised final guideline; EPA is including a discussion of these provisions in the preamble today as a convenience to the reader.

B. Requirements of Section 6002

Section 6002 of the Act, "Federal Procurement," directs all procuring agencies that use Federal funds to procure items that contain the highest percentage of recovered materials practicable, and in the case of paper, postconsumer recovered materials, provided that reasonable levels of competition, cost, availability, and technical performance are maintained. Two factors trigger this requirement. First, EPA must designate items to which this requirement applies. Second, the requirement applies only when the purchase price of the item exceeds $10,000 or when the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was $10,000 or more.

Section 6002(c) requires procuring agencies to obtain from suppliers an estimate of and certification regarding the percentage of recovered materials contained in their products.

Federal agencies responsible for drafting or reviewing specifications for procurement items were required under Section 6002(d)(1) to review and revise the specifications by May 8, 1986 in order to eliminate both exclusions of recovered materials and requirements that items be manufactured from virgin materials. In addition, within one year after the date of publication of a procurement guideline by EPA, the Federal agencies must revise their specifications to require the use of recovered materials in such items to the maximum extent possible without affecting the intended use of the item.

Section 501 of the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616) added paragraph (i) to Section 6002 of RCRA. This provision requires procuring agencies to develop an affirmative procurement program for procuring items designated by EPA. The program must assure that items composed of recovered materials will be purchased to the maximum extent practicable, be consistent with applicable provisions of Federal procurement law, and contain at least four elements:

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring estimates, certification, and verification of recovered material content; and

(4) Annual review and monitoring of the effectiveness of the procurement program.

Under Section 6002(e), EPA is required to issue guidelines for use by procuring agencies in complying with the requirements of Section 6002. The EPA guidelines must provide recommendations for procurement practices and information on availability, relative price, and performance.

C. Rationale for Selecting Paper and Paper Products Containing Recovered Materials for a Procurement Guideline

In the preamble to the fly ash guideline, EPA established criteria for the selection of procurement items for which guidelines will be prepared. Section 6002(e) of RCRA specifically directs the EPA Administrator to issue a procurement guideline for paper, however. The term "paper" is construed by EPA to include paperboard and paper products also. Since Congress already has selected paper and paper products as appropriate subjects for a procurement guideline, it is not necessary for EPA to determine that they are an appropriate subject for a guideline nor to demonstrate that paper and paper products satisfy the EPA criteria.

III. Background Information on Using Recovered Materials in Paper and Paper Products

A. Introduction

In 1986, about 80 million tons of paper and paper products were consumed in the U.S.A., of which about 21.6 million tons were recovered for recycling and about 50 million tons were disposed of, primarily in municipal solid waste landfills. This is about half of all manufactured product waste appearing in municipal solid waste and about 35 percent of all municipal solid waste discarded (principally from households, commercial businesses, and institutions). By any measure, paper and paper products constitute a major portion of solid waste in this country.

The nation spends more than $9 billion annually on solid waste disposal. Most communities are running out of landfill capacity, and the siting of new landfills has become very difficult. Thus, activity to promote recovery and reuse of paper and paper products is a matter of national priority both to reduce the cost of disposal and to extend the life of existing landfills.

It should be noted, however, that paper and paper product disposal is not known to be a significant threat to human health or the environment as the wastes are generally nonhazardous in character. Thus, while the disposal of paper does not present an urgent need for immediate solution from the health and environment viewpoint, it is being addressed because many areas of the U.S. are running out of disposal options for all wastes and face serious crises unless the solid waste streams can be reduced and/or disposed of in an acceptable manner.

B. Use of Recovered Materials in Paper and Paper Products

Within the paper industry and its suppliers, discarded paper recovered for use in manufacturing processes is called waste paper, recyclable paper, or paper stock. It is often kept separate from mixed refuse at the businesses and residences where it is discarded. For example, businesses may separate and bale used corrugated containers to be picked up by a waste paper dealer, and people may separate newspapers in their homes to be donated to a local paper drive for a charity. Some businesses and institutions separate office papers in office buildings by means of a desk top sorting container or other ways. Waste paper that is separated and collected is then customarily transferred to a waste paper dealer, who prepares the paper for

shipment by baling or other means, and sells the waste paper to a paper mill.

At the paper mill, waste paper is mixed with water in a large vessel with rotating beaters at the bottom similar to but larger than a kitchen blender. The beating process separates the paper fibers and forms a slurry pulp. This recycled pulp is similar in appearance to virgin pulp prepared from wood. Recycled pulp is then cleaned and washed as necessary. In some recycling processes, the recycled pulp is washed with chemicals to remove inks, adhesive, and other contaminants. This process is referred to within the paper industry as "deinking". After deinking, the recycled pulp is equivalent to virgin pulp. Both recycled and virgin pulps are formed into paper and paper products in a similar fashion.

Paper products are manufactured from either virgin or recovered materials, or combinations of the two, by various manufacturers. Tests have shown that for a given product grade there is a wide variation in all measurable characteristics depending on particular manufacturers or particular production runs at a given mill. Products from both virgin and recovered materials generally fall into the same range of variability and frequently, they cannot be distinguished by the typical end user.

However, recycled paper fibers do tend to be shorter than virgin fibers because of the recycling process. The short fibers may cause recycled paper to be weaker than an otherwise equivalent virgin sheet, but the sheet will also have a higher opacity. In paperboard products, the recycled grade is sometimes produced at a somewhat higher caliper (thickness) than the equivalent virgin fiber product to ensure similar performance characteristics. Paper and paperboard manufacturers can generally manufacture products that meet customer specifications by taking into account the characteristics of paper made from recovered material. For some products the recycled fiber characteristics are preferred; for most there need not be any differences distinguishable by the end user.

Some recycled fiber is derived from paper containing printing, or from paper that has other materials such as coatings or adhesives on it. Paper made from these recovered materials sometimes does not have quite the same appearance as virgin paper. It is not quite as bright, or as white, or has a grayish or bluish tint, and it is sometimes speckled in appearance. Recycled paper manufacturers can bleach and brighten the paper and clean contaminants from the pulp. Coatings can also be added to the paper surface to enhance its "whiteness" and "brightness". These processes allow paper made from recovered materials to meet customer specifications.

EPA concludes that as a general rule, paper containing recovered materials can be manufactured to meet customer specifications. Commenters have questioned whether paper made from recovered materials is always available at all locations at a reasonable price. This concern is addressed later in this preamble.

C. Recovered Materials

As previously explained, RCRA requires EPA to designate items which can be produced with "recovered materials." Section 6002(h) of RCRA divides the universe of recovered paper materials into (1) postconsumer materials and (2) manufacturing, forest residues, and other wastes. Postconsumer materials are items which have passed through their end-usage as a consumer item and would include old newspapers, magazines, used corrugated containers, and office waste paper. The Hazardous and Solid Waste Amendments of 1984, amended Section 6002 to require that, in the case of paper, the guideline would maximize the use of postconsumer recovered material.

The second category of recovered paper materials under RCRA—manufacturing, forest residues, and other wastes—are preconsumer wastes. These would include manufacturing wastes like paper and paperboard waste, bag, box and carton waste, printed paper which has never reached the consumer, and obsolete inventories. Other preconsumer waste papers include fibrous byproducts and other forest residues from manufacturing or woodcutting processes. Additional examples of this type of waste paper are those generated by the conversion of goods made from fibrous materials such as waste rope from cordage manufacture and textile mill waste and cuttings used in production of cotton fiber papers.

Preconsumer waste paper use is already at a high level. Increasing the demand for paper products containing recovered materials therefore requires that postconsumer waste paper be used. While the use of postconsumer recovered materials is emphasized in RCRA Section 6002, it is also beneficial to increase the usage of preconsumer waste materials in paper and paper products. Thus, for example, as demand increases for a wider range of paper and paper products, manufacturers of products that are currently made with preconsumer materials will have to use larger quantities of postconsumer recovered materials to meet their raw materials (i.e., recovered paper) supply needs.

For purposes of the paper and paper products guideline, EPA distinguishes between recovered materials, postconsumer recovered materials, and waste paper. As is explained in more detail below, the term "recovered materials" is comprehensive and, as in the statute, refers to the complete universe of recovered paper products. The term "postconsumer recovered material" similarly is used as defined in RCRA. The term "waste paper," used in connection with printing/writing papers, refers to all postconsumer recovered materials as well as to preconsumer waste paper from some sources. It does not include fibrous byproducts from forestry, waste generated by the conversion of goods made from fibrous material, and fibers recovered from waste water that would otherwise enter the waste stream.

D. Performance

The performance of printing/writing papers and fiber boxes containing recovered materials is often questioned. As noted in the proposed amendments (52 FR 37337), comments received by EPA suggested that few manufacturers of printing/writing paper would be able to meet a minimum content standard for postconsumer recovered material. As a result, EPA reviewed information about the technical performance of these products.

1. Printing/Writing Papers.

Performance testing of paper containing recovered material is a continuing activity of paper manufacturers. In some instances, the evaluation of the reports of these organizations was complicated by the fact that the recovered materials used were not precisely identified as either postconsumer recovered materials or waste paper. The reports of these organizations indicate, however, that acceptable performance is possible in most grades of paper and paper products made from recovered materials. The use of preconsumer waste paper is common in printing and writing papers, although the use of postconsumer recovered materials is limited.

A common fear is that paper containing postconsumer recovered materials causes difficulty in printing and high-speed copier machines. EPA has reviewed documentation from state printing agencies and private sector printers and has found that this is a common reaction by pressmen. In many states, printers have refused to use

paper made from recovered materials. However, several states have had many years of experience in printing with such paper, after having first overcome adverse reactions by pressmen. These states report that while there is some difficulty in using printing paper containing postconsumer recovered materials, it is no more than with other economy grades of printing paper. Therefore, procuring agencies and agencies that revise and write specifications should carefully identify the performance expected of the product so that acceptance or rejection is based on verifiable tests rather than preconceived perceptions.

EPA has obtained results of laboratory tests for both virgin paper and paper made from recovered materials.[1] These test results provide additional verification that paper made from recovered materials can and does meet the same standards as virgin paper for many categories of printing/writing papers. This is especially true in the economy grades typically purchased in competitive bids by public agencies.

2. Fiber Boxes

The primary standards for linerboard (the facing material of corrugated containers) and fiber boxes are set by the Uniform Freight Regulations and are measures of basic weight and mullen (burst strength). These standards are currently under review. The contemplated changes would replace the mullen test with a "crush" test that would enable linerboard manufacturers to use a percentage of postconsumer recovered materials. (In fact, there are a few mills including one or more new mills that produce linerboard made of 100 percent postconsumer waste paper.) Federal procurement of kraft linerboard containing postconsumer recovered materials is practicable because it is now produced by a number of manufacturers. In addition about one-quarter of the corrugating medium used to produce boxes is "recycled medium" and contains essentially all postconsumer recovered materials.

E. Major Federal Purchasers

The major Federal purchasers of paper, and, therefore, the agencies most likely to be affected by this guideline are the Government Printing Office (GPO), which operates under the direction of the Congressional Joint Committee on Printing (JCP); the General Services Administration (GSA); and the Department of Defense (DOD). On advice of its Committee on Paper Specifications, which includes representatives from GPO, JCP adopts specifications and standards for printing and writing grades of paper. GSA adopts specifications for all other paper and paper products. DOD further reviews these standards and drafts additional specifications, as necessary, to establish military standards for some of the items it procures.

[1] See docket materials dated October 9, 1985 for a description of these tests.

IV. Discussion of guideline

This section of the preamble summarizes and explains the basis for each section of the revised final guideline and responds to comments received on the proposed amendments to the October 1987 final guideline. Section V discusses recommendations as to price, competition, availability, and performance, while Section VI discusses implementation of the revised guideline.

As used in this and following sections of the preamble, the term "recovered materials" refers to postconsumer recovered materials in the case of most types and grades of paper and paper products, to waste paper in the case of the printing/writing grades, and to recovered materials in the case of cotton fiber paper.

A. Purpose and Scope

The purpose of this revised guideline is to recommend additional procedures for complying with Section 6002.

This guideline applies to the procurement of paper and paper products containing recovered materials. Included are all paper and paperboard categories except building and construction paper grades. The Agency is including as many items as possible within the scope of the guideline to encourage the paper industry to increase and to improve the production of paper and paper products containing recovered materials.

The final guideline included an illustrative, but not inclusive, list of major paper and paperboard purchase categories falling within the scope of the guideline. It is as follows:

- High Grade Bleached Papers.
  - Printing and writing papers, including memeo and duplicator papers
  - Mailing envelopes
  - Memo pads
  - Form bond and manifold business forms
  - Computer paper
  - Xerographic/copy paper
- Newsprint
- Tissue Products
  - Sanitary products, e.g., toilet tissue, paper towels, facial tissue, paper napkins
  - Industrial wipers
- Unbleached Paper and Paperboard
- Coarse paper
- Linerboard and corrugating medium
- Corrugated boxes
- Fiber sheets and boxes

In making its decision regarding the scope of this guideline, the Agency considered suggestions from the Government Printing Office and representatives of the printing industry to the effect that performance standards for certain grades of printing and writing paper can currently be met only by virgin paper. It was suggested that EPA exclude these papers on an item-by-item basis. It was also suggested that certain items that must meet stringent standards on noncontamination, such as surgical masks and items coming in contact with wet or oily foods, should be individually identified for exclusion.

RCRA Section 6002(d)(2) requires the use "of recovered materials to the maximum extent possible without jeopardizing the intended use of the item". This statutory provision effectively allows procuring agencies to exclude use of recovered materials from specifications when performance standards for an item cannot be met if recovered materials are included in the content. Although commenters stated that EPA should exclude items, they did not indicate why this statutory provision is inadequate to accommodate the concerns of agencies that draft and review specifications. A determination to exclude a specific item from a recovered materials content requirement may be made by the agency in drafting and reviewing specifications based on standards related to performance. EPA suggests a procedure for establishing such an exclusion in § 250.13 of this guideline. It is further suggested that performance tests be cited and that test results be included in records for the annual review process and in any reporting on the effectiveness of the affirmative procurement program.

EPA decided not to include building and construction grades of paper based on several considerations. In reviewing the variety of paper and paper products that are or may be manufactured with a percentage of recovered materials, it became apparent that building and construction grades constitute a significant and distinct industry unrelated to the manufacturing of virtually all other grades of paper and paperboard. The manufacturing, marketing, standards, and testing mechanisms for building and construction grades are different from those for other grades of paper. Any evaluation of the feasibility and

potential effectiveness of a Federal procurement program for these grades would require extensive additional information; in addition, different procurement offices and procedures are involved in the procurement of construction categories. For these reasons, EPA believes that it would be more appropriate to consider building and construction grades of paper in a separate context. Toward this end, EPA studied the feasibility of and is preparing a procurement guideline for building insulation products made from recovered materials including paper.

B. Applicability

Many of the requirements of Section 6002 apply to "procuring agencies," which is defined in RCRA Section 1004(17) as "any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." Under Section 6002(a), the procurement requirements apply to any purchase by a procuring agency costing $10,000 or more or when the procuring agency purchased $10,000 worth of the item or of a functionally equivalent item during the preceding fiscal year. EPA believes that its interpretation of this requirement, which is described in more detail below, will provide an effective program without imposing an unreasonable bookkeeping burden on the purchasers and users of paper and paper products.

1. Procuring Agencies

EPA made two changes to § 250.3 of the final guideline to clarify the circumstances in which Section 6002 of RCRA applies to procuring agencies. First, the statutory definition identifies three types of procuring agencies: (1) Federal agencies, (2) State or local agencies using appropriated Federal funds, and (3) contractors. Federal agencies should note that under this definition, the requirements of Section 6002 apply to them whether or not *appropriated* Federal funds are used for procurement of items designated by EPA. Section 250.3 has been revised to clarify this issue.

In addition, § 250.3 has been revised to clarify that the requirements of Section 6002 apply to each Federal agency as a whole. This point is particularly important in determining whether the $10,000 threshold has been reached. For example, the General Services Administration, as a whole, purchases more than $10,000 worth of paper and paper products during each fiscal year. Therefore, the requirements of Section 6002 will apply to all GSA procurements of paper and paper products, including procurements by individual regions and subagencies.

2. Direct Purchases

For the purpose of this guideline, purchases made as a result of a solicitation by a procuring agency for its own general use or that of other agencies (for example, GSA purchases) are considered "direct." EPA believes that a contract for printing is, in part, a paper procurement action because the type of paper to be used is explicitly stated in the contract. (Labor and overhead expenses involved in printing would be considered a service.) Therefore, a Federal agency that provides printing services to other governmental agencies would be subject to this guideline. The guideline leaves the method of calculating the value of paper used in performing a printing contract to the discretion of the agency awarding that contract. This provides a wide latitude. GPO has stated that the value of the paper may be as low as 20 percent or as high as 80 percent of the contract. The value allocated to the paper used in the performance of the printing contract would determine the applicability of the guideline: if that value is $10,000 or more, the guideline would apply.

3. Indirect Purchases

EPA revised § 250.3(c)(2) (now § 250.3(d)(2)) to clarify and conform it to Federal grants and contract law. EPA has removed the clause excluding indirect purchases with funds which are not separately accounted for under block grants.

The definition of "procuring agency" in RCRA Section 1004(17) makes it clear that the requirements of Section 6002 apply to "indirect purchases," i.e., purchases by a State or local agency or its contractors using appropriated Federal funds. Thus, the guideline applies to paper and paper products purchases meeting the $10,000 threshold made by States and their localities or their contractors, subcontractors, grantees, or other persons which are funded by grants, loans, or other forms of disbursements of monies from Federal agencies. However, the guideline does not apply to such purchases if they are unrelated to or incidental to the Federal funding, i.e., not the direct result of the grant, loan, or funds disbursement. An example of a paper purchase unrelated or incidental to Federal funding is where a contractor purchases paper under a grant for construction of a public works project. The paper purchase would not be subject to the requirements in Section 6002 or this guideline, even though some of the grant funds supporting the contract might be used to finance the purchases.

4. The $10,000 Threshold

RCRA Section 6002(a) provides that the requirements of Section 6002 apply (1) when the purchase price of an item exceeds $10,000 or (2) when the quantity of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. Thus, Section 6002 clearly sets out a two-step procedure for determining whether the $10,000 threshold has been reached. First, a procuring agency must determine whether it purchased $10,000 worth of paper and paper products during the preceding fiscal year. If so, the requirements of Section 6002 apply to all procurements of paper and paper products occurring in the current fiscal year. Second, if a procuring agency did not procure $10,000 worth of paper and paper products during the preceding fiscal year, it is not subject to Section 6002 unless it makes a $10,000 purchase during the current fiscal year. The requirements of Section 6002 apply to the $10,000 purchase; to all subsequent purchases of paper and paper products made during the current fiscal year, regardless of size; and to all procurements of paper and paper products made in the following fiscal year.

Note that Section 6002(a) does not provide that the procurement requirements are triggered when the quantity of items purchased during the current fiscal year is $10,000 or more. EPA does not believe that Congress intended to require procuring agencies to keep a running tally of procurements of items designated by EPA. Maintaining such a running tally would be very burdensome. Rather, procuring agencies only need to compute their total procurements once at the end of the fiscal year and only if they intend to claim an exemption from the requirements of Section 6002 in the following fiscal year.

5. Functionally Equivalent Items.

Under RCRA Section 6002(a), the procurement requirements of Section 6002 apply when purchases during the preceding fiscal year of a "procurement item" or "functionally equivalent" procurement items cost $10,000 or more. In common usage, terms such as "paper" and "boxes" include many items manufactured to meet different performance standards. They may not, therefore, technically be "functionally

equivalent." (For instance, offset printing paper should not be used for high-speed office copiers.) The variations in grade and types of paper products are numerous. The JCP has specifications for over 50 grades of all types of paper, 23 for printing alone, while GSA estimates that it provides specifications for about 300 paper products. Because few procuring agencies, as defined in the Act, purchase $10,000 worth of any one grade of paper or any one paper product, EPA believes that restricting the applicability of Section 6002 to purchases based on a narrow, technical definition of functional equivalency would limit the effectiveness of the guideline in meeting the objectives of RCRA.

The Agency has concluded that, in the case of paper and paper products, "functionally equivalent" items should be defined as a category of items having the same or substantially similar end use. EPA has developed a categorization of functionally equivalent items based on this concept of similar end use. For procuring agencies purchasing many grades, the categorization will extend the applicability of the guideline beyond a technically defined "functional equivalency" so that a greater number of procurement actions are affected.

Under § 250.3 of the guideline, each of the following groups of items are "functionally equivalent":

—All grades and types of xerographic/copy paper;
—Newsprint;
—All grades and types of printing and writing paper;
—Corrugated boxes and fiberboard boxes;
—Folding boxboard and cartons;
—Stationery, office papers (memo pads, scratch pads), envelopes, and manifold business forms including computer paper;
—Toilet tissue, paper towels, facial tissue, paper napkins, doilies, and industrial wipers;
—Brown papers and coarse papers.

C. Requirements vs. Recommendations

RCRA Section 6002 requires procuring agencies and contracting officers to perform certain activities, such as revising specifications for procurement items. It also requires EPA to prepare "guidelines for the use of procuring agencies in complying with" Section 6002. EPA has incorporated the Section 6002 requirements into the guideline for the benefit of procuring agencies. As a result, the guideline contains two types of provisions: requirements (mandated by Congress in Section 6002) and recommendations (EPA's guidance for complying with the requirements of Section 6002). As used in this guideline, the verbs "shall" and "must" indicate Section 6002 requirements, while verbs such as "recommend," "should," and "suggest" indicate recommendations for complying with those requirements.

Procuring agencies must comply with the requirements of Section 6002, whereas EPA's recommendations are only advisory in nature. Procuring agencies may choose to use other approaches which satisfy the Section 6002 requirements. EPA believes, however, that if a procuring agency chooses to follow EPA's recommendations, that agency will be in compliance with the Section 6002 requirements.

D. Organization of the Revised Guideline

Subpart C of 40 CFR Part 250, which contains EPA's recommendations for implementing the affirmative procurement program requirements of RCRA Section 6002, has been reorganized, as well as revised, for ease of use. The revised subpart contains a separate section for each element of the affirmative procurement program.

E. Definitions

Most of the definitions in this guideline are the same definitions used in RCRA and therefore do not require further explanation. Other definitions, such as "paper," incorporate standard industry definitions. A few definitions are further discussed in this section of the preamble.

1. "Paperboard".

One common term used by the industry is "paperboard." This term is used to describe thick paper used in the manufacture of products such as tablet backs, folding boxes, and corrugated boxes. Paperboard is similar in composition and form to paper, but generally refers to sheet that is 0.012 inch thick or thicker. Thus, the term "paper," which is used in the Act, is construed to include paperboard and paperboard products.

2. "Practicable".

Section 6002 requires procuring agencies to procure items composed of the highest percentage of recovered materials *practicable* and to develop programs to assure that recovered materials are purchased to the maximum extent *practicable* (emphasis added). Commenters asked EPA to define the term "practicable" as used in Section 6002. In response, EPA added a definition of "practicable" in the final paper guideline, 52 FR 37297 (October 6, 1987).

EPA's definition of "practicable" combines the dictionary definition with certain statutory criteria for determining practicability. The dictionary definition of practicable is "capable of being used," and EPA believes that Congress intended the term to be defined in this way. Congress also provided four criteria for determining the maximum amount practicable: (1) Performance in accordance with applicable specifications; (2) availability at a reasonable price; (3) availability within a reasonable period of time; and (4) maintenance of a satisfactory level of competition. EPA's definition of "practicable" incorporates these criteria.

3. "Waste Paper".

This category includes all postconsumer recovered materials as defined in RCRA Section 6002(h)(1), plus the two preconsumer categories of "manufacturing, forest residues, and other wastes" as defined in Section 6002(h)(2). EPA has determined that mill broke is specifically excluded from the definition of recovered materials because it is waste generated before completion of the papermaking process. The two non-postconsumer categories are:

(1) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller roles or rough sheets) including envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and,

(2) Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

4. "Mill Broke"

EPA has determined that the definition of dry paper and paperboard waste in "recoverable materials" [Section 6002(h)(2)(A)] specifically excludes mill broke, which is any paper waste generated before completion of the papermaking process. Mill broke is commonly returned to the pulping process and is composed of whatever the pulp is derived from, e.g., wood pulp, waste paper, etc. In the final guideline, the definition of "mill broke" makes clear that it is excluded from the term "recovered materials."

5. "Cotton Fiber"

Cotton fiber papers are one of the oldest types of paper manufactured.

These papers are used for fine stationery, ledger papers, maps, wedding invitations, and the like, and thus occupy a special niche in the printing-writing paper category. By definition and practice of the paper industry, cotton fiber papers must contain at least 25 percent cellulose fibers derived from lint cotton, cotton linters, and cotton or linen cuttings. Some cotton fiber content products are made of 100 percent cellulose derived from recovered cotton sources. Thus, EPA has defined cotton fiber content papers as paper that contains a minimum of 25 percent and up to 100 percent cellulose fibers derived from lint cotton, cotton linters, and cotton or linen cloth cuttings.

F. Specifications

1. General

a. *Federal agencies.* RCRA Section 6002(d) contains two requirements for revising specifications for procurement items. First, Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies were required to revise their specifications by May 8, 1986 to eliminate exclusions of recovered materials and requirements that items be manufactured from virgin materials [Section 6002(d)(1)].

Second, within one year after the date of publication of a procurement guideline as a final rule, Federal agencies must assure that their specifications for designated items require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item [Section 6002(d)(2)]. EPA believes that this second requirement is more extensive than the first requirement. Simply eliminating discriminatory provisions, as required by Section 6002(d)(1), is not sufficient to meet all the obligations of Section 6002(d). EPA believes, however, that compliance with the affirmative procurement requirements of Section 6002(i) fulfills the Section 6002(d)(2) requirements because an affirmative procurement program should result in procurement to the maximum extent practicable.

b. *Procuring agencies.* EPA believes that the second specification revision requirement also applies to non-Federal procuring agencies which procure paper and paper products with appropriated Federal funds. Unless their specifications are revised to allow the use of recovered materials in paper and paper products, these agencies will be unable to implement the affirmative procurement requirements of RCRA Section 6002(c) (1) and (i). For this reason, the guideline provides that all *procuring agencies* (rather than "Federal agencies" as provided in the Act) must assure that their specifications for paper and paper products require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of these items.

Some agencies have moved to require the use of recovered materials; others have felt it sufficient to "permit" and/or "encourage" the use of "reclaimed fibers" or "recovered materials." By adding the requirement that procuring agencies establish affirmative procurement programs for items containing postconsumer recovered materials or other recovered materials, the 1984 amendments to Section 6002 make it clear that simply "permitting" or "encouraging" the use of such materials is not sufficient to assure that specifications require the maximum use of recovered materials "without jeopardizing the intended use of the item." Federal agencies must take affirmative steps to encourage their use.

2. Recommendations

Section 250.12(b) of the guideline presents recommendations for specification revisions to implement the statutory requirements. Unnecessarily stringent specifications must be revised to allow for a higher content of recovered materials. Specifications need not be revised, however, "if it can be determined that for technical reasons, for a particular end use, a product containing such materials will not meet reasonable performance standards." [§ 250.13(a)]

3. Exclusion of Products That Do Not Meet Performance Standards

Specifications sometimes do not clearly state the intended end use of products. For example, paper purchased as printing paper is sometimes used in high-speed copiers with unfortunate results simply because the user did not properly recognize a difference in paper characteristics. In such cases, product specifications should be revised to clearly state an intended end use for a product(s). When using recovered materials, it is important that the correct grades be supplied for the intended end use. EPA recommends that specifications clearly identify both the expected performance and the specific intended use, especially when the paper is to be used in high-speed copiers.

Certain paper and paper products might not meet the standards of performance necessary for their intended end use if they contain any percentage of postconsumer recovered materials. Examples of such items are paper which comes into contact with wet or oily food, archival papers, certain map papers, deed papers, and face masks for use in "clean rooms." EPA considered removing these paper items from its designation of items to be covered by the guideline. Unlike construction grade papers, which are excluded on a categorical basis, these papers would have to be excluded on an item-by-item basis. EPA concluded that it does not have the expertise to make such a technical determination, and that such determinations are best left to procuring agencies. (For a related discussion, see the section on minimum content standards for archival papers later in this preamble.)

Section 250.13(b) of the guideline recommends that any agency document any finding that, for a particular end use, an item containing recovered materials will not meet reasonable performance standards and reference the documentation in subsequent solicitations for bids for that item. The documentation should clearly show that the unacceptable performance is caused by properties of the paper itself and not by the equipment with which the paper is used. The documentation should reference specific tests used to judge performance.

4. Specifications Related to Aesthetics

Specifications related to aesthetics, such as whiteness, brightness, color, and dirt count, could serve as impediments to the use of paper containing recovered materials. The American Society for Testing and Materials (ASTM) and the Technical Association of the Pulp and Paper Industry (TAPPI) have established standards for brightness and dirt counts which paper and paper products made from recovered materials can meet. In § 250.12(b), EPA recommends that agencies that draft specifications conduct a careful review of existing specifications related to aesthetics to determine whether they are overly stringent for the product's intended end use, and if so, amend them. Section 250.12(b) references ASTM, TAPPI, and American Institute of Paper Chemistry standards and research.

5. New Specifications

Considerable technological advances are occurring in the paper and paperboard manufacturing industry. These advances are leading to increased utilization of postconsumer recovered materials in many products and the introduction of the use of preconsumer materials in other products, e.g., pulp substitutes and deinking grades of waste

paper and sawdust and other forest residues. For instance, the Railway Association is currently considering a performance test change that would effectively allow more use of recovered materials in fiber (corrugated) boxes. In recent years, the process of manufacturing newsprint with nearly 100 percent postconsumer recovered materials has become common. In § 250.14 of the guideline, EPA recommends that procuring agencies monitor new developments and use them to increase the use of postconsumer and other recovered materials.

C. Affirmative Procurement Program

Section 6002(i) of RCRA requires procuring agencies to adopt an affirmative procurement program to ensure that paper and paper products containing recovered materials are purchased to the maximum extent practicable. As discussed previously, RCRA Section 6002(h) provides that "postconsumer recovered materials" are a specific subset of "recovered materials." The definition of "postconsumer recovered materials" includes paper, paperboard, and fibrous wastes that have passed through their end usage as a consumer item or that enter and are collected from municipal solid waste. "Recovered materials" is a broader term, including postconsumer recovered materials as well as such widely-used waste as manufacturing wastes, forest residue, and other wastes. Because the intent of this guideline is to reduce the municipal solid waste stream, the focus of this guideline is postconsumer recovered materials.

The affirmative procurement program must contain four elements: (1) A recovered materials preference program; (2) a promotion program; (3) procedures for estimation, certification, and verification; and (4) procedures for annual review and monitoring of the program's effectiveness. The following sections explain EPA's recommendations for each element of the affirmative procurement program.

1. Recovered Materials Preference Program

The first of the four requirements of the affirmative procurement program is a recovered materials preference program to maximize the use of recovered materials. The procuring agency may implement the preference program by employing a case-by-case approach, by adopting minimum content standards, or by choosing an approach that is substantially equivalent to the preceding approaches. In the final paper guideline, EPA recommended use of any of these approaches. Because of comments submitted in response to the original proposed paper guideline, EPA concluded that minimum content standards would comply with the statutory requirements but that the other approaches might not necessarily, 52 FR 37299 (October 6, 1987). Accordingly, EPA proposed to amend the final paper guideline to recommend minimum content standards as guidance to procuring agencies, 52 FR 37335–41 (October 6, 1987).

As discussed in the final paper guideline, 52 FR 37298–37299 (October 6, 1987), Section 6002(i) also requires that any affirmative procurement program be consistent with applicable provisions of Federal procurement law. From time to time, Congress has established preferential procurement programs in order to attain socioeconomic goals. Among those are the Small Business, Labor Surplus Area, and Minority Business procurement programs. EPA considered applying either or both of the mechanisms used in those programs—price preferences and set-asides—to this guideline. A price preference allows the procuring agency to pay a higher price, if necessary, for a specified product from preferred vendors. A set-aside requires the procuring agency to award a certain percentage of its contracts to preferred vendors of a product regardless of price. Price preferences and set-asides are currently being used in some state programs for the procurement of paper and paper products containing recovered materials. As of January 1988, five states and two cities use price preference programs in which products containing recovered materials may cost from 5 to 10 percent more than virgin materials. Two states have set-aside programs, one for paper and paper products, the other for all types of products. These states report that they successfully procure products containing recovered materials.

EPA has considered recommending these programs at the Federal level. However, in the case of existing Federal preferential procurement programs that allow a price preference or set-aside, the Agency found that each had been established under explicit statutory authority or a specific Executive Order. Neither the statutory language nor the legislative history of Section 6002 seems to contemplate the adoption of either price preferences or set-asides, and doing so would conflict with existing Federal procurement regulations.

a. *Case-by-case approach.* As explained in the preamble to the final paper guideline, EPA concluded that it would be rare that equivalent bids would be submitted for virgin paper and paper products and for paper and paper products containing recovered materials. Thus, a procuring agency could not award the procurement to the vendor offering the product with the highest recovered materials content unless it was the low bid, 52 FR 37299 (October 6, 1987). EPA concluded therefore that wide use of the case-by-base approach or a substantially equivalent alternative might not result in much procurement of paper and paper products containing recovered materials.

After careful consideration of the legal limitations of the case-by-case approach (or a substantially equivalent alternative) as well as the likely impact of such an approach on procurement practices, EPA has determined that procuring agencies which elect to use the recommended minimum content standards will be in compliance with the statutory requirement for a recovered materials preference program assuring procurement of items composed of recovered materials to the maximum extent practicable. Consequently, EPA is withdrawing its recommendation of the case-by-case approach or a substantially equivalent alternative for procurement of paper and paper products. Instead, EPA recommends that procuring agencies adopt minimum content standards.

b. *Minimum content standards.* EPA proposed minimum content standards for 21 categories of selected paper and paper products, 52 FR 37341 (October 6, 1987). EPA today is adopting those standards as its recommendations with the changes indicated below, as well as adding one new category, cotton fiber papers.

For most grades of paper and paper products, EPA is recommending minimum postconsumer recovered materials content standards. In the case of printing/writing grades, EPA is recommending minimum "waste paper" content standards. As explained above, in the case of cotton fiber papers, EPA is recommending a minimum "recovered materials" standard. EPA also has added definitions of "waste paper" and "cotton fiber".

(1) *Legal considerations.* RCRA Section 6002(i)(1) requires that affirmative procurement programs be "consistent with applicable Federal procurement law." EPA was concerned that minimum content standards might violate the Competition in Contracting Act of 1984 (CICA) (10 USC Chapter 137) and the Federal Acquisition Regulation (FAR) (48 CFR Ch. 1). Both provide that specifications restricting what can be

offered by bidders are legally permissible only to the extent that they reflect the Government's minimum needs or are authorized by law. [CICA 2711(a)(1), 48 CFR 10.002(a)(3)(ii).] EPA has concluded that RCRA Section 6002 provides the necessary authorization. See 52 FR 38844 (October 19, 1987). Section 6002(i)(3)(B) expressly permits agencies to establish specifications which restrict bids to those which meet a minimum content standard. Therefore, minimum content standards are not in violation of general Federal procurement law.

CICA requires agencies to use full and open competitive procedures when procuring property and services. The term "full and open competition" means that all responsible sources must be permitted to submit a bid. In the case of a procurement against a restrictive specification, such as a minimum content standard, "full and open competition" means that all responsible sources who can meet the specification can bid. The preference program recommendation in the revised final guideline is consistent with this requirement, since any vendor of paper and paper products can submit a bid as long as the product offered contains the minimum recovered content.

(2) *Methods for establishing minimum content standards.* RCRA provides four criteria for establishing a minimum content standard. Section 6002(i)(3)(B) provides that the minimum content required by a specification must be the maximum available without jeopardizing the intended end use of the item or violating the limitations of Section 6002(c)(1)(A)–(C). Thus, the four criteria are (1) the intended end use of the item, (2) availability, (3) technical performance, and (4) price.

Under the minimum content standards approach, procuring agencies establish specific recovered materials percentages in their specifications. Today EPA is recommending specific standards for procuring agencies to use. Procuring agencies may adopt other standards as long as the statutory requirements are met.

(3) *Basis of recommended minimum content standards.* Beginning in 1971, the U.S. General Services Administration (GSA) established minimum content standards for several types of paper and paper products. The GSA specifications established minimum levels for "reclaimed material" content and for "postconsumer waste" content which was a sub-set of "reclaimed material." In other words, a two-tiered approach was used. The "reclaimed material" and "postconsumer waste" categories correspond to the terms "recovered materials" and "postconsumer recovered materials," respectively, as used in this guideline.

EPA received comments on its earlier proposed paper guideline that very few manufacturers of printing/writing papers would be willing or able to meet a minimum content standard for postconsumer recovered materials, 52 FR 37297 (October 6, 1987). Thus an alternative was sought for this category.

The source of recovered materials that are commonly used in printing/writing papers differs from the source of recovered materials used in other grades. Pulp substitute is a manufacturing waste, virtually all of which is derived from businesses that convert paper stock into finished products such as books or envelopes. Pulp substitute, as the name suggests, can be used instead of virgin pulp. The quantity of postconsumer recovered materials in pulp substitute is essentially zero. "High grade deinking" is printing scrap, which can include items such as misprinted forms that never reach the ultimate user. The high grade drinking category also includes a significant amount of postconsumer recovered materials, such as officer waste paper. However, the paper mill does not always know whether the material is preconsumer or postconsumer because both types of material may be contained in the same bales. Tissue products use most of the postconsumer recovered materials consumed in the high grade deinking category while printing/writing paper producers use much less; many manufacturers of printing/writing papers avoid postconsumer recovered materials altogether. In other words, manufacturers of printing/writing papers tend to use preconsumer waste paper (manufacturing by-products such as pulp substitutes), whereas manufacturers of tissue papers do use postconsumer waste. Tissue products do not have to meet the demands that printing and writing papers do. The contrast between the strength and color requirements for institutional paper towels and offset paper running through a high-speed press illustrates this difference.

EPA contacted virtually every mill known to make printing/writing papers using recovered materials. Almost universally they stated that they preferred not to deal with postconsumer recovered materials under a minimum content standard. Some of the reasons cited were:

- Postconsumer recovered materials are not as predictable in fiber composition or content as other types, so it is difficult to assure that specifications can be met.
- A mill essentially needs deinking capability to use postconsumer recovered materials (whereas pulp substitutes are not normally cleaned in deinking systems).
- Contaminants cannot be controlled as well, and "off spec" products are much more likely to be produced using postconsumer recovered materials.
- Only a few mills handle postconsumer recovered materials successfully enough to overcome these problems consistently.

For these reasons, EPA found that it is not advisable to recommend minimum postconsumer recovered materials content standards for printing/writing grades. EPA is, therefore, recommending a category of recovered materials called "waste paper" for the printing and writing paper grades only.

EPA has concluded that increasing the use of waste paper in the manufacturing of printing and writing papers will in fact allow maximum use of postconsumer recovered materials in those products while it increases the use of postconsumer recovered materials in others, thereby satisfying the intent of RCRA. As more preconsumer waste paper is used for printing and writing papers, there will be less available as a raw material for other products. As a result, manufacturers will have to use more postconsumer recovered materials as a raw material. Therefore, for printing and writing papers, EPA is recommending a minimum waste paper content.

A document entitled *Background Documentation for Minimum Content Standards* has been placed in the docket and explains the basis for EPA's recommended minimum content standards. It identifies mills producing newsprint or printing/writing papers with postconsumer or waste paper recovered content, respectively, at the time of the preparation of the document. The percentages of both types of recovered materials content in product also have been identified.

Several commenters recommended that EPA adopt the original GSA standards as minimum content standards. EPA used these standards as a reasonable starting place for establishing recommended minimum content standards. However, because of the successful experience by several States in procuring printing and writing paper with recovered materials, EPA proposed a minimum of 50 percent waste paper content.

Commenters from the paper industry objected to the proposed minimum

content standards for printing and writing paper on the basis that they are too high to be practical and that procuring agencies will be unable to obtain adequate competition for all grades at a minimum content of 50 percent waste paper. Procuring agencies supported the minimum content standard proposed, but some stated that they have difficulty in purchase of printing/writing papers in some instances. None of the commenters objecting to the proposed minimum content standards provided data supporting their position, nor did any other commenter provide data from which EPA could conclude that the objections were correct. There might be short-term availability problems for particular types or grades of paper and paper products, but EPA was unable to determine whether and at what levels unavailability problems would occur. Therefore, although EPA considered these comments, the Agency concluded that there was no basis on which to reduce the recommended minimum content. The revised final guideline issued today recommends the 50 percent minimum content standard.

EPA notes that procuring agencies are not required to buy paper and paper products if the procuring agency determines that the product is not reasonably available, there is unsatisfactory competition, or the product is only available at an unreasonable price. These issues are discussed further in Section V of the preamble.

In two categories, EPA proposed no minimum content standards because it believed that there was not sufficient production of these papers with recovered material content to assure a satisfactory level of competition; they are high-speed copier paper and form bond, including computer paper and carbonless. EPA has determined, in the minimum content standards adopted here today, not to recommend standards for these categories for the reasons previously indicated. Nonetheless, these categories of paper are subject to the requirements of Section 6002. Procuring agencies must promote their preferernce program for these items. As these items become available at a reasonable price with satisfactory competition, procuring agencies should establish minimum content standards for them. In addition, as the economic situation changes, EPA will consider revising this guideline to recommend minimum content standards for these items.

Manufacturers of corrugated boxes objected to the proposed minimum content standard of 40 percent as being too high. They provided an explanation and rationale for their position, but did not provide an alternative minimum content standard. After a closer examination of the industry structure and practices and historical data, EPA concurs and has reduced this category to 35 percent postconsumer recovered materials. A more detailed basis for this change can be found in the docket for this rulemaking. However, EPA notes that the 35 percent minimum content standard will still require that corrugated boxes contain both recycled corrugating medium and linerboard with postconsumer recovered materials to assure that the minimum content standard is met. Alternately, this standard could be met with only 100 percent recycled linerboard as well. A fuller explanation and analysis has been placed in the docket for this rulemaking.

At the same time, EPA reviewed the proposed minimum content standard for solid fiber boxes and determined that it should be raised from 5 percent to 35 percent. The basis for this change is that the medium or filler between the two liners is made of chipboard, which is a recycled paperboard, and thus consists of postconsumer recovered materials. EPA notes that this product has largely disappeared from commercial use, but is still produced in small quantities.

A commenter noted that there should be a minimum content standard for cotton fiber content papers because this grade contains recovered materials as defined by RCRA Section 6002. EPA concurs and has added both a definition and a minimum content standard of 25 percent recovered materials.[2] This product category, also commonly known as "rag paper," *must* contain cotton fibers to qualify by definition as that product. This type of recovered material does not fall under the postconsumer or waste paper definitions. Rather, it falls under the recovered materials definition under Section 6002(h)(2)(D):

> manufacturing, forest residues, and other wastes such as . . . (D) wastes generated by the conversion of goods made from fibrous material (e.g., rope waste from cordage manufacture, textile mill wastes, and cuttings).

It has been suggested to EPA that a minimum *waste paper* content standard should be established for cotton fiber content papers. EPA notes that such a standard might be confusing because the commercial definition of cotton fiber content paper refers to its cotton cellulosic content only. In addition, to the best of EPA's knowledge, use of waste paper in the production of cotton fiber content paper seems to be incidental at best. For these reasons, EPA did not adopt a waste paper content standard for cotton fiber paper.

EPA's recommended minimum content standards are shown in Table 1. Note that EPA has added a column to Table 1 to address recovered materials content in cotton fiber content papers.

[2] The commenter suggested a minimum content standard of 25 percent recovered materials for EPA to recommend. After researching industry practices, EPA concluded that a 25 percent standard is reasonable. Data documenting this conclusion has been placed in the docket for this rulemaking.

TABLE 1.--EPA Recommended Minimum Content Standards of Selected Papers and Paper Products

	Minimum percentage of recovered materials	Minimum percentage of postconsumer recovered materials	Minimum percentage of waste paper [1]
Newsprint	—	40	—
High grade bleached printing and writing papers:			
Offset printing	—	—	50
Mimeo and duplicator paper	—	—	50
Writing (stationery)	—	—	50
Office paper (e.g., note pads)	—	—	50
Paper for high-speed copiers	—	—	[2]
Envelopes	—	—	50
Form bond including computer paper and carbonless	—	—	[2]
Book papers	—	—	50

TABLE 1.—EPA Recommended Minimum Content Standards of Selected Papers and Paper Products—Continued

	Minimum percentage of recovered materials	Minimum percentage of postconsumer recovered materials	Minimum percentage of waste paper [1]
Bond papers	—	—	50
Ledger	—	—	50
Cover stock	—	—	50
Cotton fiber papers	25	—	—
Tissue products:			
Toilet tissue	—	20	—
Paper towels	—	40	—
Paper napkins	—	30	—
Facial tissue	—	5	—
Doilies	—	40	—
Industrial wipers	—	0	—
Unbleached packaging:			
Corrugated boxes	—	35	—
Fiber boxes	—	35	—
Brown papers (e.g., bags)	—	5	—
Recycled paperboard:			
Recycled paperboard products including folding cartons	—	80	—
Pad backing	—	90	—

[1] Waste paper is defined in Section 250.4 and refers to specified postconsumer and other recovered materials.
[2] EPA found insufficient production of these papers with recycled content to assure adequate competition.

Finally, EPA has concluded that while in theory, higher minimum content standards could be established, in actuality, such higher standards could result in no procurement due to lack of satisfactory competition, unreasonable prices, or unreasonable availability. Therefore, the recommended minimum content standards were set at levels at which EPA felt there was a reasonable assurance of adequate procurement.

(4) *Archival papers.* Organizations involved in book and document preservation expressed concern about EPA's proposed minimum content standards. Although they were generally in favor of using recycled paper products, they felt its use for books, government publications, and documents scheduled for permanent retention should not be allowed. Some cited an ANSI standard issued in 1984 that deals with an alkaline paper to slow deterioration of paper. Several enclosed a rationale on the subject and the ANSI Z39.48–1984 standard. EPA was asked to set up a category to promote the use of alkaline paper for all books, publications, and documents of enduring interest, or at the least to set up a separate category, and to reduce or delete minimum percentages of waste paper for all the printing/writing papers except envelopes.

After researching this issue, EPA has determined that both virgin papers and recycled papers can be acidic or alkaline, depending on the manufacturing process used. While it is true that the deinking and bleaching processes used to make paper containing recovered materials are acidic, EPA has determined that there are manufacturers of recycled paper that produce archival papers. Evidence has been submitted to EPA and added to the docket for this rulemaking that there are at least seven companies manufacturing acid-free grades of paper. Of these seven companies, two are manufacturers of paper containing recovered materials.

EPA notes that those concerned over the permanence of paper should refer to § 250.13 of the guideline, "Exclusion of products containing recovered materials that do not meet reasonable performance standards." If a procuring agency determines that papers containing postconsumer recovered materials do not meet reasonable performance standards for archival papers, then the agency can add an exclusion of these papers to its specifications; the agency must document the basis for this exclusion, however. Further, EPA encourages the development of technical performance specifications by the user agencies, e.g., GPO, GSA, JCP, that require permanence as long as they do not specifically exclude the use of recycled paper.

2. Promotion Program

The second requirement of the affirmative procurement program is an effort by procuring agencies to promote procurement of paper and paper products containing recovered materials. EPA recommends several methods for procuring agencies to consider for disseminating information about their preference program, such as placing notations in solicitations for bids and conducting discussions about the program at bidders' conferences and meetings. EPA also recommends that agencies such as GSA that procure paper and paper products for use by other agencies consider noting in their catalogs those papers or paper products that contain recovered materials.

A commenter on the proposed lubricating oils procurement guideline recommended use of journals to promote the preference program. EPA is recommending in the final lubricating oils guideline that agencies issue press releases to recycling industry journals. This recommendation is also relevant to promotion of the paper and paper products preference program and is being added to § 250.22 today.

3. Estimation, Certification, and Verification

The third requirement of the affirmative procurement program set forth in Section 6002(i) concerns estimates, certification, and verification of recovered material content in procurements. Estimates and certifications of content in an item are most easily expressed as a percentage of total content and can range from 0 percent to 100 percent, depending on the type of product or the feedstocks used in manufacturing the item. Many issues have been raised about these requirements, such as when the information should be provided, who is to provide it, how it is to be obtained, and how it is to be verified. To clarify

this subject, it is necessary to review the requirements of the statute.

a. *Estimation.* RCRA Section 6002(c)(3)(B) and Section 6002(i)(2)(C) require that, after the effective date of a guideline, contracting officers must require vendors who supply Federal procuring agencies with products covered by the guideline to provide an estimate of the total percentage of the recovered materials utilized in the performance of the contract.

EPA believes that this requirement is for the purpose of gathering statistical information on price, quantity, availability, and performance of products made from recovered materials. EPA further believes that this requirement applies regardless of whether the procurement solicitation specifies that recovered materials can or must be used. Estimates may differ from the minimum recovered materials content specified in certifications. The estimates will provide up-to-date information for the annual review which is required of procuring agencies.

EPA has decided to recommend a limit for retaining these estimates. In other procurement guidelines, EPA has recommended that the estimates be retained for three years. Therefore, in the revised final guideline today, EPA is recommending that procuring agencies retain these data for three years by type of product, quantity purchased, and price paid.

b. *Certification.* The use of certifications is common in government procurement. A certification is written assurance that goods or services delivered will fulfill the contractual requirements. Failure to meet conditions which have been certified can result in penalties to a vendor. RCRA Section 6002(c)(3)(A) requires that after the effective date of this guideline, vendors must "certify that the percentage of postconsumer recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements." In other words, vendors must certify that a minimum percentage of recovered material will be contained in products to be supplied. RCRA Section 6002(i)(2)(C) requires "certification of minimum post-consumer recovered material content actually utilized. . .".

Together, these sections could be interpreted to mean that multiple certifications will be required: one when bids are offered, and another with each shipment. EPA is concerned that this interpretation could create unnecessary burdens for vendors and procuring agencies, and thus work against the intent of Section 6002. States which purchase paper and paper products with recovered material content have found one certification sufficient. As an example, New York State requires certification of the content from vendors within six days of a bid opening. Vendors commonly discuss product specifications and availability with manufacturers prior to submitting a bid, so information for certififcation can be obtained at that time. A vendor can easily certify to a minimum of 0 percent if it does not wish post-consumer recovered material (and in the case of printing/writing paper, waste paper) content to be a factor in its bids. The certification then becomes part of the contract awarded to the successful vendor. EPA has concluded that one certification will fulfill both statutory requirements and, by using it in all instances, procuring agencies can adapt their purchasing programs most easily.

In the final guideline, 52 FR 37300 (October 6, 1987), EPA recommended that procuring agencies require certifications as a condition of a responsive bid when bids are offered. Also, as previously indicated, the successful vendor must estimate the actual recovered materials content in products that are supplied. The estimate may or may not be different than the minimum percentage that is certified.

EPA understands that for both estimation and certification, the vendor will not have direct knowledge of recovered materials content. Only the mill that produces the paper will have that information. However, there is no direct authority in RCRA Section 6002 for the Federal government to require this information from anyone but the vendor. Therefore, the vendor must make its own arrangements for obtaining this information from the mill operator. The legislative history suggests the approach intended, as shown by the following excerpt from the Conference Committee Report on the Hazardous and Solid Waste Amendments of 1984:

> In obtaining certification of the percentage of postconsumer materials and the percentage of manufacturing forest residues and other wastes, it is the intent of Section 6002 as amended by this Act that vendors supply the procuring agency with a statement *from the mill* indicating the percentages used *by the mill* in producing the paper and their sources of raw material. (H.R. Rep. No. 98–1133, 98th Cong. 2nd Sess. 121 (1984) [emphasis added].

c. *Verification.* Procuring agencies also are required to establish "reasonable verification procedures for estimates and certifications." [RCRA Section 6002(i)(2)(C)] If these verification procedures include access to mill operators' records, then the procuring agency must use some authority other than RCRA to inspect these records or must require vendors to have an agreement with the mill operator to suppy such information or access to the procuring agency.

In general, paper manufacturers maintain records of the feedstocks used in each "run" or "lot" of paper for their own internal quality and specification controls. The optimum mix of recovered and virgin fiber often remains the same for each grade of paper, though variations may occur in individual runs.

In most cases manufacturers will be able to provide a certification to vendors as to the specific fiber content of the product shipped to a customer. It is not intended that the guideline require any additional records to be kept by the mills; the records normally kept should be complete enough to estimate or certify to recovered materials content accurately. However, to simplify the verification procedure and accommodate variations dictated by quality control and supply, the average amount of recovered materials used in each specific product over a one-month period may be used, if necessary, to meet the requirement for verification of estimates. Since mills commonly keep accounting and record summaries on a monthly basis, EPA recommends that the one-month figures be used for estimates of fiber percentages. Should it be necessary to verify the exact content of a specific lot or run of paper, the mill records for that lot or run can then be consulted.

However, if the vendor knows that the recovered materials content of paper or paper products supplied to procuring agencies differs from the monthly average, then the average cannot be used. For example, if the monthly average is 30 percent postconsumer recovered materials content but the paper or paper product supplied contains no postconsumer recovered materials or conversely contains 60 percent recovered content, then the vendor cannot use the monthly average. Use of the average in such instances will be viewed as an attempt to circumvent the requirements of RCRA in supplying paper or paper products to the procuring agency.

Monthly *averages* cannot be used for certification. Every shipment may not contain recovered materials content equal to or greater than the average. However, the *minimum* percentage of recovered materials used in recycled paper products by the mill can be determined from monthly records for certification purposes.

In the preamble to the final guideline, EPA indicated that it had received comments indicating that in the case of the printing and writing grades, mills sometimes cannot distinguish postconsumer recovered materials from other recovered materials. Consequently, it would be difficult to comply with the estimation and certification requirement to identify postconsumer recovered material content. In most cases, however, mills have detailed knowledge of their raw materials. While postconsumer recovered materials content of every bale of waste paper may not be known to a certainty, mills can make reasonable estimates based on their extensive knowledge of their raw materials. In the revised guideline issued today, EPA has adopted "waste paper" content standards to resolve any inherent fiber identification problems with the printing and writing grades of paper.

4. Annual Review and Monitoring

The fourth requirement of the affirmative procurement program is an annual review and monitoring of the effectiveness of the program. EPA explained these requirements in full in the final paper guideline, 52 FR 37301 (October 6, 1987). The review should include an estimate of the quantity of paper and paper products containing recovered materials purchased during the year.

EPA believes that procuring agencies should review the range of estimates and certifications of recovered materials content provided by vendors during the year. Significant and repeated variations between the minimum content standards, certifications, and estimates would signal that changes in specific minimum content standards may be warranted. EPA further believes that information provided by the estimation requirement will be particularly helpful to procuring agencies when they review their compliance with the requirement to purchase paper and paper products with the highest percentage of recovered materials practicable.

Similarly, if information from estimates received or other data reveal that sufficient bids would have been submitted in response to standards using higher minimum content levels, then the procuring agencies should consider revising their standards accordingly. If there was a lack of competition, the procuring agencies should determine whether the standards must be lowered. This would satisfy the statutory requirements for procuring agencies in RCRA Section 6002(c)(1) and those specific to the minimum content standards approach in RCRA Section 6002(i)(3)(B).

In the proposed amendments to the paper and paper products procurement guideline, EPA recommended that procuring agencies compile statistical records of paper and paper products procurements. EPA identified six categories of data, recommended that a summary of the data be included in the procuring agency's annual review, and recommended that procuring agencies send a report discussing the findings made during the annual review to the Office of Federal Procurement Policy (OFPP) for inclusion in OFPP's biennial report to Congress. EPA is including this recommendation in the final guideline today, with one exception.

OFPP has informed EPA that it does not have the technical expertise to review the data. For this reason, EPA is no longer recommending that procuring agencies send a report discussing their findings to OFPP. EPA continues to believe that this information will be useful to the public, however. EPA notes that this guideline will apply to State and local procuring agencies and contractors, as explained under "Applicability". Information drawn from the experience of Federal procuring agencies about purchases of paper and paper products containing recovered materials would therefore be useful to State and local purchasing officials and contractors. Accordingly, EPA encourages Federal procuring agencies to make their reports available to the public.

EPA has concluded that one purpose of the requirement that vendors estimate the total percentage of recovered materials is to provide information to procuring agencies that can be used in future procurements. Further, procuring agencies need to keep up-to-date on changes in recycling practices and availability of products containing recovered materials. EPA believes that unless a procuring agency compiles such data, it will not be fulfilling its statutory obligations.

For these reasons, EPA believes that agencies should keep statistical records of paper and paper products procurements to properly implement the intent of Congress in requiring an affirmative procurement program. A summary of these records should be included in the annual review and monitoring of the effectiveness of the program.

Note that for printing/writing papers, the data gathered will pertain to information on *waste paper* content instead of information on postconsumer recovered materials, and for cotton fiber papers, the data will pertain to *recovered materials* content. For all other categories of paper and paper products, postconsumer recovered materials content should be used.

A program for gathering statistics need not be elaborate to be effective. However, agencies should monitor their procurements to compile data on the following:

(a) The percentage of recovered materials in the products procured or offered;

(b) Comparative price information on competitive procurements;

(c) The quantity of each item procured over a fiscal year;

(d) The availability of the paper and paper products to procuring agencies;

(e) Type of performance tests conducted, together with the categories of paper and paper products containing recovered materials that failed tests, the percentage of total virgin products and products containing recovered materials, respectively, that failed each test, and the nature of the failure;

(f) Agency experience with the performance of the procured products.

The Government Printing Office has informed EPA that every shipment of paper or paper products is tested. Because of the number of shipments received (shipments are received on a daily basis, with multiple shipments often being received on any given day), it would be a burden for procuring agencies to retain the results of each of these tests. Instead, procuring agencies should identify the performance tests used and maintain records, by test, on the percentage of failures by paper and paper products containing recovered materials and on the nature of these failures.

EPA recommends that each procuring agency prepare a report on its annual review and monitoring of the effectiveness of its procurement program. As part of the report, agencies using the case-by-case approach or a substantially equivalent alternative should demonstrate that their preference program results in procurement of paper and paper products containing recovered materials to the maximum extent praticable. Agencies using the minimum content standards approach should determine whether their minimum content standards should be raised, lowered, or remain constant for each item. The basis for these determinations should be a review of the data compiled on recovered materials content, price, availability, and performance, as well as a comparison of estimates and certifications provided by the vendors.

Agencies should also document specification revisions made during the reporting period.

The revised final guideline issued today incorporates the recordkeeping recommendations. In § 250.23, paragraph (d) identifies the six categories of records. In § 250.24, paragraph (c) recommends that the annual review include a summary of the data compiled in each category and that the results of the annual review be made avilable to the public.

A commenter stated that the recordkeeping provisions should be requirements rather than recommendations. The commenter argues that EPA has full authority to make the recordkeeping provisions requirements and that the statutory basis is as firm as the basis for stating in § 250.23 that contracting officers must require vendors to submit estimates and certifications of re-refined oil content. EPA disagrees. Section 6002 clearly identifies what is required of procuring agencies, and recordkeeping is not included. On the other hand, contracting officers are required to obtain estimates and certifications from vendors. Section 6002 does not authorize EPA to require anything of procuring agencies, let alone recordkeeping. Thus, EPA can only recommend that procuring agencies keep records on procurements of items containing recovered materials.

V. Price, Competition, Availability, and Performance

As described above, Section 6002(c)(1) of RCRA provides that a procuring agency may decide not to purchase an item designated by EPA if it determines that the item is available only at an unreasonable price, a satisfactory level of competition cannot be maintained, the item it not reasonably available within a reasonable period of time, or the item fails to meet the performance standards. EPA has considered the effect of these limitations on paper and paper products containing recovered materials.

Commenters stated that EPA is requried under Section 6002(e) to provide detailed information about the availability, price, and performance of paper and paper products containing recovered materials. EPA has determined that such information varies significantly over short periods of time. Paper and paper products are made from virgin and recovered commodities which fluctuate in value according to supply and demand within the national and international economies. Even relative prices between paper products made with virgin or recovered fibers are subject to short-term fluctuations. Also, availability of paper and paper products made from recovered materials is a result of demand. Recent consolidation within the paper industry, the development of this guideline, and current activity to legislate preferences for recycled products at the state and local level, can all affect availability. Therefore, specific information about price and availability would not remain accurate long enough, at this point in time, to be useful in a guideline. General information is presented in this section. Information about performance has been obtained and is discussed above in Section III of the preamble.

A. Price

Section 6002 provides that a procuring agency may not purchase a designated item if the price is "unreasonable." Commenters on several of the procurement guidelines stated that a "reasonable price" includes price preferences. Each procuring agency may decide whether or not a "reasonable price" includes a price preference. RCRA Section 6002 does not provide explicit authority to EPA to authorize or recommend payment of a price preference or to create a set-aside. Therefore, unless an agency has an independent authority to provide a price preference or to create a set-aside, EPA believes that a price is "unreasonable" if it is greater than the price of a competing product made of virgin material.

However, it should be borne in mind that, when product specfications require a recovered material content, there is no way to guarantee that every item procured under those specifications was procured at a price no greater than the price that would have been paid in the absence of those specifications. On the contrary, EPA expects that there will be fluctuations in price in both directions. Therefore, EPA interprets the reasonable price provision of RCRA Section 6002(c)(1)(C) for those specifications to mean that there is no projected or observed long-term or average increase over the price of comparable items that do not contain recovered materials.

B. Competition

As with price, determinations of "satisfactory" competition must be made in accordance with Federal procurement law. For example, 48 CFR Part 14, Sealed Bidding, allows for award of bids even when a small number of bids have been received; see 48 CFR 14.407–1. In the case of negotiated contracts, 48 CFR 15.804–3(b) provides that competition exists if offers are solicited; two or more responsible offerors that can satisfy the Government's requirements submit price offers responsive to the solicitations' expressed requirements; and these offerors compete independently for a contract to be awarded to the responsible offeror submitting the lowest evaluated price.

The existing level of competition for paper and paper products containing recovered materials varies depending on the product. For a large majority of products, both virgin and recycled products coexist in the marketplace, with some manufacturers producing products from all-virgin materials, some using only recovered materials, and others using both. Thus, the minimum content standards will automatically exclude many potential bidders that market only virgin products. The percentage of bidders excluded depends on how the minimum content standards are set. EPA knows of no analytical methods of accurately setting minimum content standards that are low enough to assure satisfactory competition, and yet high enough to maximize the use of recovery materials, except through experience. Thus, EPA and procuring agencies must learn through trial and error how best to insure competition while fulfilling the primary goal of this guideline.

C. Availability

The Agency does not believe that procuring agencies should have to tolerate any unusual or unreasonable delays in obtaining paper or paper products containing recovered materials. The experiences of GSA and of states with affirmative procurement programs have shown that these products are generally available at all locations. One possible exception mentioned by some states is printing and writing paper. In some cases, delays have been incurred because of low levels of storage or warehousing in the vicinity of the procurement depot. However, as affirmative procurement programs prove effective, printing and writing papers containing waste paper should become more widely and consistently available, as are other paper and paper products containing postconsumer recovered materials.

Some commenters have suggested that EPA should provide assistance to procuring agencies in determining availability by identifying potential suppliers and by encouraging these suppliers to bid on government contracts. EPA has placed in the docket for this rulemaking lists of mills that manufacture paper or paper products using recovered materials, especially

printing and writing paper and tissue products. EPA will not place a list of mills in the guideline itself, however, because one purpose of the guideline is to encourage new suppliers, not to promote existing suppliers, and thus to encourage greater use of recovered materials. Procuring agencies also are in direct contact with paper vendors on a regular basis and can seek this information directly.

D. Performance

Product performance is discussed above in Section IV.E of the preamble.

VI. Implementation

Different parts of Section 6002 refer to different dates by which procuring agencies must have completed or initiated a required activity: (1) May 8, 1986 (i.e., 18 months after enactment of HSWA); (2) one year after the date of publication of an EPA guideline; and (3) the date specified in EPA guidelines. As a result, there is some confusion with respect to which activities must be completed or initiated by each date. This section of the preamble explains these requirements.

First, under Section 6002(d)(1), Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items must eliminate from such specifications any exclusion of recovered materials and any requirements that items be manufactured from virgin materials. This activity was required to be completed by May 8, 1986.

Second, procuring agencies must assure that their specifications for procurement items designated by EPA require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item [Section 6002(d)(2)]. In addition, procuring agencies must develop an affirmative procurement program for purchasing items designated by EPA, in this instance, paper and paper products containing recovered materials [Section 6002(i)(1)]. Both of these activities must be completed within one year after the date of publication of a guideline by EPA. Because the revised guideline issued today supersedes the final guideline issued on October 6, 1987, specification revisions and development of an affirmative procurement program for paper and paper products must be completed within one year from today.

Third, after the date specified by EPA in the applicable guideline, procuring agencies that procure items designated by EPA must begin procurement of such items containing the highest percentage of recovered materials practicable [Section 6002(c)(1)]. In addition, contracting officers must require venders to submit estimates and certifications of recovered materials content [Section 6002(c)(3)].

With respect to this third set of requirements, EPA believes that procuring agencies should begin to procure paper and paper products containing recovered materials as soon as the specification revisions have been completed and the affirmative procurement programs have been developed. As stated, these latter activities must be completed within one year after publication of a guideline. Again, because the revised guideline published today supersedes the final guideline published on October 6, 1987, to be consistent with the statutory requirements, EPA has concluded that affirmative procurement should begin one year from today.

To clarify this point, EPA has added § 250.25 to the final guideline which states procuring agencies must begin procurement of paper and paper products containing recovered materials one year from the date of publication of this revised guideline as a final rule.

EPA expects cooperation from affected procuring agencies in implementing this guideline. Under Section 6002(g) of RCRA, the Office of Federal Procurement Policy (OFPP), in cooperation with EPA, is responsible for overseeing implementation of the requirements of Section 6002 and for coordinating it with other Federal procurement policies. OFPP is required to report to Congress on actions taken by Federal agencies to implement Section 6002.

VII. Summary of Supporting Analyses

A. General

The preamble to the final paper guideline included a discussion of the technical material supporting the guideline, 52 FR 37305 (October 6, 1987). That material is applicable to the revised guideline as well. In addition, as indicated in the preamble, EPA has added technical material supporting the revised minimum content standard for corrugated boxes and solid fiber boxes, as well as the cotton fiber paper minimum content standard.

B. Environmental and Energy Impacts

Concerns about the high volumes and cost of solid waste disposal and the difficulty many communities are having in locating new disposal sites, as well as Congressional mandate, were the chief reasons for the final paper guideline. EPA has not concluded that there will be any significant environmental impact, positive or negative, from the Federal procurement of paper and paper products containing recovered materials.

The energy advantage varies from product to product and mill to mill as well as between users of virgin and recovered materials. Recycled feedstocks seem to be a minor factor. EPA has concluded that the energy efficiency between mills, be they virgin or recycling, is greater than the difference in energy efficiency between the two types of mills, which tends to reduce the importance of this issue.

C. Volume Reduction and Cost Impacts of Reducing Paper Disposal in Landfills

This was explained in full in the preamble to the final paper guideline, 52 FR 37304 (October 6, 1987).

D. Executive Order No. 12291

Under Executive Order (E.O.) No. 12291, regulations must be classified as major or nonmajor. E.O. No. 12291 establishes the following criteria for a regulation to qualify as a major rule:

1. An annual effect on the economy of $100 million or more;
2. A major increase in costs or prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions; or
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federal purchases of paper and paper products do not constitute a large enough share of these markets for industry to make manufacturing decisions that are not otherwise economically feasible in order to meet Federal procurement requirements. In fact, some Federal procurement policies have been modified in recent years to conform more closely to common commercial standards for some paper products, e.g., toilet tissue. The flexibility allowed to the procuring agencies in implementing an affirmative procurement program should make it possible to make adjustments if any adverse market dislocation or decrease in competition should occur.

Because of the number of items included in the paper and paper product categories and the number of procurement actions taken by procuring agencies each year, some agencies may find it necessary to initially allocate additional resources to implement this guideline. However, the flexibility allowed and the practices recommended in this guideline are intended to avoid on-going increased expenditures by

procuring agencies. For example, EPA has recommended that the procedure for estimating and certifying recovered materials content be simple and that it be consistent with the procuring agency's usual contracting procedure.

On the basis of the above information and on more extensive data in the rulemaking docket, the Agency earlier concluded that the final paper guideline was a nonmajor rule. The revisions to the guideline have not changed this conclusion.

This document has been submitted to the Office of Management and Budget (OMB) for review as required by E.O. No. 12291.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions), unless the Administrator certifies that the rule will not have significant economic impact on a substantial number of small entities.

Because of the $10,000 threshold, EPA does not expect a substantial number of small entities to be affected by this guideline. The Agency also believes that the flexibile approach to procurement of paper and paper products containing recovered materials provided for in this guideline will not impose a significant regulatory or economic burden on small procuring agencies, manufacturers, vendors, or contract printers. Detailed information on this assessment can be found in the RCRA docket for this guideline.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this guideline will not have a significant economic impact on a substantial number of small entities. Therefore, this guideline does not require a Regulatory Flexibility Analysis.

List of Subjects in 40 CFR Part 250

Forest and forest products, Government contracts, Government procurement, Packaging and containers, Paper, Postconsumer materials, Recovered materials, Recycling, Resource recovery, Waste paper.

Dated: June 16, 1988.

Lee M. Thomas,

Administrotor.

For the reasons set out in the Preamble, Part 250 of Title 40 of the Code of Federal Regulations is revised to read as follows:

PART 250—GUIDELINE FOR FEDERAL PROCUREMENT OF PAPER AND PAPER PRODUCTS CONTAINING RECOVERED MATERIALS

Subpart A—General

Sec.

250.1 Purpose.
250.2 Designation.
250.3 Applicability.
250.4 Definitions.

Subpart B—Revisions and Additions to Paper and Paper Product Specifications

250.10 Introduction
250.11 Elimination of recovered materials exclusion.
250.12 Requirement of recovered materials content.
250.13 Exclusion of products containing recovered materials that do not meet reasonable performance standards.
250.14 New specifications.

Subpart C—Affirmative Procurement Program

250.20 General.
250.21 Recovered materials preference program.
250.22 Promotion program.
250.33 Estimates, certification, and verification.
250.24 Annual review and monitoring.
250.25 Implementation.

Authority: 42 U.S.C. 6912(a) and 6962.

Subpart A—General

§ 250.1 Purpose.

(a) The purpose of this guideline is to assist procuring agencies in complying with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended, as that section applies to paper and paper products designated in § 250.2 of this part.

(b) This guideline contains recommendations for implementing the requirements of section 6002 of RCRA, including the revision of specifications and the establishment of an affirmative program for the procurement of paper and paper products containing recovered materials. The guideline also makes recommendations concerning solicitations for bids and estimation, certification, and verification procedures. In addition, the guideline sets dates for implementation.

(c) The Agency believes that adherence to the practices recommended in the guideline constitutes compliance with section 6002 of RCRA, as it relates to the purchase of paper and paper products containing recovered materials.

§ 250.2 Designation.

Under section 6002(e)(1) of RCRA, paper and paper products are designated as items which can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of section 6002 of RCRA. As used in this guideline, the term "paper and paper products" does not include building and construction paper grades.

§ 250.3 Applicability.

(a) This guideline applies to all paper and paper products purchased with appropriated Federal funds.

(b)(1) This guideline applies to all procuring agencies and to all procurement actions involving paper and paper products where the procuring agency purchases $10,000 or more worth of one of these items during the course of a fiscal year, or where the cost of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more.

(2) This guideline applies to Federal agencies, to State or local agencies using appropriated Federal funds, and to persons contracting with any such agencies with respect to work performed under such contracts. Federal agencies should note that the requirements of RCRA section 6002 apply to them whether or not appropriated Federal funds are used for procurement of items designated by EPA.

(3) The $10,000 threshold applies to procuring agencies as a whole rather than to agency subgroups such as regional offices or subagencies.

(c) For purposes of the $10,000 threshold, each item listed in each category below is considered to be functionally equivalent to every other item in the category:

(1) All grades and types of xerographic/copy paper;

(2) Newsprint;

(3) All grades and types of printing and writing paper;

(4) Corrugated and fiberboard boxes;

(5) Folding boxboard and cartons;

(6) Stationery, office papers (e.g., memo pads, scratch pads), envelopes, and manifold business forms including computer paper;

(7) Toilet tissue, paper towels, facial tissue, paper napkins, doilies, and industrial wipers; and

(8) Brown papers and coarse papers.

(d) Procurement actions covered by this guideline include:

(1) All purchases of paper and paper products made directly by a procuring agency or by any person contracting with any such agency with respect to work being performed under such

contract, for example, contract printing; and,

(2) Indirect purchases of paper and paper products made by a procuring agency, such as purchasing resulting from Federal grants, loans, and similar forms of disbursements of monies that the procuring agency intended to be used for the procurement of paper or paper products.

(e) Purchases of paper and paper products that are unrelated or incidental to Federal funding, i.e., not the direct result of a Federal contract, grant, loan, funds disbursement, or agreement with a procuring agency, are not covered by this guideline.

§ 250.4 Definitions.

As used in this guideline, the following terms shall have the meaning indicated below:

(a) "Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.;*

(b) "Bleached papers" means paper made of pulp that has been treated with bleaching agents;

(c) "Bond paper" means a generic category of paper used in a variety of end use applications such as forms (see "form bond"), offset printing, copy paper, stationery, etc. In the paper industry, the term was originally very specific but is now very general.

(d) "Book paper" means a generic category of papers produced in a variety of forms, weights, and finishes for use in books and other graphic arts applications, and related grades such as tablet, envelope, and converting papers;

(e) "Brown papers" means papers usually made from unbleached kraft pulp and used for bags, sacks, wrapping paper, and so forth;

(f) "Coarse papers" means papers used for industrial purposes, as distinguished from those used for cultural or sanitary purposes;

(g) "Computer paper" means a type of paper used in manifold business forms produced in rolls and/or fan folded. It is used with computers and word processors to print out data, information, letters, advertising, etc. It is commonly called computer printout;

(h) "Corrugated boxes" means boxes made of corrugated paperboard, which, in turn, is made from a fluted corrugating medium pasted to two flat sheets of paperboard (linerboard); multiple layers may be used;

(i) "Cotton fiber content papers" means paper that contains a minimum of 25 percent and up to 100 percent cellulose fibers derived from lint cotton, cotton linters, and cotton or linen cloth cuttings. It is also known as rag content paper or rag paper. It is used for stationery, currency, ledgers, wedding invitations, maps, and other specialty papers;

(j) "Cover stock" or "Cover paper" means a heavyweight paper commonly used for covers, books, brochures, pamphlets, and the like;

(k) "Doilies" means paper place mats used on food service trays in hospitals and other institutions;

(l) "Duplicator paper" means writing papers used for masters or copy sheets in the aniline ink or hectograph process of reproduction (commonly called spirit machines);

(m) "Envelopes" means brown, manila, padded, or other mailing envelopes not included with "stationery;"

(n) "Facial tissue" means a class of soft absorbent papers in the sanitary tissue group;

(o) "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including a government corporation, and the Government Printing Office;

(p) "Fiber or fiberboard boxes" means boxes made from containerboard, either solid fiber or corrugated paperboard (general term); or boxes made from solid paperboard of the same material throughout (specific term);

(q) "Folding boxboard" means a paperboard suitable for the manufacture of folding cartons;

(r) "Form bond" means a lightweight commodity paper designed primarily for business forms including computer printout and carbonless paper forms. (See manifold business forms);

(s) "Industrial wipers" means paper towels especially made for industrial cleaning and wiping;

(t) "Ledger paper" means a type of paper generally used in a broad variety of recordkeeping type applications such as in accounting machines.

(u) "Manifold business forms" means a type of product manufactured by business forms manufacturers that is commonly produced as marginally punched continuous forms in small rolls or fan folded sets with or without carbon paper interleaving. It has a wide variety of uses such as invoices, purchase orders, office memoranda, shipping orders, and computer printout;

(v) "Mill broke" means any paper waste generated in a paper mill prior to completion of the papermaking process. It is usually returned directly to the pulping process. Mill broke is excluded from the definition of "recovered materials;"

(w) "Mimeo paper" means a grade of writing paper used for making copies on stencil duplicating machines;

(x) "Newsprint" means paper of the type generally used in the publication of newspapers or special publications like the *Congressional Record.* It is made primarily from mechanical wood pulps combined with some chemical wood pulp;

(y) "Office papers" means note pads, loose-leaf fillers, tablets, and other papers commonly used in offices, but not defined elsewhere;

(z) "Offset printing paper" means an uncoated or coated paper designed for offset lithography;

(aa) "Paper" means one of two broad subdivisions of paper products, the other being paperboard. Paper is generally lighter in basis weight, thinner, and more flexible than paperboard. Sheets 0.012 inch or less in thickness are generally classified as paper. Its primary uses are for printing, writing, wrapping, and sanitary purposes. However, in this guideline, the term paper is also used as a generic term that includes both paper and paperboard. It includes the following types of papers: bleached paper, bond paper, book paper, brown paper, coarse paper, computer paper, cotton fiber content paper, cover stock or cover paper, duplicator paper, form bond, ledger paper, manifold business forms, mimeo paper, newsprint, office papers, offset printing paper, printing paper, stationery, tabulating paper, unbleached papers, writing paper, and xerographic/copy paper.

(bb) "Paper napkins" means special tissues, white or colored, plain or printed, usually folded, and made in a variety of sizes for use during meals or with beverages;

(cc) "Paper product" means any item manufactured from paper or paperboard. The term "paper product" is used in this guideline to distinguish such items as boxes, doilies, and paper towels from printing and writing papers. It includes the following types of products: corrugated boxes, doilies, envelopes, facial tissue, fiberboard boxes, folding boxboard, industrial wipers, paper napkins, paper towels, tabulating cards, and toilet tissue;

(dd) "Paper towels" means paper toweling in folded sheets, or in raw form, for use in drying or cleaning, or where quick absorption is required;

(ee) "Paperboard" means one of the two broad subdivisions of paper, the other being paper itself. Paperboard is usually heavier in basis weight and thicker than paper. Sheets 0.012 inch or more in thickness are generally classified as paperboard. The broad

classes of paperboard are containerboard, which is used for corrugated boxes; boxboard, which is principally used to make cartons; and all other paperboard;

(ff) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

(gg) "Practicable" means capable of being used consistent with: performance in accordance with applicable specifications, availability at a reasonable price, availability within a reasonable period of time, and maintenance of a satisfactory level of competition;

(hh) "Printing paper" means paper designed for printing, other than newsprint, such as offset and book paper;

(ii) "Procurement item" means any device, good, substance, material, product, or other item, whether real or personal property, that is the subject of any purchase, barter, or other exchange made to procure such item;

(jj) "Procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State that is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract;

(kk) "Recovered materials" means waste material and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term "recovered materials" includes:

(1) Postconsumer materials such as:

(i) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end usage as a consumer item, including: Used corrugated boxes, old newspapers, old magazines, mixed waste paper, tabulating cards, and used cordage, and,

(ii) All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste; and

(2) Manufacturing, forest residues, and other wastes such as:

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(iii) Fibrous by-products of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;

(iv) Wastes generated by the conversion of goods made from fibrous material (e.g., waste rope from cordage manufacture, textile mill waste, and cuttings); and

(v) Fibers recovered from waste water that otherwise would enter the waste stream;

(ll) "Recyclable paper" means any paper separated at its point of discard or from the solid waste stream for utilization as a raw material in the manufacture of a new product. It is often called "waste paper" or "paper stock." Not all paper in the waste stream is recyclable; if may be heavily contaminated or otherwise unusable.

(mm) "Specification" means a detailed description of the technical requirements for materials, products, or services that specifies the minimum requirement for quality and construction of materials and equipment necessary for an acceptable product. Specifications are generally in the form of a written description, drawings, prints, commercial designations, industry standards, and other descriptive references;

(nn) "State" means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(oo) "Stationery" means writing paper suitable for pen and ink, pencil, or typing. Matching envelopes are included in this definition.

(pp) "Tabulating cards" means cards used in automatic tabulating machines; "Tabulating paper" means paper used in tabulating forms for use on automatic data processing equipment;

(qq) "Toilet tissue" means a sanitary tissue paper. The principal characteristics are softness, absorbency, cleanliness, and adequate strength (considering easy disposability). It is marketed in rolls of varying sizes or in interleaved packages;

(rr) "Unbleached papers" means papers made of pulp that have not been treated with bleaching agents;

(ss) "Waste paper" means any of the following "recovered materials":

(1) Postconsumer materials such as:

(i) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end usage as a consumer item, including: Used corrugated boxes, old newspapers, old magazines, mixed waste paper, tabulating cards, and used cordage, and

(ii) All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste; and

(2) Manufacturing, forest residues, and other wastes such as:

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: Envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and;

(ii) Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(tt) "Writing paper" means a paper suitable for pen and ink, pencil, typewriter or printing;

(uu) "Xerographic/copy paper" means any grade of paper suitable for copying by the xerographic process (a dry method of reproduction).

Subpart B—Revisions and Additions to Paper and Paper Product Specifications

§ 250.10 Introduction.

This subpart offers guidance to Federal agencies that draft or review specifications for paper and paper products. As used in this subpart, the term "postconsumer recovered materials" refers to waste paper in the case of printing and writing papers and to recovered materials in the case of cotton fiber papers.

§ 250.11 Elimination of recovered materials exclusion.

By May 8, 1986, each Federal agency was required to assure that its specifications do not unfairly discriminate against the use of postconsumer recovered materials. At a

minimum, except as provided in § 250.13 of this Part, each Federal agency was required to:

(a) Revise those specifications, standards, and procedures that require that paper and paper products contain only virgin materials to eliminate this restriction; and

(b) Revise those specifications, standards, and procedures that prohibit using postconsumer recovered materials in paper and paper products to eliminate this restriction.

§ 250.12 Requirement of recovered materials content.

(a) Within one year of publication of this revised guideline, paper and paper product specifications must require the use of postconsumer recovered materials to the maximum extent possible without jeopardizing the intended end use of the paper or paper product.

(b) Specifications that are unnecessarily stringent for a particular end use and that bear no relation to function, such as brightness and whiteness for copy paper, should be revised in order to allow for a higher use of postconsumer recovered materials. Specifications that bear no relation to function should be revised according to the agency's established review procedure. In determining the relationship to function of existing specifications, Federal agencies should make maximum use of existing voluntary standards and research by organizations such as the American Society for Testing and Materials' Committees D6, D10, and F5; the Technical Association of the Pulp and Paper Industry; and the American Institute of Paper Chemistry.

§ 250.13 Exclusion of products containing recovered materials that do not meet reasonable performance standards.

(a) Notwithstanding the requirements of §§ 250.11 and 250.12 of this Part, Federal agencies need not revise specifications to allow or require the use of postconsumer recovered materials if it can be determined that for technical reasons, for a particular end use, a product containing such materials will not meet reasonable performance standards.

(b) Any determination under this section should be documented by the drafting and reviewing agency and be based on technical performance information related to a specific item, not a grade of paper or type of product. Agencies should reference such documentation in subsequent solicitations for the specific item in order to avoid repetition of previously documented points.

§ 250.14 New specifications.

When paper or a paper product containing postconsumer recovered materials is produced in types and grades not previously available, specifications should be revised to allow use of such type or grade, or new specifications should be developed for such type or grade. EPA recommends that procuring agencies monitor new developments and use them to increase the use of postconsumer recovered materials as appropriate.

Subpart C—Affirmative Procurement Program

§ 250.20 General.

(a) Within one year after the date of publication of this revised guideline, procuring agencies which procure paper and paper products must establish an affirmative procurement program for such items. The program must meet the requirements of section 6002(i) of RCRA, including the establishment of a preference program; a promotion program; procedures for obtaining estimates and certification of postconsumer recovered materials content and for verifying the estimates and certifications; and an annual review and monitoring program. This subpart provides recommendations for implementing section 6002(i).

(b) As used in this subpart, the term "postconsumer recovered materials" refers to waste paper in the case of printing and writing grades and to recovered materials in the case of cotton fiber papers.

§ 250.21 Recovered materials preference program.

(a)(1) EPA recommends that procuring agencies establish minimum recovered materials content standards that assure that the postconsumer recovered materials content required is the maximum available without jeopardizing the intended end use of the item or violating the limitations of Section 6002(c)(1) (A) through (C) of the Act.

(2) EPA recommends that procuring agencies set their minimum content levels at the highest levels that meet the statutory requirements but no lower than the levels shown in Table 1.

TABLE 1.—EPA RECOMMENDED MINIMUM CONTENT STANDARDS OF SELECTED PAPERS AND PAPER PRODUCTS

	Minimum percentage of recovered materials	Minimum percentage of postconsumer recovered materials	Minimum percentage of waste paper [1]
Newsprint		40	
High grade bleached printing and writing papers:			
Offset printing			50
Mimeo and duplicator paper			50
Writing (stationery)			50
Office paper (e.g., note pads)			50
Paper for high-speed copiers			(2)
Envelopes			50
Form bond including computer paper and carbonless			(2)
Book papers			50
Bond papers			50
Ledger			50
Cover stock			50
Cotton fiber papers	25		
Tissue products:			
Toilet tissue		20	
Paper towels		40	
Paper napkins		30	

TABLE 1.—EPA RECOMMENDED MINIMUM CONTENT STANDARDS OF SELECTED PAPERS AND PAPER PRODUCTS—Continued

	Minimum percentage of recovered materials	Minimum percentage of postconsumer recovered materials	Minimum percentage of waste paper [1]
Facial tissue		5	
Doilies		40	
Industrial wipers		0	
Unbleached packaging:			
Corrugated boxes		35	
Fiber boxes		35	
Brown papers (e.g., bags)		5	
Recycled paperboard:			
Recycled paperboard products including folding cartons		80	
Pad backing		90	

[1] Waste paper is defined in Section 250.4 and refers to specified postconsumer and other recovered materials.
[2] EPA found insufficient production of these papers with recycled content to assure adequate competition.

(3) Minimum content standards should be reviewed annually based on procurement experiences, including data compiled on postconsumer recovered materials content, as recommended in § 250.23(c) of this part.

(b) The recommendations in paragraphs (a) (1) and (2) of this section, as well as any other affirmative procurement program that an agency may adopt, are subject to the following limitations provided in section 6002(c)(1) of RCRA:

(1) Maintenance of a satisfactory level of competition;

(2) Availability within a reasonable period of time;

(3) Ability to meet the performance specifications in the invitation for bids;

(4) Availability at a reasonable price.

(c) Procuring agencies should make determinations regarding competition and availability in accordance with the Federal Acquisition Regulation (FAR), 48 CFR Ch. 1 *et seq.*

§ 250.22 Promotion program.

EPA recommends that procuring agencies consider all possible promotional methods including the following:

(a) A special notation prominently displayed in any paper or paper product procurement solicitation or invitation to bid.

(b) A statement in each paper specification defining "postconsumer recovered materials," "waste paper," or "recovered materials," as applicable, as they are defined in § 250.4 of this part.

(c) A brief statement in advertisements of bids describing the preference program. Such advertisements should be placed in the *Commerce Business Daily* and periodicals commonly read by vendors of paper and paper products containing postconsumer recovered materials.

(d) Catalog listings of available products (such as GSA's Office Supplies) indicating which paper or paper product contains postconsumer recovered materials.

(e) Discussion of the preference program at bidders' conferences or similar meetings of potential bidders.

(f) Announcements in recycling journals, trade magazines, and procurement publications.

§ 250.23 Estimates, certification, and verification.

(a) Agencies must require vendors to estimate the total percentage of postconsumer recovered materials in paper and paper products supplied to them.

(b) Agencies must require vendors to certify the minimum postconsumer recovered materials to be used in the performance of a contract.

(c) There must be reasonable verification procedures for estimates and certifications, e.g., the procuring agency may state in solicitations for bids that, in the case of a bidder's protest, all estimates and certifications will be subject to audits of mill records.

(d) For each paper or paper product procured, agencies should maintain the following records:

(1) The percentage of postconsumer recovered materials in the products procured or offered;

(2) Comparative price information on competitive procurements;

(3) The quantity of each item procured over a fiscal year;

(4) The availability of the paper and paper products to procuring agencies;

(5) Type of performance tests conducted, together with the categories of paper or paper products containing postconsumer recovered materials that failed the tests; the percentage of total virgin products and products containing postconsumer recovered materials, respectively, that failed each test; and the nature of the failure;

(6) Agency experience with the performance of the procured products.

§ 250.24 Annual review and monitoring.

(a) Each procuring agency must conduct an annual review and monitoring of the effectiveness of its affirmative procurement program.

(b) EPA recommends that the annual review include the following items:

(1) An estimate of the quantity of paper and paper products purchased containing postconsumer recovered materials and the total quantity of paper and paper products purchased.

(2) A review of the variation between estimates and certifications of postconsumer recovered materials content in paper and paper products purchased during the year. If the variations are significant, procuring agencies should determine whether minimum content standards can be introduced or raised without causing a long-term increase in price.

(c) Procuring agencies should prepare a report on their annual review and monitoring of the effectiveness of their procurement programs and make the report available to the public. The report should contain the following information:

(1) If the case-by-case approach is being used, a demonstration that they procure paper and paper products containing postconsumer recovered materials to the maximum extent practicable. The basis for this determination should be a review of the data compiled on recovered materials content, price, availability, and performance, as well as a comparison of estimates and certifications provided by the vendors.

(2) If the minimum content standards approach is being used, a determination of whether the minimum content standards in use should be raised, lowered, or remain constant for each item. The basis for these determinations should be a review of the data compiled on postconsumer recovered materials content, price, availability, and performance, as well as a comparison of estimates and certifications provided by the vendors.

(3) Documentation of specification revisions made during the year.

§ 250.25 Implementation.

(a) Procuring agencies must complete specification revisions in accordance with RCRA section 6002(d)(2) and development of affirmative procurement programs in accordance with RCRA section 6002(i) within one year from the date of publication of this revised guideline.

(b) Procuring agencies must begin procurement of paper and paper products containing postconsumer recovered materials in compliance with RCRA section 6002, one year from the date of publication of this revised guideline.

[FR Doc. 88-13917 Filed 6-21-88; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Wednesday
June 22, 1988

Part VIII

Department of Health and Human Services

Family Support Administration

45 CFR Part 1080

Emergency Community Services Homeless Grant Program; Interim Final Rule With Request for Comments

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 1080

Emergency Community Services Homeless Grant Program

AGENCY: Family Support Administration (FSA), HHS Office of Community Services (OCS).

ACTION: Interim final rule with request for comments.

SUMMARY: OCS is issuing interim final regulations for the disbursement of funds for the Emergency Community Services Homeless Grant Program (EHP) established by the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77), with a request for comments. The regulations establish procedures that States, territories, Indian tribes, and other organizations must follow to apply for and use the funds appropriated for this program.

DATES: The effective date of this interim final rule is June 22, 1988, except for § 1080.8 (Reporting Requirements). The effective date for § 1080.8 will be announced in a separate document. Consideration will be given to comments received by July 22, 1988. We will consider all comments submitted and revise these rules if necessary.

ADDRESS: Address comments in writing to: Director, Office of Community Services, Department of Health and Human Services, Attention: EHP Regs, 330 Independence Avenue SW., Washington, DC 20201.

Please address a copy of comments on information collection requirements to: Allison Herron, EOMB Desk Officer for OCS, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503.

If you prefer, you may deliver your comments to Room 5600, Wilbur Cohen Building, 330 Independence Avenue SW., Washington, DC, or to Room 2038, Mary E. Switzer Building, 330 C Street SW., Washington, DC.

Comments will be available for public inspection as they are received, beginning approximately July 13, 1988, in Room 2038 of the Department's offices in the Mary E. Switzer Building at 330 C Street SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202/475–0418).

FOR FURTHER INFORMATION CONTACT: Janet Fox, (202) 475–0432.

SUPPLEMENTARY INFORMATION: The Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, signed July 22, 1987) established a number of programs to assist homeless persons, including the Emergency Community Services Homeless Grant Program (EHP) (Title VII, Subtitle D, Sec. 751–754 and 762 of Pub. L. 100–77). The program is operated by the Office of Community Services (OCS) within the Family Support Administration (FSA) of HHS. The McKinney Act provides that the funds appropriated for the EHP program are to be distributed to States that receive funds under the Community Service Block Grant (CSBG) program (42 U.S.C. 9901 *et seq.*), using the allocation formula that applies to the CSBG program. In addition, the Act sets aside EHP funds to be awarded directly to certain Indian tribes.

The McKinney Act authorized appropriations of $40 million for each of fiscal years 1987 and 1988 for the EHP program. Congress later appropriated $36.6 million for FY 1987 and $19.148 million for FY 1988. Congress made it clear in the conference report and floor debate on the Act that the FY 1987 funds were intended to meet the critically urgent needs of homeless people during the Winter of 1987–88, and that agencies were to act quickly to implement the legislation. Given this clear statement of Congressional intent and the fact that the McKinney Act was not signed into law until July 22, 1987, OCS distributed FY 1987 funds in the fall of 1987 without issuing new regulations. These interim final regulations apply to funds appropriated for fiscal years 1988 and thereafter, and generally follow the procedures used for FY 1987 funds. We have kept these regulations to a minimum, consistent with the Department's policy of allowing maximum flexibility to the States and localities in providing services to their citizens.

Justification for Dispensing With Notice of Proposed Rulemaking

This Administrative Procedure Act creates an exception to general notice and comment rulemaking procedures where the agency for good cause finds that those procedures are impracticable, unnecessary, or contrary to the public interest. The McKinney Act and its legislative history indicate that Congress intended to provide funds to augment existing programs and services available to the homeless at the local level, to assist the homeless in accessing these programs and services, and to develop new or increased non-federal sources of funding for assistance to the homeless. Congress chose community action agencies, organizations serving migrant and seasonal farmworkers, and tribal organizations because of its awareness that these organizations already provided significant services to the homeless and because this would avoid creating a new administrative structure for disbursing the funds. In keeping with this view of the purpose of the Emergency Community Services Homeless Grant Program, in general these regulations are narrowly drawn to avoid imposing additional obligations or requirements on States, tribes, or the public. They reflect the requirements of the McKinney Act and include minimal fiscal, administrative, and reporting requirements, drawn from current regulations applicable to Departmental block grants, needed to insure the proper and efficient use of Federal funds. We therefore believe that notice of proposed rulemaking is unnecessary. In addition, notice and comment rulemaking is impracticable, since States and OCS must have time after implementation of a final rule to submit applications for EHP funds, to review the applications for approval, and to disburse the funds according to the prescribed formula. This must occur before the end of fiscal year 1988 to maintain the availability of Federal funds. We therefore are implementing these regulations through interim final publication.

Section-by-Section Analysis

Section 1080.1 Scope.

The regulations apply to the Emergency Community Services Homeless Grant Program.

Section 1080.2 Definitions.

The regulations include definitions of "homeless individual" and "Indian tribe" that are taken directly from the McKinney Act. The McKinney Act limits the definition of Indian tribes to federally-recognized tribes, a difference from the CSBG program, which allows direct grants by OCS to both federally and state-recognized tribes.

"State" is defined to include the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau. This definition is consistent with that used for the CSBG program.

Section 1080.3 Allocation of funds.

The regulations implement the McKinney Act requirement that the EHP funds be allocated to States that receive funds under the CSBG Act, using the allocation formula that applies to CSBG, as set out in section 674(a)(1) of Pub. L. 97–35 (42 U.S.C. 9903(a)(1)).

Section 1080.4 Eligible use of funds.

As required by Pub. L. 100–77, the regulations state that grant recipients may use EHP funds only to: (1) Expand comprehensive services to homeless individuals to provide follow-up and long-term services to help them make the transition out of poverty; (2) provide assistance in obtaining social and maintenance services and income support services for homeless individuals; and (3) promote private sector and other assistance to homeless individuals.

Section 1080.5 Application procedures for states.

Under the terms of the McKinney Act, a State must apply to OCS for the EHP funds. These regulations specify that State applications must be submitted by August 8, 1988, for FY 1988 funds, and for future years at a time established by the Secretary.

Applications can be in any format, but must describe the agencies, organizations, and activities the State intends to support with the funds received. The application must also include statutorily required assurances that the State will award all the funds to community action agencies eligible to receive funds under section 675(c)(2)(A) of the CSBG Act (42 U.S.C. 9904(c)(2)(A)), organizations serving migrant and seasonal farmworkers, and certain other organizations that received FY 1984 CSBG funds from a State under special waiver provisions included in Pub. L. 98–139. (There are about 40 "special waiver" organizations located in only 3 States—Colorado, Utah, and Wyoming). Not less than ninety percent of the amounts must go to eligible organizations that were providing services to meet the critically urgent needs of homeless individuals as of January 1, 1987. The funds may not be used to supplant or replace other homeless assistance programs administered by the State, or to defray State administrative expenses.

Section 1080.6 Funding of alternative organizations.

Under the McKinney Act, if a State fails to apply for its share of the available funds or does not submit an approvable application, the Secretary is to award the State's allocation to other organizations within the State. Only those organizations eligible for funding by the State under the EHP program (e.g., community action agencies, organizations serving migrant and seasonal farmworkers, and "special waiver" recipient organizations) may receive funding under this section. Not less than ninety percent of the funds must be awarded to such organizations that were serving the homeless as of January 1, 1987. These interim final regulations provide that the Secretary will award all of the funds to eligible organizations in the State involved, in the same proportion as the State distributed its CSBG funds to those organizations for the previous fiscal year. States generally update their CSBG distribution formulas annually to account for shifts in populations. Using the State's most recent formula to distribute EHP funds will allow the Secretary to allocate funds to those areas the State has recently deemed most in need.

Section 1080.7 Funding of Indian tribes.

Section 762 of the McKinney Act specifies that not less than 1.5 percent of any funds appropriated for EHP are to be set aside and distributed by OCS directly to Indian tribes. In order for a tribe to make effective use of the limited EHP funds, we believe that it would already need to be administering Federal assistance programs with similar purposes and administrative structures. In addition, if the over 500 federally-recognized Indian tribes (including Alaskan Native villages) all applied for the relatively small amount of money available ($549,000 for 1987 and $287,220 for 1988), proportionate distribution would result in many grants too small to be effective. Similarly, the amount of funds is too small to justify competitive grant awards. Given this situation, OCS distributed FY 1987 funds only to those tribes that applied for and received CSBG direct grants for FY 1988 (since the funds were actually allocated in FY 1988), and established a minimum grant amount of $1,000. For 1987, 74 tribes were funded under this provision.

We believe that the same circumstances which guided the allocation of FY 1987 funds continue to apply to the EHP program for FY 1988. Accordingly, these regulations state that only those federally-recognized tribes that apply for and receive CSBG funds directly from the Office of Community Services in any fiscal year will be eligible to receive direct grants of EHP funds from OCS for that year. A minimum grant award amount is also established. Rather than the single $1000 minimum award used for FY 1987 funds, however, the regulations specify that those tribes that would otherwise receive between $1 and $500 under the allocation formula would have that amount raised to $500. Those tribes that would receive between $501 and $999 will instead receive a $1000 award. Given the limited amount of funds available for Indian tribes and the small size of some of the tribes, OCS determined that this two-step minimum grant award process would result in a more equitable distribution of funds.

The regulations do not require Indian tribes to submit an EHP application because we believe that a separate application requirement would be too burdensome, given the small amount of funds involved. Eligible federally-recognized Indian tribes that apply for a CSBG direct grant under section 674(c) of the CSBG Act (42 U.S.C. 9903(c)) will be considered to have applied for an EHP grant. Acceptance of its CSBG application will constitute approval of an EHP grant for an Indian tribe.

Indian Funding Formula

The Indian set-aside funds will be allocated to eligible tribes on the basis of the size of the tribe's population living in poverty. The tribe's poverty population will be determined by multiplying its overall population by the rural poverty rate for Indians in the State in which the tribe is located. Each tribe's poverty population will then be compared to the total poverty population of all tribes funded under this section to determine its share of the funds, adjusted if necessary to reflect the minimum grant award. The regulations specify that the figures used to calculate the size of a tribe's poverty population will be those established by OCS for the purposes of making direct grant awards to Indian tribes for the CSBG program. Any changes made to those figures by OCS will also be applied to the EHP program.

As an example, if a tribe with a total population of 3,000 is located in a State where the Indian rural poverty rate is 50%, the tribe's poverty population will be 1500 (3,000×50%=1,500). If 5 tribes with a total poverty population of 10,000 were funded, then one tribe with a poverty population of 1500 would receive 15% of the available funds (1,500 divided by 10,000=15%). If the total EHP set-aside funds available were $20,000, this tribe would receive $3,000 ($20,000×15%=$3,000). If the allocation calculated under this formula came to less than the minimum grant amount of $500 or $1,000, the amount would be adjusted up to that amount, and the allocations for the other tribes would be adjusted down proportionately to accommodate it.

We believe this formula improves upon the method used for FY 1987 funds, which were allocated to tribes on the basis of the CSBG allocation formula. That method was used because it was

well-known and was immediately available to disburse funds quickly during the 1987–88 winter season. For future years, we considered several options for distribution, including continued use of the CSBG formula. However, the amount of funds allocated to a tribe under the CSBG formula is based upon a tribe's share of a State's allocation, while the EHP funds are set-aside for distribution on a national basis, without reference to a tribe's share of State funds. In calculating allocations based on the CSBG formula, we found that two tribes of similar overall size and poverty populations could receive significantly different amounts of funds depending on the State in which they were located. We have modified the allocation method for FY 1988 and thereafter to avoid this result.

Another option we considered was an allocation based strictly upon overall tribal population. In the interests of providing tribes with maximum funding based on poverty, we did not choose this option. Ideally, we would like to disburse funds on the basis of the number of homeless Indians in each tribe. However, there are no uniformly available figures on homeless Indians by tribe.

For all these reasons, we have determined that the best available allocation formula at this time is based upon the relative size of the poverty populations of eligible tribes.

Section 1080.8 Reporting requirements.

These regulations require all EHP grant recipients to report annually to OCS on their implementation of the EHP program. The report is to indicate the types of activities funded, the number of individuals served, and any impediments to homeless individuals' use of the program or to their obtaining services or benefits under the program. The report may be in any format, but must be submitted within 6 months of the end of the period covered by the report (e.g., the report will be due by March 31 for the fiscal year which ended on September 30 of the previous year). We would strongly encourage grantees, however, to submit their reports by December 31 of each year, while the details of the program are still fresh. This information will allow HHS to fulfill its obligation under section 203(c) of the McKinney Act to report annually to Congress and the Interagency Council on the Homeless on the implementation and effectiveness of the programs funded by the Act.

Section 1080.9 Other requirements.

The McKinney Act is silent on a number of administrative details necessary to ensure that EHP funds are spent as intended by the law. We have determined that the best way to ensure that the intent of Congress is carried out is to make the EHP program subject to a few selected regulations that are currently applicable to the HHS block grant programs, including CSBG.

These interim final regulations apply to EHP the payment regulations applicable to the HHS block grant programs (45 U.S.C. Part 96, Subpart B, § 96.12, as amended). Those block grant regulations provide that the Secretary will make payments to the grantees at such times and in such amounts as are consistent with section 203 of the Intergovernmental Cooperation Act (42 U.S.C. 4213) and Treasury Circular No. 1075 (31 CFR Part 205). Those regulations in essence are intended to limit the amount of time elapsing between a grantee's acquisition of federal funds and their expenditure, and mean that many awards may be disbursed in more than one payment, rather than in a lump sum, thus reducing federal interest costs.

The regulations make the HHS block grant regulations concerning the time period for obligation and expenditure of funds (45 U.S.C. Part 96, Subpart B, § 96.14) applicable to EHP. Those regulations provide that funds that a State has not obligated by the end of the fiscal year in which they were first allotted will remain available for obligation during the following fiscal year.

Also applying to EHP are the financial management and audit regulations applicable to the HHS block grant programs (45 U.S.C. Part 96, Subpart C, as amended). Those regulations require States to obligate and expend federal grant funds in accordance with the laws and procedures applicable to the obligation and expenditure of their own funds. Those regulations also require States and tribes that receive over $100,000 in federal grant funds from all sources to conduct a single audit of all federal financial assistance under the terms of the Single Audit Act (Pub. L. 98–502). States and Indian tribes that receive between $25,000 and $100,000 in federal grants may either conduct a single audit or an audit that meets the statutory requirements of that program. Since the McKinney Act does not prescribe audit requirements for EHP, these grantees must also conduct a single audit. States or tribes that receive less than $25,000 in federal funds from all sources are not subject to federal audit requirements. The HHS block audit regulations specify reporting deadlines for audits, and lay out procedures for the repayment of funds found by the audit to have been spent improperly. The block grant regulations also identify the Regional Office of Investigations of the Department's Office of Inspector General as the agency to which States and Indian tribes should report information relating to possible fraud or other offenses against the United States.

These regulations also specify that all EHP grants are subject to the enforcement regulations applicable to the HHS block grant programs (45 CFR Part 96, Subpart E, as amended). Those regulations establish procedures for accepting and responding to complaints that a recipient has improperly spent federal funds. They include the right to a hearing on the complaint, appeal rights, and repayment of funds.

Finally, the EHP regulations state that grant recipients are subject to the hearing procedures regulations applicable to the HHS block grant programs (45 CFR Part 96, Subpart F). Those regulations specify the procedures and time requirements for a hearing.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more or has certain other specified effects. The Department has determined that these regulations are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of $100 million or more, or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 6), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities," an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses, small nonprofit organizations, and small governmental entities. The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. For these reasons, the

Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements in a proposed or final rule. These regulations require grant recipients to submit an annual report to OCS on their implementation of the EHP program and any impediments to homeless individuals' use of the program or to their obtaining services or benefits under the program. This information is essential so that HHS can fulfill its obligation under section 203(c) of the McKinney Act to report to Congress and the Interagency Council on the Homeless on the implementation and effectiveness of the programs funded by the Act. The Office of Community Services has submitted information to the Office of Management and Budget requesting approval of the reporting requirement. A copy of any comments on these paperwork requirements should be sent to Allison Herron, EOMB Desk Officer for OCS, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503.

List of Subjects in 45 CFR Part 1080

Administrative practices and procedures, Community action programs, Grant programs—social, Homeless assistance.

For the reasons set forth in the preamble, Part 1080 is added to Title 45 of the Code of Federal Regulations as follows:

PART 1080—EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM

Sec.

1080.1 Scope.
1080.2 Definitions.
1080.3 Allocation of funds.
1080.4 Eligible use of funds.
1080.5 Application procedures for States.
1080.6 Funding of alternative organizations.
1080.7 Funding of Indian tribes.
1080.8 Reporting requirements.
1080.9 Other requirements.

Authority: 42 U.S.C. 11302 (101 Stat. 485); 42 U.S.C. 11461–11464, 11472 (101 Stat. 532–533).

§ 1080.1 Scope.

This part applies to the Emergency Community Services Homeless Grant Program.

§ 1080.2 Definitions.

(a) "Homeless" or "homeless individual" includes:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term "homeless" or "homeless individual" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(b) "State" includes the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

(c) "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), that is recognized by the Federal Government as eligible for special programs and services provided to Indians because of their status as Indians.

§ 1080.3 Allocation of funds.

From the amounts made available under the Emergency Community Services Homeless Grant Program, the Secretary shall make grants to States that administer programs under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*). Such grants shall be allocated to the States in accordance with the formula set forth in section 674(a)(1) of such Act (42 U.S.C. 9903(a)(1)).

§ 1080.4 Eligible use of funds.

Amounts awarded under the Emergency Community Services Homeless Grant Program may be used only for the following purposes:

(a) Expansion of comprehensive services to homeless individuals to provide follow-up and long-term services to help them make the transition out of poverty;

(b) Provision of assistance in obtaining social and maintenance services and income support services for homeless individuals; and

(c) Promotion of private sector and other assistance to homeless individuals.

§ 1080.5 Application procedures for States.

(a) Each State requesting funds under the Emergency Community Services Homeless Grant Program shall submit an application for funds for each fiscal year. For fiscal year 1988, the application shall be submitted no later than August 8, 1988. In succeeding fiscal years, the application shall be submitted at a time established by the Secretary.

(b) The application may be in any format, but must include a description of the agencies, organizations, and activities that the State intends to support with the amounts received. In addition, the application must include the following assurances:

(1) The State will award all of the amounts it receives to:

(i) Community action agencies that are eligible to receive amounts under section 675(c)(2)(A) of the Community Services Block Grant Act (42 U.S.C. 9904(c)(2)(A));

(ii) Organizations serving migrant and seasonal farmworkers; and

(iii) Any organization to which a State, that applied for and received a waiver from the Secretary under Pub. L. 98-139, made a grant under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*) for fiscal year 1984;

(2) Not less than 90 percent of the amounts received shall be awarded to agencies and organizations meeting the requirements of paragraph (b)(1) of this section that, as of January 1, 1987, were providing services to meet the critically urgent needs of homeless individuals;

(3) No amount received will be used to supplant other programs for homeless individuals administered by the State; and

(4) No amount received will be used to defray State administrative costs.

§ 1080.6 Funding of alternative organizations.

(a) If a State does not apply for or submit an approvable application for a grant under the Emergency Community Services Homeless Grant Program, the Secretary shall use the amounts that would have been allocated to that State to make grants to agencies and organizations in the State that meet the requirements of § 1080.5(b) (1) and (2) of this chapter.

(b) The amounts allocated under this section in any fiscal year shall be awarded to eligible agencies and organizations in the same proportion as

funds distributed to those agencies and organizations by the State for the previous fiscal year under the Community Services Block Grant Program (42 U.S.C. 9904(c)(2)(A)).

§ 1080.7 Funding of Indian tribes.

(a) Not less than 1.5 percent of the funds provided in each fiscal year for the Emergency Community Services Homeless Grant Program shall be allocated by the Secretary directly to Indian tribes that have applied for and received a direct grant award under section 674(c) of the Community Services Block Grant Act (42 U.S.C. 9903(c)) for that fiscal year.

(b) An Indian tribe funded under this section is not required to submit an application for Emergency Community Services Homeless Grant Program funds. A tribe's application for a direct grant award under section 674(c) of the Community Services Block Grant Act (42 U.S.C. 9903(c)) that is submitted by September 1 for the succeeding fiscal year will be considered as an application for Emergency Community Services Homeless Grant Program funds for that fiscal year. Acceptance of the Community Services Block Grant application will constitute approval of an award of funds under this section.

(c) Funds allocated under this section shall be allotted to an Indian tribe in an amount that bears the same ratio to all the funds allocated under this section as the tribe's poverty population bears to the total poverty population of all tribes funded under this section, except that no tribe shall receive an amount of less than:

(1) $500, for those tribes whose allocation under this section would otherwise be at least $1 but no more than $500; or

(2) $1000, for those tribes whose allocation under this section would otherwise be at least $501 but less than $1000.

(d) For purposes of this section, an Indian tribe's poverty population shall be calculated by multiplying the tribe's overall population by the Indian rural poverty rate for the State in which it is located, using the population and rural poverty rate figures established for the purposes of making direct grants under section 674(c) of the Community Services Block Grant Act (42 U.S.C. 9903(c)).

§ 1080.8 Reporting requirements.

Each recipient of funds under the Emergency Community Services Homeless Grant Program shall submit an annual report to the Secretary, within 6 months of the end of the period covered by the report, on the expenditure of funds and the implementation of the program for that fiscal year. The report is to state the types of activities funded, the number of individuals served and any impediments, inlcluding statutory and regulatory restrictions to homeless individuals' use of the program and to their obtaining services or benefits under the programs.

§ 1080.9 Other requirements.

All recipients of grants under the Emergency Community Services Homeless Grant Program shall be subject to the following regulations applicable to the block grant programs in the Department of Health and Human Services:

(a) 45 CFR Part 96, Subpart B, § 96.12—Grant Payment, concerning the timing and method of disbursing grant awards;

(b) 45 CFR Part 96, Subpart B, § 96.14—Time Period for Obligation and Expenditure of Grant Funds, as amended, concerning the availability of grant funds.

(c) 45 CFR Part 96, Subpart C—Financial Management, as amended, concerning the financial management and audit requirements;

(d) 45 CFR Part 96, Subpart E—Enforcement, as amended, concerning the enforcement and complaint procedures; and

(e) 45 CFR Part 96, Subpart F—Hearing Procedures, concerning the hearing procedures.

Wayne A. Stanton,

Administrator, Family Support Administration.

Date: April 25, 1988.

Otis R. Bowen,

Secretary, Department of Health and Human Services.

Date: June 2, 1988.

[FR Doc. 88-14110 Filed 6-20-88; 11:23 a.m.]

BILLING CODE 4150-04-M

Federal Register

Wednesday
June 22, 1988

Part IX

Department of Transportation

14 CFR Part 382

Nondiscrimination on the Basis of Handicap in Air Travel; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

14 CFR Part 382

[Docket 45657; Notice 88-9]

Nondiscrimination on the Basis of Handicap in Air Travel

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department is proposing a rule to implement the Air Carrier Access Act of 1986. The proposed rule would prohibit discrimination by air carriers on the basis of handicap consistent with the safe carriage of all passengers. The proposed rule would also establish enforcement procedures for the rule's provisions.

DATE: Comments should be received by September 20, 1988. Late-filed comments will be considered to the extent practicable.

ADDRESS: Comments should be sent to Docket Clerk, Docket No. 45657, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Room 4107. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide duplicate copies of their comments. Comments will be available for inspection at this address Monday through Friday from 9:00 a.m. through 5:30 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590. Telephone 202-366-9306 (voice); 202-755-7687 (TDD).

SUPPLEMENTARY INFORMATION:

Background

Air carrier policies and practices concerning disabled passengers have long been a troublesome and controversial subject. Many disabled passengers have objected to airline policies that they view as inconvenient, unnecessary, and discriminatory. Disabled passengers have also expressed concern about the seeming inconsistency of airline policies, asserting that it is often difficult for them to know, from one airline to the next or even from one terminal or flight crew to the next on the same airline, what conditions will be imposed on their ability to travel. Air carriers, on the other hand, have defened some of these policies as being necessary for safety, for economics, or for the convenience of pasengers.

In 1982, the Civil Aeronautics Board (CAB) promulgated 14 CFR Part 382, a regulation intended to prohibit discrimination on the basis of handicap by certificated air carriers (i.e., the larger airlines) and commuter air carriers. The regulation was divided into Subpart A (a general prohibition of discrimination), Subpart B (specific requirements for service to disabled passengers) and Subpart C (recordkeeping, reporting, and enforcement provisions). Only Subpart A applied to all certificated and commuter carriers. Subparts B and C applied only to those carriers who received a direct Federal subsidy under the Essential Air Service program.

The legal authority for the regulation included section 504 of the Rehabilitation Act of 1973, as amended (which prohibits discrimination on the basis of handicap in Federally-assisted programs), section 404(a) of the Federal Aviation Act of 1958, as amended (which requires carriers to provide "safe and adequate" service), and section 404(b) of the latter Act (which prohibited "unjust discrimination" in air transportation; this subsection has since lapsed).

The Paralyzed Veterans of America (PVA) sued the CAB, arguing that even nonsubsidized carriers receive significant Federal assistance in the form of Federal Aviation Administration (FAA) air traffic control services and airport and airway improvement grants. Consequently, PVA said, all portions of the rule should apply to all carriers. The U.S. Court of Appeals for the District of Columbia agreed. After its review of the case, the Supreme Court decided, in June 1986, that nonsubsidized carriers did not receive Federal financial assistance and, therefore, were not covered by section 504. The result of this decision was to leave Part 382 in effect, without change.

In response to the Supreme Court decision, Congress enacts the Air Carrier Access Act of 1986, which President Reagan signed into law on October 2, 1986. The Act amended Section 404 of the Federal Aviation Act to prohibit discrimination on the basis of handicap by all air carriers. It also directed the Department to promulgate regulations to implement its provisions by January 31, 1987.

In August 1986, in response to correspondence from blind individuals and members of Congress, the Department published an informational notice requesting comment on a series of issues of concern to blind air travelers. The Department received several hundred comments on that notice, which have been taken into account in the development of this NPRM.

To develop regulations to implement the Air Carrier Access Act, the Department was urged by groups representing persons with disabilities to use the regulatory negotiation technique to develop proposed and final regulations. In agreeing to use this technique, the Department was aware that it could not meet the statutory deadline for issuing final regulations. However, groups representing persons with disabilities preferred this approach even though it would delay the issurance of this NPRM. In regulatory negotiation, the Department convenes an advisory committee under the Federal Advisory Committee Act. The committee consists of representatives of interests affected by the rulemaking. In this case, disability groups represented on the committee included the Paralyzed Veterans of America, the National Council on Independent Living, the American Council of the Blind, National Association of Protection and Advocacy Systems, and the Society for Advancement of Travel of the Handicapped. Air travel industry representatives included the Air Transport Association, Regional Airline Association, National Air Carrier Association, Airport Operators Council International/American Association of Airport Executives, and the Association of Flight Attendants. In addition to the Department, the Architectural and Transportation Barriers Compliance Board represented the Federal government's interest. A neutral mediator from the Federal Mediation and Conciliation Service chaired the committee.

The advisory committee met from June through November 1987. The group tentatively agreed on a substantial number of issues and produced consensus recommendations for proposed regulatory language on these points. Substantial progress was made, and differences narrowed, on several other issues. The negotiations were not completed, however, due to an impasse over the issue of exit row seat restrictions. As a result of this impasse, the parties never came to a formal vote or consensus (i.e., a sign-off) on the entire package. Consequently, agreements reflected in this NPRM, while significant, are, it should be

emphasized, of a preliminary or tentiative nature.

The Department, with the assistance of the FMCS mediator and staff of Senator Robert Dole, a primary sponsor of the Air Carrier Access Act, attempted for two months to resolve this impasse. However, the mediator determined in December that it appeared that negotiations would not be able to resume, recommending to the Department that it proceed with the publication of this NPRM. The Department has not terminated the advisory committee, which can continue to serve as a means of receiving advice and views of interested parties in this rulemaking. For example, it is possible that the Department could meet with members of the committee to discuss comments on this NPRM following the end of the comment period, or a continuation of the regulatory negotiation process.

The Department wishes to thank the members of the advisory committee for their efforts. These efforts are reflected in this NPRM. Where the members of the committee agreed upon proposed provisions for the rule, the Department is publishing these proposals as part of this NPRM with no, or only minor, revisions. Where the members of the committee made progress on, but did not agree about, regulatory provisions, the Department is basing its proposal on the committee's discussions. The section-by-section analysis will identify the provisions based on committee discussion that did not produce agreement. In the latter cases, the section-by-section analysis will discuss which parties took which positions.

The Air Carrier Access Act

The following is the text of the Air Carrier Access Act of 1986:

Section 404 of the Federal Aviation Act of 1958 (49 U.S.C. 1374) is amended by adding at the end thereof the following new subsection:

PROHIBITION ON DISCRIMINATION AGAINST HANDICAPPED INDIVIDUALS

(c)(1) No air carrier may discriminate against any otherwise qualified handicapped individual, by reason of such handicap, in the provision of air transportation.

(2) For the purposes of paragraph (1) of this subsection the term 'handicapped individual' means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Sec. 3 Within one hundred and twenty days after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations to ensure nondiscriminatory treatment of qualified handicapped individuals consistent with safe carriage of all passengers on air carriers.

The legislative history of this statute stressed three major themes. First, the statute was enacted in response to *Department of Transportation* v. *Paralyzed Veterans of America*, the Supreme Court decision holding that Subparts B and C of the existing 14 CFR Part 382 could apply only to carriers directly receiving Federal financial assistance. Second, the legislation responds to Congress's concern about leaving "handicapped air travelers subject to the possibility of discriminatory, inconsistent and unpredictable treatment on the part of air carriers." (Sen. Rept. 99-400, Aug. 13, 1986, p.2) Both the Senate Report and floor statements supporting the bill by Senators Dole, Cranston, and Metzenbaum emphasized both these points.

Perhaps the most important theme in the legislative history concerned the relationship between nondiscrimination and safety. The statute itself directs the Department to promulgate rules to ensure nondiscriminatory treatment of qualified handicapped individuals "consistent with the safe carriage of all passengers on air carriers."

The Senate Report discussed this relationship at several points. The statute "does not mandate any compromise of existing DOT or Federal Aviation Administration (FAA) safety regulations." (Id. at 2) It was intended that the airlines will not "impose upon handicapped travelers any regulations or restrictions unrelated to safety and unrelated to the nature and extent of any individual's handicap." (Id. at 4) The Department's rules are intended to "ensure the safe carriage of passengers" and to require that "any airline procedures applicable only to handicapped passengers be related to safety considerations." (Id.) In a floor statement, Senator Dole added that

> Our intent * * * is that so long as the procedures of each airline [concerning the transportation of disabled passengers] are safe as determined by the FAA, there should be no restrictions placed upon air travel by handicapped persons. Any restrictions that the procedures may impose must be only for safety reasons found necessary by the FAA.
>
> Beyond this, the Secretary of Transportation should review each airline's procedures in light of the regulations to be promulgated pursuant to [the Act] to ensure that the procedures of each airline do not contain discriminatory requirements. This review will be essential, in my judgment, for the uniform, timely, and effective implementation of this bill's nondiscrimination policy. *(Congressional Record*, August 15, 1986, at S11785).

Senator Cranston added that the Act (the language of which closely parallels that of section 504 of the Rehabilitation Act of 1973) was intended to fill in the gap in section 504 protection left as a result of the *DOT* v. *PVA* decision, a point with which Senators Dole and Metzenbaum agreed. (*Id.* at S11784, S11787).

The Department of Transportation supported the enactment of the Air Carrier Access Act and is committed to its implementation in the way intended by its supporters in Congress. Consequently, this regulation would prohibit discrimination against airline passengers with disabilities, both in general and with respect to a number of specific airline practices that have tended to deny travel opportunities to disabled passengers. As Congress intended, the Department proposes to review airline procedures to ensure that they are consistent with the provisions of the rule. The provisions of the rule and the DOT review of carrier procedures should also do much to increase the consistency and predictability of carriers' treatment of disabled passengers.

It is also essential, under the Act, that these regulations ensure nondiscrimination consistent with the safe carriage of all passengers. Consequently, it is the Department's intent that nothing in these regulations would cause carriers to take actions inconsistent with the safety requirements of the Federal Aviation Regulations (FARs).

The Air Carrier Access Act was intended to fill what Congress regarded as a gap in section 504 coverage resulting from the Supreme Court's decision in *DOT* v. *PVA*. The language of the statute parallels that of section 504. Consequently, the Department is persuaded that in determining the substantive requirements to be imposed under the statute, the Department should be guided by existing case law interpreting section 504. Specifically, the Department interprets its discretion in implementing the Act as constrained by *Southeastern Community College* v. *Davis*, 422 U.S. 397 (1979), *American Public Transit Association* v. *Lewis*, 665 F.2d 1272 (DC Cir., 1981), and following cases, which hold that a Federal agency may not, in carrying out section 504, impose undue financial or administrative burdens on regulated parties. In making regulatory decisions, the Department intends not to impose undue burdens on the carriers.

Section by Section Analysis

Section 382.1 Purpose.

This section would restate the purpose of the Air Carrier Access Act. It

would point out that the regulations are intended to ensure that handicapped persons have access to air transportation, that carriers not impose restrictions on such passengers except those necessary to the safe carriage of all passengers, and that carriers provide services to individuals that are predictable based on the requirements of the regulation. (Of course, services to disabled passengers are subject to the same vagaries as services to other passengers. This section is not intended to imply that airlines are required to provide better, or more consistent, services for one part of the flying public.)

Paragraph (c) states that the rule is not intended to impose undue financial and administrative burdens on carriers. This statement is consistent with case law interpretation of section 504 of the Rehabilitation Act. It should be noted that various specific sections of the proposed rule are designed to prevent the imposition of undue burdens on carriers (e.g., under § 382.41, retrofit of existing aircraft for accessibility is not required). The Department seeks comment on whether the rule should contain any additional provisions for providing relief to a carrier which believes it is having to incur an undue burden, beyond the exemption request mechanism of 49 CFR 5.11, which is available with respect to all DOT rules.

The advisory committee agreed on the substance of this section, except for the provision concerning predictable services, on which discussion had not been completed, and paragraph (c), which was added after the discussions had concluded. The Department has also made editorial changes to the committee draft.

Section 382.3 Applicability.

Paragraph (a) of this section, on which the committee agreed, would provide that this section applies to all air carriers providing air transportation. These terms are defined in section 382.5. The key point of this paragraph is that all such carriers are covered by the proposed rule whether or not they receive Federal financial assistance. This is consistent with the intent of Congress enacting the Act to solve the problem created by *DOT* v. *PVA*.

Subparagraph (b) lists those provisions of the proposed regulation which would not apply to indirect air carriers (this term is also defined in section 382.5). Indirect air carriers (e.g., tour packagers who do not themselves directly operate aircraft) fall within the scope of the Act. However, many provisions of the proposed regulation, by nature, apply solely or for the most part to persons who directly provide air transportation. These provisions include those pertaining to airport facilities, seat assignments, accessibility of aircraft, provision of services and equipment, storage of personal equipment, reimbursement and repair of mobility aids, provisions for persons with hearing impairments, miscellaneous requirements, passenger information provided on the aircraft, security screening, special charges, and training. It seems pointless, and possibly confusing, to impose these provisions on the indirect air carriers. The Department seeks comment on whether any of these provisions should apply to indirect air carriers, and, if so, how they would be meaningful if so applied. The Department also seeks comment on whether there should be additional requirements imposed through an indirect carrier when the carrier actualy providing service is not otherwise covered by the rule (e.g., is a foreign air carrier).

The National Air Carrier Association representative to the advisory committee suggested that certain charter flights be exempted from the requirements of the regulation. So-called private charters (e.g., a flight contracted for by a private organization for the use of its own members) were the group proposed for exemption. Members of disability groups did not favor such an exemption. On this issue, the Department does not believe there is a persuasive distinction to be drawn between private charters and other flights subject to coverage under the Act. There is no evidence in the statutory language or legislative history that Congress intended to exempt such charters. To the contrary, it appears that Congress sought broad coverage in order to ensure nondiscriminatory access by handicapped persons to air transportation. It does not appear reasonable to limit this access on the basis of who the party is who organizes a charter flight.

One important consequence of statutory language for the applicability of the regulation should be noted. The statute applies to air carriers engaged in air transporation. As defined in the Federal Aviation Act, these terms do not include foreign air carriers. Therefore, while these rules would apply to the overseas or foreign air transportation by U.S. carriers (e.g., a Pan American or TWA flight to Europe), they would not apply to the operations of foreign air carriers, even at U.S. points (e.g., a Qantas or SAS flight to the U.S.). The Department believes that it has no discretion in this matter, which is determined by the language of the Federal Aviation Act and the Air Carrier Access Act.

Paragraph (c) states that nothing in this rule would have the effect of either requiring or authorizing a carrier to disregard an FAA safety rule. This is true for future as well as current FAA rules which have been duly promulgated and made part of the Code of Federal Regulations (i.e., as distinct from subregulatory guidance or advice), as well as airworthiness directives.

Section 382.5 Definitions.

Several definitions used in the proposed rule come either directly from provisions of the Federal Aviation Act (air carrier, air transportation), derive clearly from it (indirect air carrier), or are simply shorthand designations for frequently used terms (DOT, OST, FAA). The definition of "facility" is derived from the existing 14 CFR Part 382. The definition of "handicapped person" is taken from the definition used in the Department's section 504 rule for financial assistance programs. (The Department is aware that the term "person with a disability" is viewed by many people as preferable to the term "handicapped individual". However, in view of the fact that the statute uses the latter term, we are using it in the regulation.) The members of the committee were in agreement with all these definitions. The Department has added, after the committee discussions concluded, a definition of scheduled air service, to distinguish it from on-demand service of this kind provided by many air taxi operations. It refers to flights listed in the Official Airline Guide, a standard reference publication for scheduled flights. Certain provisions of the rule apply only to carriers providing scheduled air service (e.g., the requirement for TDD reservation service).

The Air Carrier Access Act prohibits discrimination against "any otherwise qualified handicapped individual." The definition of this term in the existing Part 382 is the following:

(c) "Qualified handicapped person" means with respect to the provision of air transportation, a handicapped person:

(1) Who tenders payment for air transportation;

(2) Whose carriage will not violate the requirements of the Federal Aviation Regulations (Chapter I of this title) or, in the reasonable expectation of carrier personnel designated under § 382.13(a), jeopardize the safe completion of the flight or the health or safety of other persons; and

(3) Who is willing and able to comply with reasonable requests of airline personnel or, if not, is accompanied by a responsible adult passenger who can ensure that the requests

are complied with. A request will not be considered reasonable if:

(i) It is inconsistent with this part; or

(ii) It is neither safety-related nor necessary for the provision of air transportation.

The Senate Report on the Air Carrier Access Act states that the phrase "otherwise qualified handicapped person" in the statute is intended to be consistent with this regulatory definition.

The Department is proposing a simpler definition. What does any person have to do to be "qualified" to fly as a passenger on an airline? The person has to buy a ticket (or otherwise validly obtain one, as through a gift or a frequent-flier coupon) and show up for the flight, as well as meet other reasonable, nondiscriminatory requirements applicable to all passengers (e.g., pass through a security screening and other requirements that are part of the contract of carriage). It is not clear that a handicapped person has to do anything more than this in order to be qualified to be a passenger. Consequently, the Department is proposing to define the term in this way: A qualified handicapped person is one who (1) takes the actions necessary to use ground transportation, information, or other services provided by a carrier for the public, with reasonable accommodations provided by the carrier, as needed; (2) buys (or offers to buy) a ticket (a "ticket," for this purpose, would include a "frequent flier coupon" or a denied boarding compensation voucher); (3) having purchased the ticket, presents himself or herself at the airport for transportation and (4) meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers. The Department seeks comment on whether this fourth condition should specifically include willingness to follow reasonable requests from carriers' personnel which are consistent with this Part and applicable FAA regulations. Discussion on this definition was not complete at the time the negotiations concluded.

In context of the rest of the regulation, the Department believes that this proposed definition is consistent with the existing Part 382 definition, as the Senate Report recommended. First, carriers are required to comply with FAA regulations concerning the carriage of all passengers, whether or not handicapped. A passenger who cannot be carried without violating an FAA regulation cannot be carried, regardless of disability. Consequently, this feature of the existing definition would be present in the implementation of the proposed rule. Second, under existing authorities (49 U.S.C. 1511 and 14 CFR 91.3; see discussion under the "Refusal of Service" section), carrier personnel have the authority to exclude from a flight a person who could jeopardize the safety of the flight or of other passengers. Again, these authorities apply with respect to all passengers, whether or not disabled. This feature of the existing regulation would also be present in the implementation of the proposed rule.

The provision in the existing definition of willingness and ability to comply with reasonable, safety-related requests of airline personnel is, in reality, a substantive provision concerning the situations in which attendants for disabled passengers may be required by the carrier. Consequently, the Department is proposing to incorporate this concept in the provision concerning attendants, rather than in this definition (see discussion concerning § 382.23(a)).

Section 382.7 General prohibition of discrimination.

The proposed regulation contains a number of very specific requirements intended to resolve many of the particular problems and issues that have arisen in the provision of air travel to persons with disabilities. It is also important, however, to have a general statement of the principle that carriers may not unjustly discriminate.

In addition to restating the main point of the statute, this section is intended to emphasize that not only the carriers themselves, but also other parties through whom the carrier provides services to the traveling public, must avoid discrimination in the provision of air transportation.

The section would prohibit a carrier from discriminating "directly or through contractual, licensing, or other arrangements." This means that the actions of contractors, licensees, or other parties with which a carrier has business arrangements are the responsibility of the carrier. For example, carriers have business arrangements with travel agents to sell their tickets. If the travel agent refused to sell a ticket to a disabled person on the basis of handicap, the carrier would be subject to enforcement action from the Department. A carrier may contract out services that it provides to passengers; it may not contract away its responsibilities under this regulation.

In addition to discrimination as such, certain other actions would be prohibited. First, the carrier could not require a handicapped person to accept special services that the person did not ask for or want. For example, carriers typically offer to disabled persons the opportunity to preboard the aircraft. This provision would ensure that carriers could not make this service mandatory. The Department seeks comment on whether this prohibition would make it too difficult for carriers to give individual safety briefings required by 14 CFR 121.571, or whether there are instances in which carriers should be allowed to require disabled persons to preboard the aircraft. A similar point is that carriers, while they may offer special services to disabled persons, cannot deny disabled persons the benefits or services afforded to other passengers (e.g., normal services or amenities offered to all passengers for their comfort and convenience).

The final point in this section is that a carrier could not retaliate in any way against a handicapped individual because that individual is asserting or has asserted his or her rights under the Air Carrier Access Act or these regulations. The use of the word "retaliation" was the only unresolved point of contention involving this section, about which the parties to the negotiation otherwise were in agreement. Carrier representatives suggested that a gentler term (e.g., take adverse action) would be more appropriate, as it was less likely to suggest that carriers would act in bad faith. Disability group members at one point agreed to the latter term, but later renewed their request to use "retaliate". The Department believes the use of "retaliate" is appropriate. The word is direct, understandable, and is used in a wide variety of existing civil rights regulations. We do not believe that it implies that carriers will generally act in bad faith. A provision of this kind, whatever terms it uses, is needed in order to prevent an individual who may vigorously assert his rights, for example, from being regarded as a troublemaker who is then denied the opportunity to fly.

The Department seeks comments on a difficult problem that may occasionally occur. Suppose a disabled individual books a flight, the scheduled aircraft for which will accommodate him or her. However, because of an equipment change for mechanical or economic reasons, a smaller aircraft is actually used for the flight. The smaller aircraft cannot accommodate the disabled passenger (see for example paragraph

§ 382.45(b)). The carrier has not violated these rules, so no compensation under § 382.69 is called for. The passenger has not been "bumped" because of overbooking, so 14 CFR Part 250 (the Department's denied boarding compensation rule) does not apply. Should there be any recompense to the disabled passenger? If so, on what rationale, and through what kind of regulatory mechanism, should it be provided?

Section 382.9 Assurance from contractors.

This section is related to the coverage of the activities that carriers "contract out" to other parties, which was discussed in connection with § 382.7. That section states that carriers may not discriminate directly or through contractural, licensing, or other arrangements. This section would provide a mechanism through which the carriers would carry out this responsibility. All carrier contracts with parties who provide services directly to passengers (e.g., security or baggage services as opposed to refueling services for aircraft), including licenses and other arrangements and including agreements of appointment with travel agents, would have to include a written assurance of nondiscrimination. This assurance would give the carrier the ability, as a matter of its contractural relationship with the contractor, to take corrective action in the event that the contractor acted in a discriminatory manner towards a handicapped individual. There was agreement on this provision among the members of the committee.

The Department seeks comment on whether the text of a contractural assurance should be included as part of this section and, if so, what it should say. In addition, the Department wishes to point out that it is not, through this section, attempting directly to regulate contractors or travel agents. Nor is the scope of the assurance intended to go beyond the avoidance of discrimination in activities performed on behalf of the carriers. For example, a travel agent would be bound, under its agreement of appointment with a carrier and the assurance contained in it, to avoid discrimination in selling tickets for the airline. The travel agent would not be bound by the assurance to avoid discrimination in selling tickets for cruise ships or, in most cases, to alter its offices for physical accessibility. (There could be circumstances in which physical alterations could be required, if there were no other way of providing the services the contractor carries out on behalf of the carrier.)

Section 382.11 Airport facilities and services.

The Department's 1979 section 504 rule (49 CFR Part 27) covered Federally-assisted airport facilities. Section 27.71 of this regulation concerned both the accessibility of physical facilities and the availability of airport services to disabled persons. To some extent, this section was based on a misunderstanding of the relationships between airport operators and air carriers at airports, since it assumed that airport operators typically controlled some facilities and services which in fact are often provided by the carriers. The Department is now better aware of the varied relationships among carriers and airport operators, and we believe that both an amendment to § 27.71 in the 504 rule and a section in the revised Part 382 are needed.

The Department expects to publish in the near future, as a companion piece to this section, a proposed rule to modify § 27.71. It is the Department's intent that this amendment would be substantively parallel to the proposed § 382.11 published in this notice. The Department seeks the comments of airport operators as well as carriers and consumers on § 382.11.

The provision of this regulation would cover air carriers where and to the extent that the carriers control a given facility or service. The amendment to § 27.71, to be proposed in the future, would cover Federally-assisted airport operator where and to the extent they control a given facility or service. Each facility or service would be covered (except a facility or service controlled by an airport operator not receiving Federal assistance). However, a given facility or service might be covered by Part 27 at one airport and by Part 382 at another airport, depending on the operator-carrier relationship at each airport. It is also possible, in some situations, that a carrier and an airport operator may jointly control a facility or provide a service, in which cases both regulations would apply.

The Department seeks comment on how to determine which party—the carrier or the airport, or both—has compliance responsibility in a given situation. In this connection, small air carriers have expressed the concern that they would be made to bear a disproportionate amount of the responsibility in situations where they have a short-term lease on facilities at an airport. The Department seeks comment on how responsibility should be apportioned in such situations. The Department intends the proposed § 382.11 to require basically the same accessibility features as the present § 27.71.

The structure of the proposed provision is simplified, compared to the existing § 27.71, by the presence of the Uniform Federal Accessibility Standards (UFAS). These standards, which had not been published at the time of the 1979 section 504 rule, cover some of the specific accommodations required in the existing §27.71. Because compliance with UFAS (or substantially equivelent standards) will meet accessibility requirements under this section, it is not necessary to repeat matters covered by the UFAS. Several provisions in the present § 27.71 not specifically mentioned in the UFAS are set out, including those pertaining to terminal design and passenger flow, ticketing areas, baggage areas, terminal information systems, loading bridges, and the availability of telecommunications devices for the deaf (TDDs).

The Department intends, for example, concerning baggage areas, that accessibility would involve the absence of barriers preventing a disabled person from maneuvering near the claim area to get his or her bags, not extensive, expensive, complicated new systems to provide baggage to the passenger. Carriers would have three year to bring their terminal facilities into compliance with these requirements.

Section 382.21 Refusal of service.

The most important right protected by this regulation is the right to get onto an aircraft and fly to a destination. If a handicapped person is refused service, then all the other accommodations and protections established by the regulation would be meaningless to the person. Consequently, this section would provide that refusals of service would be prohibited except where the regulation explicitly permits service to be refused. There was agreement on this general point among the parties to the negotiation; there was not agreement on the specifies of the situations in which refusals of service would be permitted, however.

Paragraph (b) of the proposed section would provide that a carrier shall not refuse to provide transportation to a handicapped person solely because the person's handicap results in appearance or involuntary behavior that may offend, annoy, or inconvenience other passengers or crew members. Unfortunately, some individuals may react negatively to the appearance of persons with certain disabilities. This is not a reason for denying service to the disabled persons.

A more complex problem may occur when the involuntary behavior resulting from a disability disturbs other persons. For example, persons with Tourette's Syndrome may swear or make other loud noises that other people find very upsetting. It is not to minimize the discomfort of other passengers or crew members to assert that, so long as the disruption caused by the person's involuntary behavior does not rise to the level of interfering with crew duties so as to endanger the safety of the flight or of other persons, the disable person's right to airline service under the Act outweights other persons' natural desire for a comfortable flight.

One disagreement about this paragraph concerned the request of air carrier representatives for a reference to section 902(j) of the Federal Aviation Act and 14 CFR 91.8 which prohibits anyone from assaulting, threatening, or interfering with crew members in the performance of their duties. A number of disability group representatives said it was inappropriate to include in a nondiscrimination rule a suggestion that disable persons threaten, assault, or interfere with crew members. One disability group also was concerned lest inclusion of such a reference be taken to mean that assertion by handicapped persons of their rights could be viewed as "interference" with crew members.

In our view, it is not necessary to include this reference in the text of the proposed rule itself. The FAA rule stands on its own, and it is not necessary to mention it here to give it effect. This is fully consistent with the intent of this NPRM: nondiscrimination consistent with safety. Obviously, interference with the activities of crewmembers can have adverse safety consequences. It is not discriminatory to insist that all passengers, whether or not disabled, avoid such interference. On the other hand, the mere presence of a handicapped person—even one whose involuntary behavior may annoy, offend, or inconvenience a crewmember—does not interfere with a crewmember's duties, though it may make the duties of a flight attendant, for example, more onerous than is usually the case. Likewise, we do not believe it necessary to state in the proposed rule that assertion of rights by disabled persons does not constitute interference with the duties of crewmembers. Obviously, whether or not such an assertion constitutes interference with the duties of a crewmember depends on the way in which the assertion is made. Rational argument is one thing; a physical confrontation is a very different matter.

Subparagraph (c) is concerned with three provisions that give airline personnel substantial discretion to exclude persons from flights. 49 U.S.C. 1511 gives the carrier authority to refuse transportation to anyone who would or might be inimical to the safety of flight. While apparently enacted originally in response to concern over hijackings of aircraft, the discretion it confers is not limited to excluding persons who might be thought to pose a threat of terrorism. The second provision, 14 CFR 91.3, gives the pilot-in-command ultimate authority over matters affecting the flights. The third, 14 CFR 121.533, concerns the responsibility and authority of the pilot in command for the safety and operation of the aircraft and everyone on it.

In advisory committee discussions, carrier representatives argued that carriers needed the discretion given by these two sections to make judgments in situations that are unclear or not directly covered by the proposed rules. Disability group representatives, on the other hand, argued that exercises of discretion under these provisions could be contrary to the Air Carrier Access Act. The Department believes that this regulation cannot, as a legal, policy, or safety matter, preclude pilots-in-command from making on-the-spot decisions necessary to their functions. At the same time, the Department believes, and this NPRM proposes, that carriers and pilots must exercise their discretion consistent with the provisions of this regulation.

The Department envisions that the provisions would work as follows: If, for example, a pilot-in-command made the decision that he or she would not provide transportation to a disabled passenger, that decision would not be subject to being overruled on the spot by other personnel on the basis of Part 382. However, if the action were later determined to be inconsistent with the rule, the carrier would be subject to enforcement action under § 382.69. Since pilots and other airline personnel are presumably instructed by their employers to follow the carrier's procedures concerning handicapped passengers, and since these procedures will have to be reviewed and approved by the Department we believe that exercises of discretion by carrier personnel under these provisions that are contrary to Part 382 are likely to be infrequent.

This subparagraph also would interact with subparagraph (b). That subparagraph would prohibit a denial of service because a handicapped person's involuntary behavior annoyed, offended, or inconvenienced a crewmember. However, if the annoyance or inconvenience rose to the level of being inimical to the safety of flight, then the carrier could appropriately refuse or terminate service. Different judgments could reasonably be made concerning the same person in different situations. For example, a person with Tourette's Syndrome might annoy passengers or crew on a 757, but the person could not be denied service because his behavior, however annoying, in the reasonable judgment of carrier personnel, did not genuinely have an adverse impact on safety. The same passenger, in a four or six-seat air taxi, could be so disruptive to the concentration of the pilot as to adversely affect safety. In this situation, the passenger could arguably be denied transportation on the basis of the carrier's judgment about his effect on safety.

Subparagraph (d) concerns the difficult issue of the setting of limits on the number of handicapped individuals permitted in a given flight. The issue affects primarily non-ambulatory persons. (All parties to the negotiation agreed that the issue of number limits did not affect handicapped persons who travel with an attendant or to blind or deaf persons who do not have a mobility impairment.) Air carrier representatives argued that the number of unaccompanied mobility-impaired individuals that should be permitted on a flight should be limited to the number of floor-level exits on the aircraft. This type of limit is consistent with many existing carrier procedures, they said. The basis for such limits is that, as one would assume and as studies have shown, persons with mobility impairments take longer to get out of an aircraft than persons without such impairments. Many nonambulatory persons could require assistance from other persons in an evacuation. The more such persons on an aircraft, the slower the actual evacuation time. The FAA requires an aircraft to be evacuated in 90 seconds in order for the aircraft to be certificated.

Representatives of disability groups contended that any number limit was burdensome. On aircraft with few floor-level exits, a number limit tied to the number of such exits would prevent even a few disabled individuals from traveling together. Even on planes with several such exits, teams of disabled athletes or groups of people traveling to a convention of a disability group could not get on the same flight. Moreover, disability group representatives said, it was irrational to limit the numbers of precisely those mobility-impaired people—those able to travel

independently—who could do the most to evacuate themselves in an emergency without assistance. Finally, in the absence of evidence showing that limiting the number of unaccompanied persons with mobility impairments to the number of floor-level exits is essential for safety, disability group representatives contended that such a limit was inconsistent with the Air Carrier Access Act. It also could be discriminatory to limit the number of disabled passengers and not apply such limits to other people (e.g., frail elderly, very obese people) who also could slow an evacuation.

The Department recognizes the concerns of both carriers and disability groups. Under the terms of the Air Carrier Access Act, however, the Department is responsible for ensuring nondiscrimination, consistent with the safe carriage of all passengers. While it is true that, as a general matter, persons with mobility impairments are likely to evacuate an aircraft more slowly than many other persons, the Department is not aware, at this time, of conclusive evidence that accommodating a number of mobility-impaired persons in excess of the number of floor-level exits is consistent with the safe carriage of all passengers. The FAA is continuing to evaluate information on this subject. In this situation, the Department believes that it would not be consistent with the Act to propose permitting carriers to impose such a limit. However, the Department does seek comment on whether there is an adequate justification for imposing either the "one person/one floor-level exit" rule or some other number limit. If so, how would the proposed number limit be specifically required for safety? How, within the context of a given number limit, if at all, could carriers make advance accommodations for groups of disabled persons traveling together? There is also some evidence suggesting that the placement of persons with mobility impairments in certain seat locations may be advisable from the standpoint of safety during an evacuation. If this is the case, what are the implications for number limits?

Subparagraph (e) of this section would require a written explanation to be given to a disabled person who was refused transportation. The refusal would automatically trigger the requirement for an explanation. This explanation, which would have to articulate the safety or other basis consistent with Part 382 for the refusal, would have to be furnished within 10 days. The Department seeks comment on whether this time frame is appropriate.

Section 382.23 Attendants.

The requirement by carriers that a disabled passenger have an "attendant" to travel has long been a source of controversy between passengers and carriers. From the point of view of passengers, requiring an attendant has been a costly and onerous proposition. The cost of transportation can be doubled, on top of which can be the salary and expenses of the attendant. These added costs may make travel prohibitively expensive. In addition, disability group representatives to the committee said that many attendants tend to be of relatively little use to a disabled person in a travel situation, because they are inadequately trained or motivated. A person who can travel independently, they said, should be permitted to do so even if he or she uses assistance to get to or from the airport or for other purposes.

Carriers' representatives cited two reasons for requiring an attendant. The first was to assist the disabled passenger in taking care of his or her personal needs. It was agreed among committee members, however, that an attendant for this purpose was not needed, with the understanding that it was not appropriate for disabled passengers to seek from carrier personnel the kind of extraordinary personal services that an attendant would provide (e.g., help in eating food or maneuvering within lavoratories.) The second ground for requiring an attendant is safety—primarily assistance in the event of any emergency evacuation. The members came to an important agreement on this issue. Namely, there was an arguable safety basis for requiring an attendant only with respect to four classes of persons: Quadriplegics, deaf-blind persons, some persons with mental disabilities, and persons traveling in a stretcher.

Subparagraph (a) of this section states the general rule: Except as specifically permitted elsewhere in the section, a carrier could not require disabled persons to travel with an attendant. This means that, for example, blind persons, deaf persons, paraplegics, and other persons with mobility impairments less severe than quadriplegia, would never be required to travel with an attendant.

The first category of persons for whom the carrier could require an attendant are persons with a mental impairment who are unable to comprehend, or follow appropriately, safety-related instructions from carrier personnel or who are brought to the gate under the supervision of an agent of a custodial institution. The first of these conditions involves the concept of ability to follow reasonable, safety-related requests of carrier personnel incorporated in the definition of "qualified handicapped individual" in the existing Part 382. If, by reason of a mental disability, a person cannot comprehend what it means when a flight attendant says "fasten your seat belt" or "exit through this door" then it is reasonable for the carrier to ask that the person travel with another person who can understand the instructions and help the passenger make the proper response.

A related category includes persons with mental impairments who arrive at the gate under the supervision and control of an agent of a custodial institution. This is expected to be a narrow category of persons. In order to fall into this category, the passenger must be in the legal custody of an institution (e.g., someone who has been legally committed to a mental hospital), as opposed to having been released from the institution. Second, the person must come to the gate under the supervision and control of an agent of the institution. "Supervision and control" means something more than being provided transportation to the airport or merely being accompanied to the gate by someone. The person must be someone who is assigned by the institution to be the custodian for the individual.

The Department recognizes that the determination of whether persons in this category need attendants is likely to have to be made by carrier personnel who are not mental health professionals. Representatives of both air travel industry and disability groups expressed some concern about this. The Department seeks comments on whether there are any practicable alternatives, such as an advance notice requirement.

Some air travel industry representatives raised the issue of how carrier personnel should deal with someone who was not in custody, was able to comprehend and follow safety instructions, but was acting strangely in the terminal or at the gate. The Department suggests that this is an issue better handled under the proposed § 382.21, as discussed in the context of a person with Tourette's Syndrome. It must be remembered that seeming strange is not, in itself, a ground for being denied transportation. Disruptive behavior that rises above the annoyance/inconvenience level and genuinely threatens safety is the sort of behavior, however, that is not likely to

be mitigated by having the person accompanied by an attendant. Consequently, we question whether this sort of situation could be aptly handled under the attendant section of the rule.

The second category of person who could be required to have an attendant is a person traveling in a stretcher. It was agreed by the committee members that, if a carrier accepts a stretcher user for a flight at all, the carrier may require an attendant who is able to provide the medical and other services that the person needs.

The third category of persons to whom an attendant requirement could be applied is quadriplegics. The process for determining whether an attendant would be required would be as follows: The passenger would determine whether he or she could travel without an attendant. If the carrier agrees that the passenger can travel unattended, no further action is needed. If the carrier disagrees, the first such passenger on the flight could nevertheless travel without an attendant, in a seat of the carrier's choice. If the person does not accept the seat assignment, if the person was the second or subsequent passenger whom the airline regarded as needing an attendant, or if the passenger concedes that an attendant is necessary, the carrier could require that the person travel with an attendant.

Most of the parties to the negotiation agreed on most of this proposal for quadriplegics (NCIL did not agree that attendants should ever be required for quadriplegics), with the provision about attendants for the second or subsequent person the carrier determines to need an attendant having been left open. The Department believes, particularly given that § 382.21(d) proposes to prohibit overall number limits, that it makes sense to include this provision.

It was also suggested that the Department may need to refine the criteria for inclusion under this provision. The Department seeks information on this point. The term "quadriplegic" can be viewed very broadly (i.e., to mean any person with any impairment of all four limbs); its application here could be both underinclusive and overinclusive. An individual who is not a quadriplegic (e.g., someone who is a hemiplegic as the result of a stroke) could be severely enough disabled to need an attendant; an individual with some impairment of all four limbs may have sufficient mobility so that he or she can travel independently. We are interested in finding a way (e.g., a "functional definition") of defining a class of persons with every severe mobility impairments to which an attendant requirement might rationally apply, if indeed there is such a class.

The fourth type of passenger for which an attendant could be required is a deaf-blind passenger (i.e., a passenger who is both deaf and blind). Attendant requirements for such passengers have been very controversial, and the parties to the negotiation were not able to agree on a provision. Carrier representatives said that carriers should be able to require attendants for all deaf-blind passengers. Representatives of disability groups advocated individual determinations of each such passenger's ability to communicate with airline personnel. A scheme parallel to that for quadraplegics was discussed but not agreed to.

This issue was the subject of a DOT enforcement decision that was issued after the conclusion of negotiations. In *Southwest Airlines Co. Enforcement Proceeding* (Docket 42425; Order 87–11–16; November 6, 1987), the Department considered a Southwest Airlines policy that required all deaf-blind persons to travel with an attendant. The Department found that this policy violated the existing Part 382 and section 404(a) of the Federal Aviation Act, and ordered Southwest to permit deaf-blind passengers to travel unaccompanied if they are able to establish some means of communication with airline personnel. The Department, for purposes of this rulemaking, proposes to adopt the result and reasoning of this decision.

Consequently, the Department proposes a sequence of events similar to that used to determine whether quadraplegics can travel without an attendant. The key criterion that the passenger and the airline would use is whether the passenger is able to establish communication with airline personnel by some means (e.g., tactile, electronic, or other). What is important is the passenger's ability to *receive* and respond appropriately to safety-related instructions. It is not necessary that passengers be able to verbalize their understanding of the instructions (e.g., an inability to speak clearly is not intended to be a ground for being required to travel with an attendant).

Section 382.25 Advance notice requirements.

The advisory committee members agreed on a provision to limit to a few situations the discretion of carriers to require advance notice by disabled passengers. As a general rule, carriers would not be able to require a handicapped person to provide notice of his or her intention to travel (beyond normal reservations that all passengers make to be assured of a seat) or of his or her disability. However, a carrier could require up to 48 hours advance notice in order to provide certain services, accommodations, or equipment. These include medical oxygen, carriage of a passenger in an incubator, a hook-up for a respirator to the aircraft electrical power supply, and accommodation for a passenger traveling in a stretcher.

In addition to these agreed-upon subjects for advance notice, the Department has proposed two others. These were not discussed in the committee, as they relate to portions of the physical accessibility requirements on which discussion was not completed. The first of these is use of an on-board wheelchair. An advance notice requirement for this equipment item is intended to reduce costs to air carriers, who presumably will have to purchase fewer chairs (which are estimated currently to cost over $900 each) and will not have to pay an "excess weight penalty" in fuel costs for flights on which the chairs are not needed. At the same time, on-board chairs would still be available when they are needed. We request comments on whether some or all planes should always have the chairs on-board, and on whether it would be too logistically inconvenient for carriers to operate under the advance notice system for on-board chairs.

The second is hazardous materials packaging for wheelchair batteries, if this packaging is provided by the carriers. For the reasons discussed in the physical accessibility section, the NPRM proposes that carriers be required to furnish such packages on request. In this section, the Department proposes that carriers may require advance notice on these requests.

The Department seeks comment on whether carriers should be able to require advance notice to carry electric wheelchairs. These wheelchairs may require special handling that it would be useful for the carrier to plan in advance. This is especially true for carriers using relatively small aircraft. The Department seeks comment on whether some of the advance notice requirements (e.g., for on-board wheelchairs and hazardous materials packaging for batteries) should apply only to small carriers or should have a shorter limit (e.g., 24 instead of 48 hours) when applied to the larger (i.e., Part 121) carriers.

Subparagraph (c) would provide that if the handicapped person provides the proper notice, the carrier has an obligation to provide the requested service (assuming the service is available at all; not every aircraft may be set up to accommodate a passenger

in a stretcher, for instance). Subparagraph (d) provides that even if the handicapped person fails to give the proper notice, the carrier will still provide the service if it is readily available or the carrier can make it available through reasonable (not extraodinary) effort. For example, if a battery package is available at the airport and the carriers could obtain it readily, the carriers would have to do so even if the passenger had failed to give advance notice. On the other hand, the carrier would not, in this case, have to fly in a package from another airport.

Suppose that a disabled person gives advance notice as provided by airline procedures permitted by this section, but through no fault of the passenger, must take a different flight (e.g., the passenger is "bumped" from carrier A because of overbooking or Carrier A's flight is cancelled). Should the advance notice the passenger has given Carrier A for the flight obligate Carrier A, for another flight, or Carrier B, to provide the requested service? If so, how would this be practicable? If not, how would the disabled passenger be protected? The Department seeks comment on this issue.

Section 382.27 Communicable diseases.

Carriers are naturally concerned with the health of their passengers and employees, both for humanitarian and legal reasons. This concern has led, in some instances, to restrictions being placed on the travel of persons who have, or are thought to have, a communicable disease. Under the Supreme Court's decision in the *Arline* case, persons with communicable diseases are considered to be handicapped persons protected by section 504 of the Rehabilitation Act of 1973. Since the Air Carrier Access Act is based on section 504, the Department is convinced that, as a matter of law, persons with such diseases are protected under the Air Carrier Access Act as well. All members of the committee agreed with this approach.

The key to a rational response by carriers to a person with a communicable disease is following the medical judgments of appropriate Federal public health authorities (e.g., the Surgeon General, the Centers for Disease Control) as to the circumstances under which the disease can be transmitted. If, in this medical judgment, the disease can be transmitted to other persons in the normal course of flight, the carrier would be justified in taking action to protect other persons on the flight. The action taken should be only that which is necessary to protect other persons, and should protect the rights of the disabled person to travel as much as possible. That is, if getting a medical certificate will be sufficient to provide assurance that passengers and crew are not endangered, it would be contrary to this part for the carrier to refuse service to a person who had such a certificate.

Unless, in the reasonable judgment of appropriate public health authorities, the disease can be transmitted to other persons in the normal course of flight, there is no reason for treating a passenger having it differently from any other passenger. To do so would be discrimination that violates the Act and these rules.

Section 382.29 Medical certificates.

Blind or deaf or mobility-impaired persons and people with most other disabilities, are not sick. They have a physical or mental condition that limits a major life activity, but, on the basis of that condition, are not any more likely to need medical attention on a flight than other persons. Consequently, it does not make sense to require a medical certificate from them as a condition for providing transportation, and this section would prohibit such requirements in all but a few cases. Those cases are a person traveling in a stretcher, a person who needs medical oxygen during a flight, or a person with a contagious disease in the circumstances in which such a requirement is permitted by § 382.27. This provision was agreed to by the members of the committee, except for subparagraph (c), which the Department has added in order to be consistent with the agreed-upon provisions of § 382.27.

Section 382.31 Seat assignments.

This section focuses on what is clearly the most controversial and emotion-laden issue in the rulemaking, that of exit row seating for blind persons. The issue of seat assignments does affect persons with disabilities other than blindness, but the focus of this issue has been on blind persons. In response to an August 1986 informational notice on this and other subjects, the Department received several hundred comments from members of the National Federation of the Blind and persons with similar views asserting that carriers' refusal to allow blind persons to sit in exit rows was clearly discriminatory, directly analogous to racial segregation. Able-bodied blind people are no slower, weaker, or less capable of opening exit doors than other persons, these comments said; in some cases, such as when visibility in the cabin is obscured due to smoke or electrical failure, blind persons may be more capable than sighted persons. Certainly a number of the comments alleged, a sober blind person in an exit row is likely to be more of use in an evacuation than an intoxicated sighted pereson. Other comments alleged that blind persons frequently have been harassed, embarrassed, thrown off planes, or arrested for refusing to leave exit row seats, all of which, the comments said, constituted discrimination. The NFB representative at the negotiations also made these arguments.

Carrier representatives believe, just as strongly, that in order to maximize the opportunity for an emergency evacuation to proceed in a timely fashion, it is essential that someone sitting in an exit row should be able, quickly and without assistance, to perform certain essential functions. Steps taken in the name of ending discrimination must be consistent with the safe carriage of all passengers, and a disabled passenger sitting in an exit row could delay an evacuation. In an evacuation, seconds can mean the difference between life and death for some passengers.

While proposals for compromise were discussed, the committee reached an impasse on this issue. The Department's position on the issue is based on the serious concern of its aviation safety agency, the FAA, that it may be necessary, in the interest of safety, to exclude from exit rows all persons who cannot perform one or more of the essential functions persons in those rows are expected to perform in an emergency evacuation.

The FAA recognizes that, while it has advised restrictions on exit row seating in the past, it has not disapproved some carrier procedures that do not impose such restrictions. (Under existing FAA rules, carriers send to the FAA their procedures concerning disabled passengers. FAA does not affirmatively approve the procedures and disapproves them only if, they create a safety problem. See 14 CFR 121.586.) Whatever its past actions, however, the FAA is now conerned that further actions may be necessary in order to ensure the safety of all passengers. As Senator Dole stated in the floor discussion of the Air Carrier Access Act, restrictions on handicapped persons, to be consistent with the Act, "must be only for safety reasons found necessary by the FAA." If the FAA were to determine that a rule establishing restriction on exit row seating were needed, such a rule would meet this criterion.

In Part 382, the Department's objective is to ensure nondiscrimination, consistent with the safe carriage of all

passengers. The Department cannot, in this rulemaking, promulgate a provision that would interfere with the development or implementation of an FAA safety rule. At this time, the FAA is considering whether it is appropriate to take any rulemaking or other action on this subject.

The Department is proposing to prohibit restrictions in exit row seating on the basis of handicap, except as an FAA safety regulation may specifically require. (Procedures adopted by a carrier in response to the requirements of such a regulation, and approved by the FAA, would be permitted under this formulation.) In the absence of an FAA requirement for seating restrictions, no restrictions on the basis of handicap would be permitted. (Carriers could restrict seating on other grounds. For example, a carrier could direct all parents—whether or not disabled—traveling with infants not to sit in certain seats.)

Section 382.41 Accessibility of aircraft.

This section is intended to spell out the requirements for physical accessibility of aircraft. Paragraph (a) concerns those smaller aircraft (i.e., with 30 or fewer passenger seats) governed under the Federeal Aviation Regulations of 14 CFR Part 121 or 135. This paragraph proposes that these aircraft would follow the same rules applicable to larger aircraft, on the same phase-in schedule. However, if structural, weight and balance, or interior configuration limitations prohibited a given accessibility modification or feature, the carrier would not have to provide that modification or feature. As with the larger aircraft, Part 135 aircraft in service on the effective date of the rule would not have to be retrofitted solely to enhance accessibility.

Paragraph (b) sets out the substantive requirements for aircraft accessibility and the schedule for putting accessibility features in place. These requirements apply to aircraft governed by 14 CFR Part 121 of the Federal Aviation Regulations which have 31 or more passenger seats.

These requirements are proposed to be phased-in over a period of time in order to allow a smooth transition to fuller accessibility. Aircraft in service on the effective date of the rule need not be retrofitted for the sole purpose of enhancing accessibility (subparagraph (1)). Aircraft contracted for before the effective date of the rule, but delivered to the carrier within two years of its effective date, would have to meet the requirements of this paragraph to the extent not prohibited by structural, configuration, or contractual limitations (subparagraph (2)). That is, if a carrier has already contracted for an aircraft with a given structure or configuration on the effective date of the rule, the carrier would not have to direct the manufacturer to change the structure or configuration, or modify its contract with the manufacturer, to accomplish accessibility improvements, if the aircraft is delivered to the carrier within two years of the effective date of the rule. The Department seeks comment on the appropriateness of these time frames.

With respect to aircraft covered by these two subparagraphs, the carrier would have to make accessibility modifications upon the first replacement of affected cabin interior elements (subparagraphs (b)(1)(i) and (b)(2)(i)). For example, if lavatories were replaced, they would have to be replaced with accessible lavatories. If seats were replaced with newly manufactured (as opposed to used or refurbished) seats, the new seats would have to include the appropriate number of aisle seats with movable armrests.

In addition, aircraft covered by subparagraphs (b)(1) and (b)(2), if they have any lavatories (whether or not the lavatories are accessible), would have to have on-board wheelchairs, having adequate restraint systems and other features, available on request two years from the effective date of the rule (subparagraphs (b)(1)(ii) and (b)(2)(ii)). Carriers would have to provide storage or mountings for the on-board chairs in each aircraft, but would not have to carry a chair on board the aircraft at all times. The carrier would have to put a chair on board the aircraft for a disabled person when the person requested it in advance. This equipment would allow those who need a wheelchair to move about the cabin to do so and, if otherwise able to use the lavatory, to get to it.

There may be feasibility problems with the use of on-board chairs in some aircraft. For example, one aircraft type in the 60–100 seat range has a mid-cabin hump (resulting from the placement of a structural spar) in the aisle, which would act as a barrier to the passage of an on-board chair. Some smaller aircraft would not be able to accommodate an on-board chair without the removal of revenue seats (see discussion below concerning the removal of revenue seats in the context of accessible lavatories). The Department seeks comment on how best to deal with these potential problems.

As an operational matter, many commuter flights are so short (e.g., 30 minutes or less) that there would barely be time for the aircraft to attain cruising altitude and for the passenger to use the chair to get to and from the lavatory before the "fasten seat belts" sign came on again in preparation for landing. During this time, the flight attendant (often there is only one) would be less able to perform other scheduled duties. It should also be easier for a passenger to avoid the necessity of visiting the lavatory on a very short flight. The Department seeks comment on whether the requirement to provide an on-board chair on request should be limited to flights over a certain length.

Subparagraph (3) applies to aircraft delivered more than two years after the effective date of the rule (and to older aircraft in which cabin interior elements are replaced, as provided in subparagraphs (b)(1)(i) and (b)(2)(ii). The first substantive requirement concerns movable armrests on aisle seats (subparagraph (b)(3)(i)). Such armrests, which either fold down or swing up out of the way, are intended to permit persons with mobility impairments to transfer more readily from a boarding chair or on-board chair into the aircraft passenger seat.

The NPRM proposes that a certain number of seats with accessible aisle armrests to be provided in aircraft, according to the number of seats in the aircraft. The NPRM discusses two options on this matter. The first option would require all aisle seats to be equipped with movable armrests, except where it was not feasible to do so (e.g., first class seats with fixed tray tables). Under the second option, there would be a limited number of such seats, which would be increased over time, on the projection that demand for them would also grow. The schedule is as follows:

Number of passenger seats in aircraft	Number of movable aisle armrests by aircraft delivery date to carrier (years following effective date of rule)		
	2–4 yrs.	4–6 yrs.	Over 6 yrs.
31–59	2	4	8
60–199	4	6	10
200–399	6	8	10
400 and over	6	8	12

Under this proposal, the seats with movable armrests would be marked with a symbol to ensure that they could be located readily. The seats would have to be located in each class of service (e.g., first class as well as coach), except where doing so was not feasible. The Department seeks comments on whether a quicker phase-in period or a larger or smaller number of seats would be appropriate.

Under the second option, there would have to be a priority system for the assignment of these seats, to ensure that people with mobility impairments who needed the seats would be able to get them. For example, carriers, in making seat assignments for a flight, would (if someone with a mobility impairment had not already asked for such a seat) not assign these seats until all other seats had been assigned, in order to hold them for a person who needed the movable armrest.

The Department seeks comments on whether this proposal would unduly complicate the seat assignment process. The Department seeks comments on whether the final rule should also require that, if all seats with movable armrests are already assigned when a person with a mobility impairment seeks such a seat, the carrier ask or require a non-disabled individual who has been assigned such a seat to move to another seat so that the disabled passenger can use it. If all the aisle seats on an aircraft had movable armrests, the requirements for identification of the seats and a priority seat assignment system would be superfluous. Consequently, they would not apply to such an aircraft.

The Department seeks comment on whether the use of accessible armrests, and the consequent seating of persons with mobility impairments primarily in aisle seats, would have any adverse safety consequences. That is, would this make it more difficult for passengers in the center and window seats to evacuate? If there are any such safety consequences, what action if any, should carriers or the Department take in response? The Department's regulatory evaluation also notes that the cost of option 1 (all aisle seats accessible) would be considerably costlier than option 2 (a certain number of accessible aisle seats). The Department seeks comments on whether there would be benefits that would justify the higher costs of option 1.

Subparagraph (b)(3)(ii) concerns on-board wheelchairs, discussed above. The NPRM proposes a series of design and performance requirements for such chairs.

Subparagraphs (b)(3) (iii) and (iv) concern accessible lavatories. Two types of lavatories are proposed, depending on the type of aircraft involved. In larger aircraft (e.g., one with 200 or more seats), a lavatory large enough to permit a person using the on-board wheelchair to enter, maneuver, transfer, and leave is proposed. Other accessibility features are also proposed. The lavatory would have to give passengers using the on-board wheelchair privacy (in terms of sight, sound, and smell) equivalent to that afforded other passengers.

The Department seeks comment on how privacy can best be protected. Can a pocket door design be implemented at reasonable cost? Can any curtain or screen arrangement provide adequate privacy? Can a door close-off or privacy curtain be installed without causing seats to be removed, especially in smaller aircraft? Can there be space to allow a wheelchair to maneuver at the door and allow a person to enter the lavatory without causing the removal of seats, especially on smaller aircraft? What lead time would be needed to allow for the technical development of an adequate facility? If a facility cannot be developed that can meet these requirements and still not require the removal of a row of seats, is a lesser degree of privacy acceptable (e.g., a privacy curtain over the door)?

In smaller aircraft (e.g., one) with 60–199 seats), the accessible lavatory would have to have the same accessibility features. However, there would not have to be space in the lavatory for the user to maneuver and transfer; nor would the means of protecting the passenger's privacy have to be equivalent to that afforded other passengers (e.g., the door would not have to close around the on-board wheelchair, but a curtain or other screening device would have to provide at least visual privacy).

Removing revenue seats to accommodate accessible lavatories could impose heavy, additional costs on carriers. Indeed, a reasonable argument may be made that to require the removal of revenue seats would go beyond reasonable accommodation of the needs of disabled passengers and would cause carriers to incur undue financial burdens or fundamentally alter their programs. The Department does not intend to impose requirements that would force carriers to remove revenue seats. The Department seeks comments from interested parties, particularly airframe and component manufacturers, on how best to include accessibility features in lavatories without causing the removal of revenue seats.

The Department also seeks comment on how best to define what constitutes a removal of revenue seats. It seems clear that, if a carrier is replacing an older, inaccessible lavatory with an accessible lavatory while not replacing all the seats, and one or more seats are taken out to make room for the larger lavatory, a removal of seats has occurred. If the entire cabin interior is being replaced at the same time, and the replacement interior (including the accessible lavatory) has fewer seats than the old interior, should this be considered a removal of revenue seats?

When a new aircraft is being ordered, should the "no removal of revenue seats" provision apply to additional seats that would arguably be foregone in a cabin configuration that included the accessible lavatory? In ordering a new aircraft, should it make a difference whether the carrier is ordering a new copy of an existing, certificated type of aircraft (with a standard seating configuration for that aircraft type) as distinct from a newly certificated type of aircraft which comes into being after the regulation is in effect? How would the Department determine, under these various scenarios, whether a carrier should install an accessible lavatory?

In connection with its consideration of the proposal for accessible lavatories, the Department seeks comment on whether a different line of demarcation between aircraft sizes (e.g., wide body vs. narrow-body or single-aisle vs. multiple aisle, rather than more or fewer than 200 seats) would be more workable. The Department also seeks comment on whether the time frame for lavatory installation is appropriate, or whether the schedule could be accelerated or slowed feasibly.

Subparagraph (b)(3)(v) would require that all Part 121 aircraft with more than 30 seats delivered two years or more after the effective date of the rule to have sufficient on-board storage capacity for at least one folding wheelchair. The provision of such space would be optional on smaller aircraft. The Department seeks comments on the feasibility and cost of such a requirement.

The Department has assumed, for purposes of its regulatory evaluation, that there would be no additional capital costs of this requirement for larger aircraft (i.e., those with more than 100 seats), since existing coat closets appear large enough to accommodate a folding wheelchair. The Department seeks comments on the validity of this assumption. However, the Department has received information suggesting that some aircraft certificated under Part 121 (e.g., those with fewer than 60 seats) may be unable to accommodate space for a folding wheelchair without removing revenue seats. In the Department's view, the same considerations pertaining to removal seats would apply here as in the case of accessible lavatories. The Department seeks comment from manufacturers and others about the extent of this problem, and about what alternatives should be pursued for aircraft models in which

such space could not be provided without removing seats.

Finally, paragraph (c) proposes the requirement that replacement or refurbishing of an aircraft cabin could not result in diminishing accessibility to a level below that specified in this part. For example, if an aircraft is provided with movable armrests in aisle seats, a subsequent replacement of the seats would also have to maintain at least the number of such seats required by this part. The Department also seeks comment on whether it is necessary to include a regulatory requirement that all accessibility features and equipment be maintained in proper operating condition.

The Department seeks comment on whether aircraft (and if so, which aircraft, in terms of size) should be required to provide accommodations for persons traveling in stretchers. What is the cost and difficulty of such accommodations, and how often are they likely to be needed or used? Providing accommodations for persons traveling in a stretcher would be optional with carriers under the proposed rule.

The general scope of this provision—on-board chairs, accessible lavatories, moveable aisle armrests, and a phase-in period for existing and new aircraft—was agreed upon by committee members. Some of the details—particularly the number of moveable aisle armrests and the timetable and "on-request" feature for boarding chairs—were not. Disability group representatives favored putting moveable armrests on all practicable aisle seats, while carriers favored a smaller number. In this regard, the Department seeks information on the experience of carriers and passengers with the number of mobility-impaired passengers typically, or frequently, traveling on a given flight. The disability group proposals were included for comment as option (1), the carrier proposals as option (2).

Section 382.43 Provision of service and equipment.

This section would require carriers to provide certain service and equipment to disabled passengers, if the passengers request the services and equipment. It would, of course, apply to qualified handicapped persons. Consistent with the rest of the rule, carriers would not provide special services and equipment to passengers who do not want them.

Enplaning and deplaning is obviously a key issue, since it is here that many physical barriers to aircraft must be overcome in order to ensure accessibility of air travel. At different airports, enplaning and deplaning-related matters may be controlled by carriers, airports, or a combination of the two. This provision would apply only to matters, at a given location, that are under the carrier's control (where the airport controlled these matters, 49 CFR 27.71 would require the airport to provide the assistance).

Except in the circumstances specified in paragraph (b), the carrier is responsible for getting a disabled passenger on and off the airplane. The carrier would have to ensure that whatever equipment and personnel are needed for the task are provided. For example, where there are not level-entry boarding ramps, carriers would be responsible for providing mechanical lifts (not ordinarily used for freight), ramps, or boarding chairs, together with the personnel necessary to operate them and to assist the passenger to transfer to an aircraft seat. The Department seeks comment on whether mechanical lifts should be required to be provided and used, as opposed to other means (e.g., boarding chairs, hand-lifting) of assisting disabled passengers on and off aircraft. Assistance in making flight connections (including, where needed, ground wheelchairs and personnel to assist in making the connection) would also be required.

In § 382.41, the Department proposes performance standards for on-board wheelchairs. The Department seeks comment on whether there should also be similar standards for boarding chairs and, if so, what those standards should be.

Some small aircraft (usually those with 19 or fewer seats), present difficult problems. Because of small entranceways and relatively narrow, light, built-in stairways, narrow aisles, and small seats, it is often not possible, without substantial risk of injury to disabled passengers and carrier personnel, to bring a disabled person on board in a boarding chair. Level entry boarding ramps and presently available mechanical lifts cannot be used in many cases. Therefore, the only presently available means of getting some disabled persons aboard some aircraft is for carrier personnel to pick up the passenger by hand and carry the passenger aboard. This approach has obvious disadvantages both for the dignity and safety of the passenger and the safety of the carrier personnel.

Consequently, when the physical limitations of an aircraft with 19 or fewer seats preclude the use of lifts, boarding chairs and other feasible devices to board disabled passengers, the carrier would not be required to hand-carry the passenger on board, resulting in a legitimate denial of service. The Department seeks comments on whether the carrier should compensate the person in this situation. The situation does not involve an overbooking or a violation of this rule, so compensation under 14 CFR Part 250 on the proposed § 382.69 would not apply. However, if the disabled person had sought, and obtained from the carrier, information that the flight was accessible to him or her, and, for example, an equipment change resulted in a smaller, less accessible aircraft being used, would it be appropriate for some other compensation mechanism to be employed, even if the carrier was operating in good faith and in conformity with the rule?

The Department has committed substantial funds to the development of a boarding device that will work with these aircraft, and the commuter carriers are also working toward this end. Meanwhile, the "other feasible devices" language is intended to cover means (e.g., a moveable stairway and platform arrangement) that may be developed as interim steps. If a technically and economically feasible device is developed, the carriers have the obligation to use it.

Paragraph (c) would require that, once a passenger is on board the aircraft, carrier personnel would have to provide reasonable assistance in moving to and from the aircraft lavatory (e.g., assistance with transfers to and from and traveling in the on-board wheelchair). Carrier personnel would not have to provide any assistance to the passenger in the lavatory, however, consistent with the general principle that flight attendants are not required to provide personal services to passengers.

Paragraph (d) provides that carriers are not required to provide extensive special assistance to disabled passengers. Disabled persons who can travel independently should be able to do so, but there is no basis for expecting flight attendants and others to provide the kind of services a personal attendant would provide. The lists of what do and do not constitute extensive special assistance are uncontroversial and consistent with a similar list in the existing Part 382.

The parties to the negotiation agreed on these provisions. The flight attendants' union representative proposed, in addition, that the rule provide, in order to avoid back injuries and other problems, that carrier personnel not be required to lift any passenger. The union also expressed concern about lifting heavy pieces of equipment. Disability group and carrier

representatives did not agree. The NPRM does not propose any provisions on these subjects. Carriers would have the responsibility of providing accommodations to disabled passengers. The Department does not propose to determine how, or through which employees, the services would be provided. The Department seeks comment on these concerns of the flight attendants' union, however.

Section 382.45 Stowage of personal equipment.

This section concerns the stowage, in the aircraft cabin and in the cargo compartment, of mobility aids and other equipment used by passengers with disabilities. Paragraph (a) states the general proposition that, like all items brought into the aircraft cabin, materials brought on board by disabled persons must be stowed in accordance with FAA safety rules concerning carry-on baggage (i.e., under a seat or in an approved storage compartment). The Department intends that carrier policies adopted to comply with recently effective FAA rules concerning enforcement of carry-on baggage rules (see 14 CFR 121.589) not have the effect of restricting, beyond the point specifically required by FAA rules, the ability of disabled persons to bring their mobility aids and other assistive devices into the cabin. The Department seeks comment on whether Part 382 regulatory language is needed on this point.

Some passengers (e.g., some post-polio individuals) need a personal ventilator or respirator. Typically, these devices can fit under a seat and operate on non-spillable electric batteries. Paragraph (b) would require carriers to permit passengers to bring such devices on board for their use. At least one carrier provides a hookup to aircraft power sources so that such devices may be operated without batteries. While this practice is encouraged, the proposed rule would not require it.

Paragraph (c) would require carriers to allow passengers who use canes or other mobility aids or equipment to bring these items on board and stow them in the cabin, in close proximity to their seats, again consistent with FAA rules concerning carry-on items.

Paragraph (d) applies this requirement specifically to wheelchairs. Some wheelchairs can be folded or disassembled so as to fit in the overhead compartment or under a seat. Such chairs, like other carry-on items, would be able to be stowed in those areas. Other wheelchairs, while not able to fit under a seat or in the overhead compartment, can fit in other approved cabin storage areas (e.g., the closet used for passengers' garment bags). Where such areas are big enough to accommodate a folding wheelchair, the carrier would permit at least one such chair to be stored there. This would be on a first-come/first-served basis; the second and subsequent wheelchairs on a flight might have to be stored in the baggage compartment. It is proposed in § 382.41 that, in all Part 121 aircraft delivered, or in which the cabin interior is replaced, more than two years after the effective date of the rule, a cabin storage area capable of accommodating at lease one folding wheelchair would have to be provided. Again, given that there may be some Part 121 aircraft with fewer than 31 seats, the Department seeks comment on whether such smaller aircraft should be exempted from this requirement.

Where passenger compartment stowage is not available (e.g., in an aircraft without such an area, for additional folding wheelchairs that will not fit into the area, for electric wheelchairs that are too big to fit anywhere in the cabin), the carrier would have to provide for the checking and timely return of the chair. The chair would have to be returned as close to the aircraft door as possible, in order to facilitate the passenger's mobility throughout the terminal. The Department seeks comment on whether it would be reasonable to permit the carrier, as an alternative, to provide equipment and assistance to get the passenger to the baggage claim area, if the passenger's wheelchair is to be returned there.

This requirement would be subject to DOT hazardous materials rules (i.e., with respect to wheelchairs with spillable batteries). In some airports, (e.g., those using mobile lounges for movement between aircraft and the terminal) the wheelchair could be returned at the gate rather than the aircraft door, as much. To faciliate the expeditious return of wheelchairs, they would have to be among the first items brought off the aircraft as the baggage compartment was being unloaded.

In some smaller aircraft (e.g., Part 135 aircraft used by commuter carriers), the size and weight of electric wheelchairs is such that they could be accommodated only if other passengers' bags were left off the flight (especially on a full flight). The proposed rule would require that wheelchairs be given priority over cargo and over baggage brought by passengers who book the flight after the disabled person does. That is, if a certain number of passengers had booked the flight before the disabled person (assuming the commuter airline industry norm of a maximum of 20 pounds of luggage per person), the wheelchair might not be able to be accommodated. On the other hand, if the handicapped person booked early enough, the chair would go on the plane and other passengers' baggage would not.

This proposed system places some burden on passengers traveling with wheelchairs to book flights early and to ask whether there would be room on the flight for their wheelchair, but this first-come/first-served policy is proposed as a means of balancing the needs of wheelchair users and other passengers. It would also make it necessary for carriers to keep track of the order in which reservations were made. The Department seeks comment on the feasibility of this approach, and on what refinements or alternatives would be helpful. The Department seeks also comment on whether, in order to make this provisions work smoothly, the passenger should have to notify the carrier at the time of reservation that an electric wheelchair needs to be carried.

One of the most serious problems facing some persons with mobility impairments is handling of electric wheelchairs. Electric wheelchairs are typically used by persons with relatively severe mobility impairments; they are also likely to be custom-fitted to the user. It is particularly important, then, that such wheelchairs be available to their users, since it is nearly impossible for many users to travel independently without them. Manual wheelchairs of the sort typically available at airports are usually not an adequate substitute.

Electric wheelchairs are often big, heavy pieces of equipment. In some aircraft (e.g., smaller Part 135 aircraft used by commuter airlines), some electric wheelchairs may be too big to fit into the cargo bay. In other cases, their weight may be too great or would throw off the aircraft's balance for airworthiness purposes. In such cases, the carrier would not have to carry the chair. The Department seeks comment on whether these reasons for not carrying electric wheelchairs would, as a practical matter, be of concern only in Part 135 aircraft or whether these exceptions to the requirement to carry electric wheelchairs should continue to apply to Part 121 aircraft as well.

Electric wheelchair batteries have sometimes been refused transportation by carriers (or have even been drained by carriers, rendering them inoperative). This is because spillable batteries require special handling to conform to DOT hazardous materials regulations. This paragraph would require such batteries to be carried. They would have to be carried consistent with DOT

hazardous materials rules. (49 CFR 175.10(a) (19–20)).

Where feasible, the carrier would have to carry electric wheelchairs secured in an upright position in the baggage compartment, so that batteries need not be detached from the chairs to comply with hazardous materials rules. When this cannot be done, the carriers would have to package batteries in a manner consistent with DOT hazardous materials rules. It is proposed that the carrier would have the responsibility for providing the hazardous materials packaging for spillable batteries, which would have to meet the packaging requirements of the DOT hazardous materials rules. Carriers could require passengers to ask for the packaging materials in advance (see § 382.25).

A broken wheelchair is of little use to its user. When the airline carries a wheelchair, it would have to be returned to the user (and reassembled where necessary) functioning as the user delivered it to the carrier. To facilitate the carrier's ability to ensure that this is the case, the user would have to be given the opportunity to assist or provide written instructions to carrier personnel concerning the disassembly and reassembly of the chair.

The members of the committee agreed about the provisions of this section, with the exception of the issue of whether carriers should be required to provide hazardous materials packages for spillable batteries. Disability group representatives thought they should; carriers did not agree to do so. The Department believes that carriers are better situated to provide such materials then individual passengers. The Department proposes that a carrier could require up to 48 hours advance notice for providing the package. To reduce the cost burdens on carriers, the Department seeks comment on whether carriers should be able to charge a small fee for each package provided. If so what should the fee be? Would a fixed fee (e.g., $5.00) or a percentage of the cost of the package be more appropriate? The Department contemplates that carriers would accept packaging materials voluntarily provided by the passenger, as long as they met DOT hazardous materials requirements.

Section 382.47 Reimbursement and repair of mobility aids.

When a carrier loses or damages baggage belonging to a nondisabled passenger, it's a hassle. When a carrier loses or damages a disabled person's wheelchair or other mobility aid, it can be a personal disaster. A disabled person stranded in a city away from home without his or her wheelchair is deprived of mobility and independence, and appropriate wheelchairs (which are often custom-fitted to an individual) are not something one can go to the nearest store and pick up like a toothbrush and a shirt. For these reasons, the Department is seeking comment on a series of accommodations that carriers could be required to make to passengers whose wheelchairs or other mobility aids were lost or broken in transit. The Department is aware that these accommodations are more than carriers do for other passengers; the justification for the additional accommodations would be the special situation of disabled passengers.

Because wheelchairs and mobility aids are different from other baggage and, in the case particularly of electric wheelchairs, quite expensive, carriers would be prohibited from limiting their liability for their loss or damage to less than twice the amount of the maximum liability limits for luggage established in 14 CFR Part 254. However, Warsaw Convention limitations on liability on international flights would continue to be in force. In addition, the Department seeks comment on whether carriers should themselves be responsible for repairing damaged equipment or providing a "loaner" while the passengers' equipment was being repaired. The Department is aware that electric wheelchairs are often "customized" to their owners and that "loaners" may not fit passengers' needs well in some circumstances. The Department seeks comments on whether there is any feasible way of dealing with these problems. Finally, carriers could not require handicapped persons to sign waivers of liability for the loss of or damage to wheelchairs and other mobility aids.

There was not an agreement in the committee on this section. (Carriers' representatives, citing antitrust concerns, did not participate in this discussion.) Some of the disability group members of the committee asked for additional protections (e.g., coverage of "assistive devices" like braille writers as well as of mobility aids, payment by carriers of the full replacement value of lost or badly damaged items). The Department seeks comments on these requests for additional accommodations.

Section 382.49 Accommodations for Persons with Hearing Impairments.

Paragraph (a) would require all carriers providing scheduled service (e.g., flights with schedules listed in the Official Airline Guide) who provide a telephone reservation/information service to make the service available to hearing-impaired persons via a telecommunications device for the deaf (TDD). The cost and convenience of the service would have to be equivalent to the telephone service provided hearing passengers. The parties to the negotiation agreed to this provision, with the exception of the reference to "scheduled service." Disability group members objected to this reference. However, in view of the relatively small percentage of passenger trips that take place on air taxis, and the smaller resources of air taxi operations, the Department believes this is a reasonable proposal consistent with Regulatory Flexibility Act considerations (relating to impacts of the rule on small business). Information presented during the committee meetings suggested that TDD units are not costly and that most scheduled carriers already have them, so carrier costs are not expected to be high. Given the relatively low cost of TDD devices, the Department seeks comments on whether air taxis and other providers of non-scheduled service, as well as carriers providing scheduled service, should make them available.

Paragraph (b) would call for carriers, as they replace existing video briefing materials, to "open caption" the new tapes. The tapes in question are those shown in the cabin on television screens to bring the mandatory safety features briefings to the passengers. Open captioning is the practice of putting written "subtitles" on the tape so that hearing-impaired persons can read what the sound track of the tape is saying. The members of the committee also agreed on this provision. The Department seeks comment on whether open-captioning the tapes could obscure the pictures to too great an extent and whether these are practicable alternative means of making this information available to persons with hearing impairments.

Members of the committee also discussed a suggestion for adding "audio loops" to new aircraft. These devices help to transmit public address messages to appropriately equipped hearing aids used by some people with hearing impairments. The devices are used, for example, in theaters to assist hearing-impaired audience members to hear plays. The cost and feasibility of installing such devices in aircraft (and their effect, if any, on avionics systems) are not known. Consequently, the NPRM does not propose a requirement for audio loops at this time. The Department seeks comment on this issue.

Section 382.51 Miscellaneous provisions.

As the title implies, this section includes three unrelated requirements that do not fit conveniently elsewhere in the regulation. The parties to the negotiation agreed on these provisions.

Paragraph (a) concerns service animals, which carriers would be required to allow to accompany the disabled persons using them. Seeing-eye dogs for blind persons are the best known such animals. However, persons other than blind people use dog guides (e.g., deaf persons). There is at least experimental work underway to use other kinds of animals to assist persons with other kinds of disabilities (e.g., monkeys to assist persons with severe mobility impairments). All service animals, used by a person with any sort of disability, would be covered. The Department seeks comment on whether there are any special conditions or limitations that carriers reasonably could apply to service animals other than dogs. If the carrier reasonably doubts that an animal is a service animal (e.g., the carrier believes a passenger is trying to sneak a pet aboard the plane), the carrier may request an identification card or document for the animal. According to members of the committee familiar with service animals, such documentation should be available for genuine service animals.

Carriers would have to permit the animal to accompany its user to any seat in which the person is sitting. Some carriers have required persons with dog guides to sit in bulkhead seats, in the belief that this was a preferable place for such persons and animals to sit. many users of dog guides prefer other locations, however. There being no safety necessity to place persons with dog guides in bulkhead seats, the regulation would not permit such a restriction to be imposed.

Paragraph (b) prohibits carriers from requiring handicapped persons to sit on blankets. This requirement is not often imposed today, although a number of carriers, for reasons that are unclear, apparently imposed it in the past. There appears to be no compelling rationale for allowing the practice to continue.

Paragraph (c) prohibits carriers from restricting the movements of handicapped persons in the terminal or requiring them to remain in a holding area or other location in order to be provided transportation or other services. During the committee meetings, some disability group representatives reported that, at some airports, carriers try to restrict handicapped passengers to a holding area while waiting for a flight or may retaliate against passengers who move about. While this might make providing services more convenient for the carrier, it is clearly discriminatory treatment that cannot be justified under the Air Carrier Access Act. This provision would also prohibit other mandatory separate treatment of disabled passengers. (This is not to say that carriers may not provide a special service area for disabled persons, so long as its use by disabled persons is fully voluntary.)

Another problem some passengers have encountered is being left for long periods of time in boarding chairs they cannot move independently. We seek comment on whether a regulatory provision is needed to deal with this problem, and, if so, what it should be.

Section 382.61 Passenger information.

This section is intended to spell out the obligations of air carriers to provide information to disabled passengers. The basic intent of the section is to ensure that information concerning matters important to disabled passengers is made available to them (i.e., both information of interest to all passengers and information of special interest to disabled passengers).

Paragraph (a) concerns information provided to persons who call the carrier or travel agents for flight or reservation information. The carrier would have to make available, on request, certain information of special interest to disabled persons.

The NPRM does not propose how this information is to be provided. The Department seeks comment on whether it would be practicable to require certain of the information to be presented on computer reservation system (CRS) screens. This would make the information available to reservation personnel more quickly (e.g., rendering an extra phone call unnecessary) but could involve substantial costs to CRS operators and carriers.

The Department is not proposing that reservation agents be directed to ask all callers whether they have a disability. This would be unnecessarily burdensome. Rather, the Department contemplates that those disabled persons who wished to receive the information called for by this section would identify themselves to the reservation agent as having a particular disability. The reservation agent would then convey the relevant information to the passenger.

The information which would be provided pertains, first, to seating. For example, are there seats on the aircraft scheduled to make a particular flight which have been specially adapted for use by disabled passengers (e.g., aisle seats with moveable armrests)? Are there seats which the carrier, consistent with the requirements of this rule, does not make available to persons with a particular disability?

Second, the information would reflect any problems with access to a particular aircraft. For example, is the entrance stairway too narrow to accommodate a boarding chair? Is there a means to get a disabled passenger to his or her seat? Are there other structural limitations on the ability of a disabled passenger to enter and use the aircraft? These matters are of concern because some aircraft—especially smaller commuter aircraft—may be more difficult to enter and use than larger planes. If a passenger is planning a trip, and learns that one leg of the trip would be on equipment that could not readily accommodate his or her needs, the individual might wish to make other arrangements for that part of the trip.

Aircraft accessibility limitations also concern storage. The third type of information that must be available is whether the aircraft is limited in its ability to carry items needed by disabled passengers. For example, is the cargo bay too small to carry an electric wheelchair? Is cabin storage space available for crutches?

Finally, the information would have to indicate whether aircraft with accessible lavatory facilities were scheduled for a given flight, so that disabled persons could take advantage of the availability of this feature.

The Department seeks comment on the relationship of these proposals to interlining. That is, when a person calls carrier A for a reservation that will involve flights on more than one carrier, how would carrier A get the information on the flights of the other carriers involved? Presumably, some phone calling or other carrier-to-carrier inquiry would be necessary.

There is one seemingly intractable limitation to the utility of the information about aircraft provided to passengers at the time they make reservations. For reasons ranging from mechanical problems to weather to the number of passengers actually traveling on a particular flight, carriers sometimes substitute a different aircraft for the one originally scheduled. Often, these changes occur too late to permit advance information to be communicated to passengers. Even the most timely availability of information provided to people making a reservation will often not enable the carrier to let passengers know about an equipment change before they reach the gate.

This regulation does not purport to solve this problem. Last-minute changes do occur, and they are capable of inconveniencing disabled passengers (e.g., a smaller aircraft is substituted that lacks sufficient space to carry an electric wheelchair). This provision is simply intended to permit disabled passengers to have access to information that is current as of the time they contact a reservation or information agent, just as other passengers are able to get advance information at that time.

The Department also seeks comment on whether it is practicable to require airlines to provide this information to persons with severe communications-related disabilities (e.g., deaf-blind persons). If so, by what means it is practicable?

Paragraph (b) concerns the on-board briefing required by FAA regulations, which describe the safety features of aircraft and safety procedures. One problem that disabled passengers have noted is that flight attendants sometimes insist that disabled passengers read or understand the material in these briefings. For example, the flight attendant might quiz the passenger on the location of emergency exits, ask the passenger to demonstrate closing and opening the seat belt, or tell a blind passenger that he or she must read a braille safety information card.

Mandatory safety briefings are important, and all passengers should pay attention to them. But crewmembers do not demand that passengers in general watch or listen to the briefings, read the safety information cards, or answer questions about safety procedures. It would be burdensome and intrusive to impose such requirements for the general passenger population. It is just as burdensome and intrusive to make such demands of disabled passengers, especially so if they are singled out for such treatment, and this paragraph would prohibit the practice. The only provision is that crewmembers may impose the same requirements on disabled passengers as they do on passengers in general.

The FAA safety rules on passenger briefings (14 CFR 121.571(a)(3), 14 CFR 135.117(b)) place an affirmative duty on carriers to give an individual briefing to each person who may (in the carrier's judgment) need the assistance of another to move expeditiously to an exit in the event of an emergency. While persons who pre-board or ask for special assistance due to disability are appropriate candidates for a special briefing, carriers must comply with these FAA rules even for passengers who may not pre-board or ask for special assistance. (The other provisions of this section, such as the "no quizzes" requirement, apply to all briefings, however.) This provision was not agreed to by the Committee; however, the Department views it as unavoidable in light of the existing FAA regulations.

Paragraph (c) concerns the information that is provided to passengers in general by the carrier at the airport or on the aircraft. Under this provision, the carrier has an obligation to ensure that this information is provided in a timely fashion in a manner usable by all persons with disabilities, including those with vision and hearing impairments. This information can concern ticketing, gate assignments (e.g., the gates for various outgoing flights at a hub airport that passengers on an incoming flight will have to connect with), delays, baggage claim, etc. The proposal does not state what form the information must take (e.g., it does not propose, for example, that a carrier must provide braille baggage tags, although the carrier could do so). In addition, carriers must provide information to disabled pesons about aircraft changes that would affect their trips, even if it is not necessary to provide this information to all passengers.

At certain times in the flight (e.g., takeoff and landing), flight crews have certain duties mandated by FAA regulations. This paragraph specifies that its information provision requirements are not intended to interefere with these duties. For example, flight attendants are required, prior to landing, to ensure that carry-on luggage is stowed in appropriate places and that seat backs and tray tables are in their full upright positions. A flight attendant would not be required to interrupt these duties to provide information to a passenger.

The members of the committee agreed on paragraphs (b) and (c). Discussion was not completed on paragraph (a), though members of the committee had generally agreed, earlier in the discussions, on the type of information that it was useful to provide at the time reservations are made.

One disability organization suggested that, as a consumer information matter, carriers be required to report the number, kind, and disposition of complaints they receive under this rule. The Department would publish periodic summaries of the complaints, by carrier, so that disabled consumers could know what airlines provide the most trouble-free service. The idea is analogous to the Department's flight delays reporting rule. The Department seeks comment on the utility and practicability of this idea.

Section 382.63 Security screening of passengers.

Effective security screening of all passengers is an important safeguard against terrorism and hijackings. Security screening procedures must not discriminate against disabled passengers; at the same time, for the sake of everyone's safety, disabled passengers as well as others must be screened to ensure that they are not carrying prohibited items onto the aircraft.

Paragraph (a) states the proposition that disabled persons should be treated the same as other passengers with respect to security screenings. Pre-boarding security screening typically works as follows: Passengers pass through a security "arch" incorporating a metal detector. if they pass through the arch without setting off the alarm, the screening is over. If the alarm goes off, then (after the individual removes coins, keys, or other metal objects from his or her person), a further screening is necessary. Typically, this further search is done with a hand-held metal detector ("wand"). If the wand search detects metal, then a further search, such as a physical "pat-down," is done.

This section says that the same sequence of events would apply to disabled passengers. If the disabled passenger, together with any aids or devices the passenger may use for independent travel (e.g., a blind passenger's cane), passes through the arch without setting off the alarm, the screening is complete. It would not be consistent with this section for the carrier to insist on special screening procedures for the aid or device in this circumstance. On the other hand, if the individual and his aid sets off the arch alarm, then the carrier could appropriately direct the passenger to proceed through the arch without his or her aid. For example, a blind passenger would go through the arch a second time after surrendering his cane, as well as his keys and coins, to the security personnel. This proposal would not prohibit, however, security personnel from insisting on examining separately an aid or device which they viewed as capable of concealing a weapon or other prohibited item.

If an individual search of a disabled passenger is needed (e.g., because the arch alarm continues to be activated; because the passenger uses a metal wheelchair which obviously would set off the alarm), then the rule would require that the individual search be conducted in the same manner as for passengers in general. The aim is to

conduct the search in the least intrusive manner consistent with the needs of security. For example, where wands are used, a wand search should be employed for a disabled person in preference to a pat-down. Where the wand alarm goes off, and a pat-down search is needed, it should be conducted in the same manner as such searches of other passengers. Some security personnel may be uncomfortable about conducting such a search of a disabled person, or be unaware of the best methods for doing so. These are concerns which are appropriately handled in the training of security personnel.

As noted in paragraph (b), handicapped passengers may wish to request a private screening. The final sentence of pargraph (a), however, emphasizes that airline personnel may not insist on giving private screenings to handicapped persons to a greater extent, or for different reasons, than such screenings are mandatory for all passengers. In other words, if a disabled passenger falls into a certain category to which the airline gives private screenings (e.g., passengers carrying classified documents), it is appropriate for the carrier to give the private screening. It is not appropriate, by contrast, for a carrier to tell a disabled persons to have a private screening on the basis of the person's disability.

Handicapped passengers who are likely to have to undergo physical pat-down searches (e.g., many wheelchair users) may, for reasons of privacy and dignity, prefer to have a private rather than a public screening. If a handicapped person requests such a screening in a timely manner, then the airline is required to conduct it in time for the passenger to catch his or her flight. Saying that the passenger must request the screening in a "timely manner" recognizes that it takes longer to conduct a private screening than a typical screening at the security checkpoint. While conditions may vary, the Department anticipates that a passenger arriving 30 minutes before the normal time passengers are advised by the carrier to show up at the airport before the flight is likely to be timely for this purpose. The Department seeks comment on whether there should be a specific time set forth in the rule.

If the passenger does not request the private screening in a timely manner, the carrier is still obligated to provide it, on request. (The Department seeks comment on how this provision should work where the airport operator, or a group of carriers, is responsible for the screening.) However, in this case, the passenger requesting the private screening does so at his or her own risk of missing the flight.

Physical pat-down searches are an intrustive and less than optimally effective means of conducting security screenings. To the Department's knowledge, however, currently available electronic screening devices are unable to conduct thorough searches of persons in the presence of substantial amounts of metal, such as are found on most wheelchairs. The Department encourages the development of devices that make pat-down searches of wheelchair users unnecessary. If they can be developed, paragraph (c) permits their use in lieu of a private screening.

The members of the committee agreed on this provision.

Section 382.65 Special charges.

The proposed regulation would require carriers to provide a number of accommodations and services to disabled passengers. This provision would prohibit carriers from imposing charges or fees on disabled persons for the provision of these accommodations or services. The Department seeks comment on whether it would be reasonable to allow a carrier to make a small charge for providing hazardous materials packaging for spillable batteries and whether there are other accommodations for which it is appropriate to charge. (Presently, charges are made by carriers for some services, such as provision of medical oxygen.) If so, what should the charges be? The committee did not complete discussion on this provision. Carrier representatives did not participate in the discussions on this provision, citing antitrust concerns as the reason.

Section 382.67 Training of carrier personnel.

One of the most frequently cited problems that disabled air travelers face is inconsistently in treatment by carrier personnel. Not only do different carriers have different practices, but different personnel of a single carrier may respond differently to similar situations. One of the ways in which this situation can be improved is to ensure that carrier personnel who deal with the traveling public know what these regulations require, know what their own carrier's procedures provide, and know how to respond appropriately to passengers with disabilities.

This section is intended to ensure that carrier public contact personnel, and other concerned personnel, receive training for these purposes. Each carrier which operates aircraft having a design capacity for more than 19 passenger seats would be required to implement a training program meeting the requirements of paragraph (a) of this section. (Carriers which operate only aircraft with a design capacity for 19 or fewer seats are covered by paragraph (g).)

Paragraph (a) lists three matters that the training would have to cover: DOT regulatory requirements, the carrier's own procedures, and training in awareness and appropriate responses to passengers with disabilities. The regulation would not specify a certain number of hours for this training. Rather, training on the first two items must be to "proficiency"—a level of learning sufficient to ensure that the personnel being trained know and can successfully apply the material covered by the training.

The DOT regulatory requirements concerning which training would be offered are primarily those of this part. But other DOT requirements would also be included. For example, DOT's hazardous materials rules prescribe certain requirements for the transportation of electric wheelchair batteries. FAA safety regulations contain requirements concerning passenger briefings and stowage of mobility aids. The Department anticipates listing all regulations relevant for training purposes in guidance which it will disseminate to carriers at the time the final rule is promulgated.

The regulation notes that training concerning awareness and appropriate responses to persons with disabilities would cover different types of disabilities and distinguish "among the differing abilities of handicapped persons." This is an important point, which the legislative history of the Air Carrier Access Act indicates was important to Congress. Persons with different types of disabilities (e.g., mobility impairments, visual impairments, hearing impairments), far from being a monolithic group of "handicapped persons," have very different sets of abilities and limitations. An appropriate way to respond to a passenger who is a wheelchair user may well not be an appropriate way to respond to a blind passenger, for example. Individuals within a general category of disabled persons likewise differ significantly. The training offered by carriers should instruct personnel in how to deal with persons with different types of disabilities as well as in how to respond appropriately to the differing abilities of individuals.

The carrier's training must cover all personnel who deal with the traveling

public. Airline personnel who do not deal with the public (e.g., staff who perform only internal administrative or operational functions, such as accountants or mechanics) would not need to receive this training. The training is intended to be "appropriate to the duties of each employee." This means that the training for all employees need not be identical. The training is not intended to reduce the time given to regular safety training. While training must concern all three areas listed in paragraph (a), it may be tailored to the specific duties of the employees being trained. For example, ticket counter agents need not be trained concerning emergency evacuation procedures for disabled persons, and flight attendants need not be trained concerning ticketing.

The Department anticipates that, in cooperation with carrier groups and groups representing persons with disabilities, it would develop and disseminate to carriers guidance concerning the content and format of the training programs which carriers would be required to develop. The purpose of this guidance would be to assist carriers in creating programs that were reasonably consistent with one another across the industry and which could be approved by the Department with as few changes as possible. The Department would aim at making this guidance available at the time a final rule based on this NPRM was published.

One of the best sources of information on the content of training for personnel who work with disabled passengers is organizations representing persons with disabilities. Paragraph (b) requires carriers operating aircraft with more than 19 seats to consult with such organizations in developing their training programs. Carriers should consult with organizations representing persons with various disabilities. The consultation is not intended to be merely *pro forma;* the carrier should not simply seek the after-the-fact comments of disability groups on a training program that has already been drafted. Rather, the carrier would be expected to work with the disability groups from the beginning of the development of the program. This participation should be especially valuable in helping the carrier's training program meet the requirement concerning appropriate responses to the differing abilities of handicapped persons.

Paragraph (c) concerns the submission of programs to DOT for approval. Carriers would have to submit their programs within 90 days of the effective date of the rule. DOT would have 120 days to review the program. The Department's review would pertain only to the consistency of the program with DOT regulations; DOT would not attempt to evaluate the pedagogical quality of the program. Consistent with the legislative history of the Act, the training program submitted for DOT approval would have to include the carriers' procedures for dealing with disabled passengers, consistent with this regulation. These procedures, like the training program itself, would be subject to DOT review and approval.

If DOT found problems in the program (e.g., a provision inconsistent with this part, a gap in its coverage of the requirements of this part), DOT would direct the carrier to fix the problem, and the carrier would have an obligation to do so. The Department seeks comment on whether a carrier's plan should be considered as approved unless DOT requests changes within 90 days. The carrier would have to begin implementation of the program within 90 days of its approval by DOT (i.e., its "program implementation date" referred to in paragraph (d) of the section).

Paragraph (d) concerns the timing for the initial training of carrier personnel. The timing requirements differ by function (aircraft crewmembers versus other personnel) and by date of employment (employed at the time the rule becomes effective versus persons hired subsequently).

Crewmembers employed on the effective date of this part who, per FAA regulations in 14 CFR Part 121, must receive recurrent training, will receive their training under this section before or as part of their next scheduled recurrent training. This will result in all current crew personnel being trained within six months to a year after the rule goes into effect. It should be emphasized that while, for purposes of administrative convenience, this training may be conducted at the same time and place as the recurrent crewmember training under Parts 121 and 135, it is intended to be an identifiable addition to that training. Other personnel (e.g., gate agents, ticket counter personnel, reservation agents) must receive their initial training within 180 days after the carrier's program implementation date.

New hires after the carrier's program implementation date would have to receive their initial training before they assume their duties (crewmembers) or within 60 days of the date on which they assume their duties (other personnel). These provisions apply to new employees "in any given position." This means, for instance, that an individual already trained as a ticket agent who is transferred to a gate agent position would have to receive the training relevant to gate agents within 60 days of starting to work as a gate agent.

Paragraph (e) adds that all personnel required to receive training must receive annual refresher training. This is intended to ensure that employees not only recall their initial training but also have access to new information (e.g., how to deal with a new mobility aid that is coming into greater use). The refresher training may be briefer than the initial training, so long as it covers the key points which personnel need to know.

This recurrent refresher training is the most expensive single component of the training requirement. According to the Department's regulatory evaluation, the annual training costs to carriers for initial and recurrent training of personnel ($22.1 million) would be more than five times the cost of initial training alone ($4.3 million). These cost projections were not available to the committee at the time it agreed to include annual refresher training in this proposed section.

In view of the costs involved, the Department seeks comment on whether the recurrent training requirement should be modified. For example, could the recurrent training requirement be deleted altogether for some personnel? Would a longer interval between training sessions (e.g., once every two years or five years, rather than once a year) allow for sufficient training of personnel while reducing costs? Would it make sense to require training beyond initial training only when there are significant changes in carrier equipment or procedures?

Paragraph (f) concerns those contractors to carriers who deal directly with the traveling public at the airport. For example, carriers may use contract personnel to staff security checkpoints at airports, to provide baggage checking and claim services, or to provide services directly to disabled passengers (e.g., persons who drive carts that take disabled persons from one part of the terminal to another). Since these personnel tend to interact with the traveling public in a narrower area of responsibility than carrier personnel, the Department does not contemplate that training as broad as that required for carrier personnel is necessary.

However, each carriers' program is required to provide that the carrier will require contractors to provide appropriate training concerning travel by disabled passengers for its personnel who deal directly with the traveling

public at the airport. (The carrier would not be required to actually conduct the training.) This training could be appropriately tailored to the employees' functions (e.g., security checkpoint operators would be trained specifically about treatment of mobility aids and how to conduct appropriate security screening of disabled persons).

Paragraphs (a) through (f) of this section concern only those carriers that operate aircraft with more than 19 passenger seats. Paragraph (g) concerns those carriers that operate only aircraft with 19 or fewer seats. There is a substantial number of such carriers, but typically they operate not only with smaller aircraft than larger carriers but also with smaller staffs and administrative support resources. They also carry fewer passengers. Consequently, the Department believes that it would not be practicable to require these carriers to implement a program like that required for larger carriers. Such a requirement would probably not be cost beneficial. Nor would it be practicable for the Department to review the large number of programs that these carriers would submit. However, these carriers would be responsible for training their employees concerning the same matters covered in paragraph (a) for larger carriers (i.e., the requirements of this part, the carrier's procedures, awareness and appropriate responses to handicapped passengers). The Department seeks comment on whether prior DOT reviews of training plans for smaller carriers would be useful and feasible.

With the exception of the question of refresher training intervals for employees (paragraph (e)), and the inclusion of carrier procedures on the training program submission to DOT, on which discussion was not completed, the members of the committee agreed on this provision.

Section 382.69 Enforcement procedures.

The success of any nondiscrimination regulation depends, not only on the cooperation and willing compliance with it by the carriers, but also on the efficacy of the procedures used to enforce it. The existing Part 382 is enforced through the same mechanism as other aviation economic regulations, using the procedures of 14 CFR Part 302. These procedures involve a formal hearing before an administrative law judge, a recommended decision, and review by the Department's Assistant Secretary for Policy and International Affairs.

This procedure can work effectively in some matters involving the rights of disabled passengers, as demonstrated in the *Southwest Airlines Co. Enforcement Case*, described in the section of the preamble concerning attendants for deaf-blind passengers. But the procedures are time-consuming (the *Southwest* case took approximately two years to resolve) and, because private legal counsel can be involved, expensive for both the complainant and the carrier. For the vast majority of consumer complaints, the procedures are too slow and inconvenient. Finally, while the Department can order a carrier to cease and desist from an unlawful practice and can impose civil penalties on an erring carrier, Part 302 procedures do not call for any compensation to persons against whom violations of the rules are committed.

For these reasons, the Department is proposing a three-tier enforcement scheme intended to dispose of most complaints of violation of the proposed Part 382 without resorting to a full-fledged Part 302 proceeding. The first tier of the system is to attempt to resolve a problem between the passenger and the carrier, without DOT involvement. Each carrier providing scheduled service (i.e., not including on-demand air taxis) would have one or more carrier complaints resolution officials (CRO) either physically available at each airport which it operates or available by free phone call from each such airport. These officials would have the authority to make dispositive resolution of complaints; that is, the official would be able to make a decision binding on his employer. In addition to this in-person mechanism for resolving complaints, each carrier would also have to establish a written complaints resolution procedure.

If a passenger complained to a CRO that the carrier was about to take action that would violate the rule (e.g., a reservation agent told a paraplegic that she needed an attendant to fly on the airline), the official could direct the appropriate carrier personnel to correct the problem before an actual violation occurred (e.g., before the passenger was denied service for lack of an attendant). In this case, no further action would be necessary. As discussed in connection with the refusal of service section, the CRO could not overrule a decision on the pilot-in-command on the spot, however.

If the violation has already occurred (e.g., the individual was improperly denied transportation) then the CRO could concede that the violation occurred, and compensation would be paid to the passenger. If the CRO denied that a violation had occurred, however, the CRO would provide a written statement of the rationale for the determination and inform the passenger that the matter could be referred to the Department.

If, instead of going to the CRO, the passenger files a written complaint, the carrier would reply within 30 days, either conceding that a violation occurred and paying compensation or denying that a violation occurred, stating why, and telling the person that the matter could be referred to the Department. A passenger would not have to return to the airport or go through the CRO to file a written complaint.

The referral to the Department would be for a brief, informal decisionmaking proceeding, not involving formal legal procedures. The complainant would send a letter to the Department alleging the violation. The Department would seek a response from the carrier. DOT would then issue a letter determining whether a violation occurred. If it had, the carrier would be responsible for paying compensation. If not, the matter would end. The determination would be made by appropriate DOT staff on the basis of the letters from the complainant and the carrier. The procedure is intended to be quick and relatively painless for all concerned.

The proposed rule uses the term "complainant." This term obviously refers to a passenger who complains directly of an alleged violation. It can also refer to a representative for such a passenger (e.g., an attorney, someone from an advocacy organization).

Compensating persons who have suffered violations of a nondiscrimination regulation, through an administrative mechanism, is a novel idea, except in the employment area. Typically, while financial assistance may be cut off or civil penalties imposed to compel the offending party to comply, individuals whose rights are violated are not directly compensated in any way through the enforcement procedures. (The Department does not take any position concerning, and through rulemaking cannot affect, whether individuals have a private right of action under the Air Carrier Access Act.) Another DOT aviation consumer rule offers a compensation model that, with some modifications, can be useful here. The denied boarding compensation (DBC) rule, 14 CFR Part 250, offers compensation to passengers with confirmed reservations who are "bumped." The Department believes that, under sections 404 and 411 of the

Federal Aviation Act—the same sections under which Part 250 was issued—it has the legal authority to establish a similar compensation scheme in this regulation.

The Compensation scheme would provide that, if the carrier's violation resulted in the complainant having to pay for an attendant, the carrier would pay the cost of the attendant's transportation and documented expenses for the attendant, up to a maximum of twice the cost of the attendant's air transportation. Otherwise, the compensation amount for a violation would be similar to that under Part 250. The baisc compensation would be the sum of the person's one way ticket, with a maximum of $200. The Department seeks comment on what requirements should be made in the case of charter flights, where often there are not "one way flight coupons" on which to base a calculation. If the violation results in a denial of transportation for a person, a service animal, or essential personal equipment, then the compensation would be doubled if alternate transportation scheduled to reach the passenger's destination promptly (i.e., within time frames like those specified in the denied boarding compensation rule) were not arranged. If the compensation were awarded as the result of a DOT referral and determination, rather than on the basis of a carrier's concession of a violation, $150 would be added to the compensation amount. This additional amount is intended to reflect the greater amount of time it takes the compensation to reach the individual and to provide an incentive for carriers to make sure they have a reasonable basis for denying that a violation has occurred. The Department seeks comment on whether this amount is appropriate, or whether it should be higher or lower.

Discussion on the enforcement section was not completed. As a general matter, the complaints resolution and compensation scheme outlined above was acceptable to carrier representatives (though the $150 additional payment was not discussed in the committee meetings). Disability group representatives, however, disagreed both with the procedures and the compensation amounts. They sought additional procedural protections for complainants. While favoring an administrative compensation mechanism, they also objected to using the DBC model for compensation. First, they said the amounts of compensation were too low. The actual and consequential damages to a handicapped person from a violation were likely to be much higher than the DBC amounts, they said. Second, it was inappropriate to use as a model for compensation for violations of people's civil rights a scheme developed for compensation for victims of a legal business practice like overbooking.

This compensation scheme is not intended to provide compensation for actual or consequential damages a person suffers because of imporperly being denied access to a flight or because of other violations of the preferred rule. Rather, it is an amount intended to provide an incentive to carriers to avoid violations and to recognize that when a carrier has failed to provide a service someone has paid for—air transportation—the carrier should make a payment commensurate with the cost of that service to the consumer.

We recognize the difference between overbooking and a violation of a nondiscrimination rule. While the legal, ethical, and emotional significance of the latter is greater, the practical result, in the context of air transportation, is likely to be quite similar for the person who is not provided the transportation he or she paid for. Use of the DBC model makes sense from this point of view. In addition, the Department does not want to establish a perverse incentive that would encourage carriers to disregard the enforcement process. Under the Federal Aviation Act, the Department can impose a maximum of air penalty $1000 per violation civil penalty for a carrier's failure to comply with a regulation.

If, as was suggested at one point in the negotiations, the compensation was set at a $1200 level, carriers would have an incentive to refuse to pay compensation and to take their chances with the lengthy Part 302 process, which could then only impose a $1000 penalty for the violation. The Department also believes that a key to the effective operation of the compensation system under this rule would be the familiarity and acceptability of the DBC compensation system on which it is modeled. However, the Department does seek comment on alternative compensation schemes (e.g., a multiple of the passenger's ticket value, a $250 or other minimum compensation amount). The Department also seeks comment on whether additional compensation is appropriate when being kept off one flight (e.g., a booked-in-advancer "super saver") results in a higher out-of-pocket cost for another flight (e.g., one at the regular fare.)

This section would provide that nothing in it was intended to preclude anyone from filing a complaint under Part 302 procedures or seeking other available legal remedies. Indeed, the Department could not, through this regulation, legally bar complainants from seeking to use these means to redress what they believe are violations of the Air Carrier Access Act or these regulations. Nor can the Department predict how courts would react to any exhaustion of remedies arguments that could be raised.

With respect to Part 302 procedures, any party may file a complaint at any time, or may request that a matter referred to the Department under this section be the basis of a Part 302 proceeding. The Department also reserves the right to initiate such a proceeding on its own motion. The Department contemplates using Part 302 procedures for such matters as issues involving significant factual disputes, the consistency of carrier policies with the regulation, patterns or practices of the carriers alleged to violate the rule (including a pattern or practice of a failure to provide equipment or accessibility features or services, or other required accommodations), and failure by a carrier to carry out its responsibilities (including compensation) under the enforcement section itself. The Department does not contemplate handling a high volume of routine consumer complaints of individual violations of the regulation through Part 302; the other features of the enforcement section of this rule are intended for that purpose. The Department's limited resources would preclude our doing so.

The Department seeks comment on when the enforcement provisions should go into effect. Carriers have suggested that it is unfair and unworkable to begin enforcement procedures (particularly the compensation provisions) immediately, when the rule would not require carriers to finish training their employees on how to comply with the rule for a year or more. Consequently, they favor a delayed implementation date for these provisions (e.g., a year to 18 months after the rest of the rule goes into effect). Disability groups, on the other hand, disagree with any delay in enforcement that would, for a significant period of time, result in regulatory rights having no regulatory remedies. The Department seeks comment on how to resolve this issue.

Regulatory Process Matters

This NPRM is a non-major under Executive Order 12291, since it would

not result in costs in excess of $100 million per year. It is a significant regulation under the Department's Regulatory Policies and Procedures, and a regulatory evaluation for the NPRM has been prepared.

The evaluation projects the following approximate present value of costs over a 21 year period from the effective date of the rule. The primary diffferences between the high and low estimates are that the former includes movable armrests on all seats and recurrent training, while the latter includes the smaller number of armrests favored by the carriers and only initial training for all employees. Costs are expressed in millions of dollars, using a ten percent discount rate.

Item	Low estimate	High estimate
On board chairs	14.6	14.7
Movable aisle armrests	7.1	161.5
Accessible lavatories	19.9	19.9
Training outlays	72.6	197.3
Total 21-year costs	114.3	393.4

The evaluation estimates that the initial investment (representing training of current employees and initial installation of accessibility equipment) would range from $94.6 million to $123 million, in undiscounted dollars. Annual costs for recurring investment (e.g., replacements of accessible equipment) and operating costs (i.e., the costs of operating accessible equipment plus training costs) would range from $10.2 million to $38.5 million, also in discounted dollars. The low and high estimates for these figures are based on the same assumptions as the high and low estimates for the 21-year discounted present value costs.

This proposed rule includes reporting requirements (i.e., the requirement in proposed § 382.67 for the submission of training programs). The Department is requesting clearance of these requirements under the Paperwork Reduction Act.

The regulation could have a significant economic impact on a substantial number of small entities. Specifically, about 4000 on-demand air taxis, most of which are small entities, are covered by the regulation. However, the Department has attempted to mitigate the effects of the rule on small entities by limiting the applicability of several sections of the proposed rule to larger aircraft or scheduled service. The Department seeks comments on what the economic effects of the rule would be on small entities and whether additional steps to mitigate these effects are appropriate.

Since this NPRM does not propose to regulate state or local governments, it would not have any significant impact on Administration Federalism policies and a Federalism Assessment has not been prepared. Since certain provisions (e.g., the proposed prohibition of number limits, the constraints on requirements for an attendant) could, in some circumstances, permit disabled family members to travel together where they might otherwise be prevented from doing so, it is likely to have a positive impact with respect to Administration family policy considerations.

List of Subjects In 14 CFR Part 382

Aviation, handicapped.

Issued this 17th day of June, 1988, at Washington DC.

Mimi Dawson,

(Acting) Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation proposes to take the following actions:

1. Title 14 of the Code of Federal Regulations is amended by revising Part 382 thereof to read as follows:

PART 382—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN AIR TRAVEL

Sec.

382.1 Purpose.
382.3 Applicability.
382.5 Definitions.
382.7 General prohibition of discrimination.
382.9 Assurances from contractors.
382.11 Airport facilities and services.
382.13–382.19 [Reserved].
382.21 Refusal of service.
382.23 Attendants.
382.25 Advance notice requirements.
382.27 Communicable diseases.
382.29 Medical certificates.
382.31 Seat assignments.
382.33–382.39 [Reserved].
382.41 Accessibility of aircraft.
382.43 Provision of services and equipment.
382.45 Stowage of personal equipment.
382.47 Reimbursement for lost or damaged mobility aids.
382.49 Accommodations for persons with hearing impairments.
382.51 Miscellaneous provisions.
382.53–382.59 [Reserved].
382.61 Passenger information.
382.63 Security screening of passengers.
382.65 Special charges.
382.67 Training.
382.69 Enforcement procedures.

Authority: Sections 404(a), 404(c), and 411 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1374(a), 1374(c), and 1381).

§ 382.1 Purpose.

(a) The purpose of this part is to prohibit air carriers from discriminating against otherwise qualified handicapped individuals on the basis of such handicap in the provision of air transportation, consistent with the safe carriage of all passengers.

(b) These regulations are intended to ensure that, consistent with the requirements of this part:

(1) Handicapped individuals receive access to air transportation;

(2) Any requirements or restrictions that air carriers impose upon handicapped persons are only those that are necessary to the safe carriage of all passengers and related to the nature and extent of any individual's handicap; and

(3) Air carriers provide services to individuals that are predictable, to the extent feasible, based on the requirements of this part.

(c) Nothing in this part is intended to require a carrier to incur undue financial or administrative burdens.

§ 382.3 Applicability.

(a) Except as provided in this section, this part applies to all air carriers providing air transportation.

(b) The following sections of this part do not apply to indirect air carriers: §§ 382.31, 382.41, 382.43, 382.45, 382.47, 382.49, 382.51, 382.61 (b) and (c), 382.63, 382.65, and 382.67.

(c) Nothing in this part shall authorize or require a carrier to fail to comply with any applicable FAA safety regulation.

§ 382.5 Definitions.

As used in this part—

"Air carrier" or "carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation.

"Air transportation" means interstate, overseas, or foreign air transportation, or the transportation of mail by aircraft, as defined in the Federal Aviation Act.

"Department" or "DOT" means the United States Department of Transportation.

"FAA" means the Federal Aviation Administration, an operating administration of the Department.

"Facility" means all or any portion of aircraft, buildings, structures, equipment, roads, walks, parking lots, and any other real or personal property, normally used by passengers or prospective passengers visiting or using the airport.

"Handicapped individual" means any individual who has a physical or mental

impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) "Physical or mental impairment" means (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardio-vascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) "Has a record of such impairment" means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by an air carrier as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in this definition but is treated by an air carrier as having such an impairment.

"Indirect air carrier" means an air carrier who is not directly engaged in the operation of aircraft in air transportation.

"OST" means the Office of the Secretary of Transportation.

"Qualified handicapped person" means a handicapped person who—

(a) With respect to accompanying or meeting a traveler, use of ground transportation, or obtaining information about schedules, fares or policies, takes those actions necessary to avail himself or herself of facilities or services offered by an air carrier to the general public, with reasonable accommodations, as needed, provided by the carrier;

(b) With respect to obtaining a ticket for air transportation on an air carrier, offers to purchase or otherwise validly to obtain such a ticket;

(c) With respect to obtaining air transportation and services or accommodations required by this Part, purchases or possesses a valid ticket for air transportation on an air carrier and presents himself or herself at the airport for the purpose of traveling on the flight for which the ticket has been purchased or obtained; or

(d) Meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers.

"Scheduled air service" means any flight scheduled in the current edition of the Official Airline Guide applicable to the flight.

§ 382.7 General prohibition of discrimination.

A carrier shall not, directly or through contractual, licensing, or other arrangements:

(a) Discriminate against any otherwise qualified handicapped individual, by reason of such handicap, in the provision of air transportation;

(b) Require a handicapped person to accept special services not requested by the passenger;

(c) Exclude a qualified handicapped individual from or deny the person the benefit of any air transportation or related services that are available to other persons, even if there are separate or different services available for handicapped persons except when specifically permitted by another section of this part; or,

(d) Retaliate in any way against a handicapped individual because the individual is asserting or has asserted rights protected by this part or the Air Carrier Access Act.

§ 382.9 Assurances from contractors.

Carriers' contracts with contractors who provide services directly to passengers, including carriers' agreements of appointment with travel agents, shall require a clause assuring nondiscrimination on the basis of handicap on the part of such contractors in activities performed on behalf of the carriers.

§ 382.11 Airport facilities and services.

(a) This section applies to terminal facilities and services owned, leased, or operated on any other basis by an air carrier, including parking and ground transportation facilities, related or providing access to air transportation.

(b) Such facilities and services shall be accessible to and usable by handicapped persons.

(c) All such facilities designed, built, or altered after the effective date of this part shall be accessible to handicapped persons. Compliance with the requirements of the Uniform Federal Accessibility Standards (UFAS), or a substantially equivalent standard, shall be deemed compliance with this requirement. These facilities shall also provide the following additional accessibility features:

(1) The basic terminal design shall permit efficient entrance and movement of handicapped persons while at the same time giving consideration to their convenience, comfort and safety. The design, especially concerning the location of means of vertical access, shall minimize any extra distance that wheelchair users must travel, compared to other persons, to reach ticket counters, waiting areas, baggage handling areas, and boarding locations.

(2) The ticketing system shall provide handicapped persons with the opportunity to use the primary fare collection area to obtain a ticket and pay the fare.

(3) Baggage dropoff and claim facilities for passengers shall be accessible to handicapped persons, and shall be designed and operated to facilitate efficient checking, handling, and retrieval of baggage by handicapped persons.

(4) The terminal shall contain at least one telecommunications device for the deaf (TDD) to enable persons with hearing impairments to make phone calls from the terminal. The TDD(s) shall be placed in a clearly marked, readily accessible location.

(5) Terminal information systems shall take into consideration the needs of handicapped persons. The primary information mode shall be visual words or letters, or symbols, using lighting and color coding. Terminals shall also have facilities for providing information orally.

(6) Facilities for moving between the gate area and the aircraft, including, but not limited to loading bridges and mobile lounges, shall be accessible to handicapped persons.

(d) Each existing fixed facility shall be made accessible as soon as possible but no later than three years the effective date of this rule.

(1) Each such facility shall

(i) Include at lease one accessible route from an accessible entrance to those areas in which the carrier

conducts activities related to the provision of air transportation; and

(ii) Include the accessibility features specified in paragraphs (c)(1) through (c)(6) of this section.

(2) An element or feature required by this paragraph to be accessible shall be deemed to be accessible if it meets the requirements of the standards referenced in paragraph (c) of this section. Departures from particular scoping and technical standards by the use of other methods are permitted where substantially equivalent or greater access to and usability of the buildings or other fixed facilities is provided. For this purpose, the special technical provisions of § 4.1.6(a)(4) of the UFAS apply.

§§ 382.13–382.19 [Reserved]

§ 382.21 Refusal of service.

(a) Unless specifically permitted by a provision of this part, a carrier shall not refuse to provide transportation to a handicapped person on the basis of his or her handicap.

(b) A carrier shall not refuse to provide transportation to a handicapped person solely because the person's handicap results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) Actions by carrier personnel under 49 U.S.C. 1511 or by the pilot-in-command under 14 CFR 91.8 or 14 CFR 121.533 shall not discriminate against any individual on the basis of handicap and shall not be inconsistent with the provisions of this part. In the event that such action is inconsistent with the provisions of this part, the carrier shall be subject to remedies provided under § 382.69.

(d) A carrier shall not refuse to provide transportation to handicapped individuals by limiting the number of such individuals that are permitted to travel on a given flight.

(e) When a carrier refuses to provide transportation to a handicapped person, the carrier shall specify in writing to the person the basis for the refusal, including, where applicable, the reason for the carrier's opinion that transporting the person would or might be inimical to the safety of flight. This written explanation shall be provided within 10 days of the refusal of transportation.

§ 382.23 Attendants.

(a) Except as provided in this section, a carrier shall not require that a handicapped person travel with an attendant as a condition of being provided air transportation.

(b) Carriers may require that a person with a mental disability travel with an attendant in order to be provided transportation in the following circumstances:

(1) A person with a mental disability who is unable to comprehend and respond appropriately to safety-related instructions of carrier personnel;

(2) A person with a mental disability who is brought to the airport under the supervision of an agent of a custodial institution, may be required to travel with an attendant, provided that the carrier shall not require an attendant for an individual under this subparagraph if the individual has been discharged from the institution.

(c) Air carriers who accept a person traveling in a stretcher may require the person to travel with an attendant who is qualified to provide medical and other services the person may need.

(d) A person who is quadriplegic shall make a self-assessment of his or her ability to travel without an attendant, including his or her ability to respond appropriately to safety-related instructions of carrier personnel which are consistent with this part and FAA safety rules.

(1) If the person determines that he or she can travel without an attendant, and the carrier agrees with this determination, the carrier may not require the person to travel with an attendant or to accept a seat assignment different from that requested by the passenger, consistent with § 382.31, as a condition of being provided air transportation.

(2) If the person determines that he or she cannot travel without an attendant, or if the carrier disagrees with the person's determination that he or she can do so, the carrier shall provide transportation to the first such person on a flight without an attendant if the person accepts a seat assignment selected by the carrier.

(3) If a person described in paragraph (d)(2) of this section does not accept a seat assignment selected by the carrier, or is the second or subsequent such person on the flight, the carrier may require the person to travel with an attendant in order to be provided transportation.

(e) A person who is both deaf and blind shall make a self-assessment of his or her ability to establish some means of communication with carrier personnel and to respond appropriately to safety-related instructions from carrier personnel which are consistent with this part.

(1) If the person determines that he or she can do so, and the carrier agrees with this determination, the carrier may not require the person to travel with an attendant or to accept a seat assignment different from that requested by the passenger, consistent with § 382.31, as a condition of being provided air transportation.

(2) If the person determines that he or she cannot do so, or if the carrier disagrees with the person's determination that he or she can do so, the carrier shall provide transportation to the first such person on a flight without an attendant if the person accepts a seat assignment selected by the carrier.

(3) If a person described in paragraph (e)(2) of this section does not accept a seat assignment selected by the carrier, or is the second or subsequent such person on the flight, the carrier may require the person to travel with an attendant as a condition of being provided transportation.

§ 382.25 Advance notice requirements.

(a) Except as provided in paragraph (b) of this section, a carrier shall not require a handicapped person to provide advance notice of his or her intention to travel or of their disability as a condition of receiving transportation or of receiving services or accommodations required by this Part.

(b) A carrier may require up to 48 hours advance notice from a handicapped person if the person wishes to receive any of the following services, types of equipment, or accommodations:

(1) Medical oxygen;

(2) Carriage of an incubator, if this service is available on the flight;

(3) Hook-up for a respirator to the aircraft electrical power supply, if this service is available on the flight;

(4) Accommodation for a passenger who must travel in a stretcher, if this service is available on the flight;

(5) Provision of an on-board wheelchair, consistent with § 382.41;

(6) Provision by the carrier of hazardous materials packaging for a battery for a wheelchair or other assistive device.

(c) If the handicapped person provides the notice required by the carrier for a service under paragraph (b) of this section, the carrier shall ensure that the requested service is provided.

(d) Even if the advance notice which carriers may require under paragraph (b) of this section is not provided by a handicapped person, the carrier shall provide the service, equipment, or accommodation requested by the handicapped person if it is readily available for a flight the handicapped person wishes to take or the carrier can

make it available by making a reasonable effort, without delaying the flight.

§ 382.27 Communicable diseases.

With respect to a person who is handicapped or regarded as being handicapped on the basis of having a communicable disease or infection, a carrier shall not, unless there is a reasonable medical judgment that the disease can be transmitted to other persons in the normal course of the flight, as established by appropriate U.S. public health authorities knowledgeable about the disease—

(a) Refuse to provide transportation to the person;

(b) Require the person to provide a medical certificate;

(c) Impose on the person any condition, restriction, or requirement not imposed on other passengers; or

(d) Otherwise discriminate against that person.

§ 382.29 Medical certificates.

A carrier shall not require a passenger to have a medical certificate as a condition for being provided transportation except with respect to:

(a) A person traveling in a stretcher;

(b) A person who needs medical oxygen during the flight as provided in 14 CFR 121.574;

(c) A person traveling in an incubator; or

(d) A person with a communicable disease, under the circumstances set forth in § 382.27.

§ 382.31 Seat assignments.

Carriers shall not exclude any person from an a seat in an exit row or other location or require that a person sit in a particular seat, on the basis of handicap, except in order to comply with the requirements of an FAA safety regulation.

§§ 382.33–382.39 [Reserved]

§ 382.41 Accessibility of aircraft.

(a) Air carriers operating aircraft having 30 or fewer seats under 14 CFR Part 121 or Part 135 shall provide accessibility of these aircraft as specified in paragraph (b) of this section to the extent not inconsistent with structural, weight and balance, operational and interior configuration limitations. Aircraft in service on the effective date of this part shall not be required to be retrofitted for the sole purpose of enhancing accessibility.

(b) Air carriers operating aircraft with more than 30 seats under 14 CFR Part 121 shall ensure accessibility of these aircraft as follows, dependent on the status of the aircraft as of the effective date of this part:

(1) Aircraft in service on the effective date of this Part shall not be required to be retrofitted for the sole purpose of enhancing accessibility.

(i) Upon the first replacement of the cabin interior elements or lavatories, or the replacement of seats with newly manufactured seats, in a way affecting accessibility features covered by this section, the carrier shall meet the requirements of paragraph (b)(3) of this section with respect to the affected features of such aircraft.

(ii) With respect to aircraft in which lavatories are provided, on-board chairs meeting the requirements of paragraph (b)(3)(ii) of this section shall be available on request no later than two years from the effective date of this part.

(2) Aircraft delivered to the carrier within two years after the effective date of this part shall provide accessibility meeting requirements of paragraph (b)(3) of this section to the extent not inconsistent by structural, configuration, or contractual limitations.

(i) Upon the first replacement of the cabin interior elements or lavatories, or the replacement of seats with newly manufactured seats, in a way affecting accessibility features covered by this section, the carrier shall meet the requirements of paragraph (b)(3) of this section with respect to the affected features of such aircraft.

(ii) With respect to aircraft in which lavatories are provided on-board chairs meeting the requirements of paragraph (b)(3)(ii) of this section shall be made available on request no later than two years from the effective date of this part.

(3) New aircraft delivered to the carrier more than two years after the effective date of this part shall provide accessibility at least to the following extent:

Option 1

(i) Aircraft on which passenger aisle seats have armrests shall include movable aisle armrests on all passenger aisle seats except for seats on which a movable armrest is not feasible.

Option 2

(i) Aircraft on which passenger aisle seats have armrests shall have seats with movable aisle armrests.

(A) Movable armrests shall be identified as such and distributed throughout the aircraft in each class of service, except for those seats in which a movable armrest is not feasible. Carriers shall provide a priority system for assignment of seats with movable armrests to persons with disabilities necessitating their use. *Provided*, that if all aisle armrests on an aircraft or clear of service are movable, the carrier is not required to identify seats with such armrests or establish a priority system for their assignment on that aircraft or in that class of service.

(B) The number of seats with movable armrests shall be at least as follows with respect to aircraft delivered to the carrier between two and four years from the effective date of this part:

Aircraft with 31–59 passenger seats: 2.
Aircraft with 60–199 passenger seats: 4.
Aircraft with 200–399 passenger seats: 6.
Aircraft with over 400 passenger seats: 6.

The number of such seats shall be at least as follows with respect to aircraft delivered between four and six years after the effective date of this part:

Aircraft with 31–59 passenger seats: 4.
Aircraft with 60–199 passenger seats: 6.
Aircraft with 200–399 passenger seats: 8.
Aircraft with over 400 passenger seats: 8.

The number of such seats shall be at least as follows with respect to aircraft delivered to the carrier more than six years after the effective date of this part:

Aircraft with 31–59 passenger seats: 8.
Aircraft with 60–199 passenger seats: 10.
Aircraft with 200–399 passenger seats: 10.
Aircraft with over 400 passenger seats: 12.

(ii) On aircraft in which lavatories are provided, the carrier shall make available, on request, at least one operable on-board wheelchair for the use of passengers. This wheelchair shall include footrests, armrests which are movable or removable, adequate restraint systems, a backrest height that permits assistance to passengers in transferring, structurally sound handles for maneuvering the occupied chair, and a means by which the occupant can prevent chair movement during transfer. The wheelchair shall be designed to be compatible with the maneuvering space, aisle width, and seat height of the aricraft on which it is to be used, and to be easily pushed, pulled, and turned in the cabin environment by carrier personnel.

(iii) In aircraft with 200 or more passenger seats in which lavatories are provided, there shall be at least one accessible lavatory. The accessible lavatory shall permit a disabled passenger to enter, maneuver within as necessary to use all lavatory facilities, and leave by means of the aircraft's on-board wheelchair. The lavatory shall also afford privacy to passengers using the on-board wheelchair equivalent to that afforded ambulatory users, and shall provide door locks, grab bars, faucets and other controls, and dispensers usable by disabled passengers, including wheelchair users and persons with manual impairments;

Provided, that carriers are not required to remove a revenue seat in order to comply with this subparagraph.

(iv) In aircraft with 60–199 passenger seats in which lavatories are provided, there shall be at least one accessible lavatory. The accessible lavatory shall provide door locks, grab bars, faucet and other controls, and dispensers usable by disabled passengers, including persons with manual impairments. A means shall be provided to ensure the privacy of passengers using the on-board wheelchair to enter and use the lavatory; *Provided*, that carriers are not required to remove a revenue seat in order to comply with this subparagraph.

(v) Aircraft operated under Part 121 that have more than 30 seats shall include on-board stowage capacity sufficient to accommodate at least one folding wheelchair.

(c) Any replacement or refurbishing of the aircraft cabin shall not reduce existing accessibility to a level below that specified in this Part.

§ 382.43 Provision of services and equipment.

Carriers shall ensure that handicapped passengers who request them are provided the following services and equipment:

(a) Assistance requested by the passenger in enplaning and deplaning, including, to the extent under control of the carrier, assistance in making flight connections, transfers between gate and aircraft and transportation between gates. This assistance shall include, as needed, the services of personnel and the use of ground wheelchairs, boarding chairs, on-board wheelchairs, and ramps or mechanical lifts.

(b) In the event that physical limitations of an aircraft with 19 or fewer passenger seats preclude the use of lifts, boarding chairs, or other feasible devices to enplane a handicapped person, carrier personnel are not required to carry the handicapped person onto the aircraft by hand.

(c) Reasonable assistance requested by passengers in moving to an from the aircraft lavatory, including assistance with use of on-board wheelchairs.

(d) Carriers are not required to provide extensive special assistance to handicapped persons:

(1) For purposes of this section, extensive special assistance includes the following activities:

(i) Assistance in actual eating;

(ii) Assistance within the restroom or assistance at the passenger's seat with elimination functions;

(iii) Provision of medical services.

(2) For purposes of this section, the following activities are not considered to be extensive special assistance and shall be provided as requested, or when offered by air carrier personnel and accepted by handicapped individuals:

(i) Assistance in preparation for eating, such as opening packages and identifying food;

(ii) Assistance in moving to and from restrooms, with the aid of an on-board wheelchair for persons needing it;

(iii) Assistance in loading and retrieving carry on baggage including mobility aids stowed on board in accordance with § 382.45.

§ 382.45 Stowage of Personal Equipment.

(a) All stowage of passengers' wheelchairs and other equipment covered by this part and used by handicapped persons in aircraft cabins shall be in accordance with 14 CFR 121.589 and 14 CFR 121.285(c) or 14 CFR 135.87, as applicable.

(b) Carriers shall permit passengers using personal ventilator/respirators to bring their equipment, including non-spillable batteries meeting the requirements of 49 CFR 173.260(d) that supply power for it, on board the aircraft and use it.

(c) Carriers shall permit passengers using canes or other mobility aids or equipment to carry these items and stow them on board the aircraft in close proximity to the passengers' seats, consistent with FAA safety regulations.

(d) Carriers shall provide for on-board stowage of passengers' wheelchairs as follows:

(1) Carriers shall permit the stowage of wheelchairs or components of wheelchairs in overhead compartments and under seats.

(2) In aircraft in which an approved stowage area is provided in the cabin, of a size that will accommodate a folding wheelchair, the carrier shall permit at least one folding wheelchair to be stowed in the storage area.

(3) In aircraft operated under 14 CFR Part 135, if an approved stowage area in the cabin is not available for a folding wheelchair, there shall be a dedicated area in the cargo compartment.

(e) When passenger compartment stowage is not available, carriers shall provide for the checking and timely return of passengers' wheelchairs as close as possible to the door of the aircraft, so that passengers may use their own wheelchairs to the extent possible in boarding and deplaning, except where this practice would be inconsistent with DOT regulations governing the transportation of hazardous materials. In order to achieve the timely return of wheelchairs, passengers' wheelchairs shall be among the first items retrieved from the baggage compartment. Wheelchairs and other mobility aids shall be stowed in the baggage compartment with priority over cargo and baggage, except baggage brought by passengers who made their reservation before the disabled person did so.

(f) Where baggage compartment size and aircraft airworthiness and operational considerations do not prohibit doing so, carriers shall accept as baggage battery-powered wheelchairs, including the batteries, consistent with the requirements of DOT regulations on the transportation of hazardous materials (49 CFR Parts 172, 173, and 175).

(1) Whenever feasible, the carrier shall transport electric-powered wheelchairs secured in an upright position, so that batteries need not be separated from the wheelchair in order to comply with DOT hazardous materials rules.

(2) When it is necessary to detach the battery from the wheelchair, carriers shall, upon request, provide packaging for and package the batteries consistent with the requirements of the DOT hazardous materials rules.

(3) When batteries have been removed, or other changes have been made to the passenger's wheelchair, the wheelchair shall be returned to the passenger functioning as delivered to the carrier. Carriers shall not drain batteries.

(4) Handicapped individuals shall be permitted to assist or provide written directions concerning the disassembling and assembling of their wheelchairs.

§ 382.47 Reimbursement for lost or damaged mobility aids.

(a) Wheelchairs and other mobility aids shall be returned to the passenger functioning as delivered to the carrier.

(b) Carriers shall not limit liability for loss of or damage to wheelchairs or other mobility aids to any amount less than twice the liability limits established for passengers' luggage under 14 CFR Part 254.

(c) Carriers shall not require handicapped persons to sign waivers of liability for damage to or loss of wheelchairs and other mobility aids.

§ 382.49 Accommodations for persons with hearing impairments.

(a) Carriers providing scheduled service which make available telephone reservation and information service to the public, shall make available a telecommunications device for the deaf (TDD) service to enable persons with

hearing impairments to make reservations and obtain information. The TDD service shall be available during the same hours as the telephone service for the general public and the response time for answering calls shall be equivalent. Users of the TDD service shall not be subject to charges for a call that exceed those applicable to users of the telephone information and reservation service.

(b) In aircraft in which safety briefings are presented to passengers on video screens, the carrier shall ensure that the video presentation is open-captioned for persons with hearing impairments. Carriers shall implement this requirement by substituting captioned video materials for uncaptioned video materials, as the uncaptioned materials are replaced in the normal course of the carrier's operations.

§ 382.51 Micellaneous provisions.

(a) Carriers shall permit dogs and other service animals used by handicapped persons to accompany the person on a flight. If the carrier reasonably doubts that the animal is a service animal for a handicapped person, the carrier may request an identificator card or document for the animal. Carriers shall permit the animal to accompany the person in any seat in which the person sits. In the event that special information concerning the transportation of animals outside the continental United States is either required to be or is provided by the carrier, the information shall be provided to all passengers traveling outside the continental United State with the carrier, including those traveling with service animals.

(b) Carriers shall not require handicapped passengers to sit on blankets.

(c) Carrierrs shall not restrict the movement handicapped persons in terminals or require them to remain in a holding area or other location in order to be provided transportation, to receive assistance, or for other purposes, or otherwise mandate separate treatment for handicapped persons.

§§ 382.53–382.59 [Reserved]

§ 382.61 Passenger information.

(a) A carrier shall make available, on request, the following information of concern to handicapped persons:

(1) The location of any seats on an aircraft with movable armrests or which the carrier, consistent with the requirements of this part, does not make available to persons with a given disability;

(2) Any limitations on the ability of the aircraft scheduled for a given flight to accommodate handicapped persons;

(3) Any limitations on the availability of storage facilities, in the cabin or in the cargo bay, for mobility aids or other equipment commonly used by handicapped persons, on an aircraft scheduled for a given flight;

(4) Whether the aircraft scheduled for a given flight has restroom facilities accessible to handicapped persons.

(b) An individual safety briefing shall be conducted in accordance with 14 CFR 121.571 (a) (3) and (4) and 135.117(b), and an individual safety briefing may be conducted for those passengers who request special assistance in boarding or who respond to an invitation to pre-board due to disability. Carrier personnel may offer an individual briefing to any other passenger but may not require its acceptance. Carrier personnel shall not require any handicapped persons to demonstrate that he or she has listened to, read, or understood the information presented, except to the extent that carrier personnel impose such a requirement on all passengers.

(c) Each carrier shall ensure that all persons with disabilities, including those with vision or hearing impairments, have timely access to information the carrier provides to other passengers in the terminal or on the aircraft (to the extent that it does not interfere with crewmembers' safety duties as set forth in FAA regulations) including, but not limited to, information concerning ticketing, flight delays, schedule changes, flight check-in, gate assignments, and the checking and claiming of luggage. Carriers shall provide information on aircraft changes that will affect the travel of handicapped persons.

§ 382.63 Security screening of passengers.

(a) Handicapped passengers shall undergo security screening in the same manner, and be subject to the same security requirements, as other passengers. Possession by a handicapped person of an aid used for independent travel shall not subject the person or the aid to special screening procedures if the person using the aid clears the security system without activating it: *Provided,* that this paragraph shall not prohibit security personnel from examining a mobility aid or assistance device which, in their judgment, may conceal a weapon or other prohibited item. Security searches for handicapped passengers whose aids activate the security system shall be conducted in the same manner as for other passengers. Private security screening shall not be required for handicapped passengers to a greater extent, or for and different reason, than for other passengers.

(b) Except as provided in paragraph (c) of this section, if a disabled passenger requests a private screening in a timely manner, the carrier shall provide it in time for the passenger to enplane.

(c) If a carrier employs technology that can conduct an appropriate screening of a handicapped passenger without necessitating a physical search of the person, the carrier is not required to provide a private screening.

§ 382.65 Special charges.

Carriers shall not impose special or additional charges for providing assistance to handicapped persons to comply with the provisions of this Part.

§ 382.67 Training.

(a) Each carrier which operates aircraft with more than 19 passenger seats shall implement a program of education and training for all its personnel who deal with the traveling public, as appropriate to the duties of each employee. This program shall ensure training to proficiency concerning:

(1) The requirements of this part and other DOT or FAA regulations affecting the provision of air travel to handicapped persons; and

(2) The carrier's procedures, if any, concerning the provision of air travel to handicapped persons.

The program shall also ensure training concerning awareness and appropriate responses to handicapped persons, including persons with physical, sensory, mental, and emotional disabilities and distinguishing among the differing abilities of handicapped individuals.

(b) Each such carrier shall consult with appropriate organizations representing persons with disabilities in developing its training program.

(c) Each such carrier shall submit to OST, within 90 days of the effective date of this part, the training program it has developed to comply with this section. The program shall include the carrier's policies, consistent with this part, concerning which the carrier's personnel are to be trained. OST shall review the program for consistency with this Part and, within 120 days of its submission, approve it or direct the carrier to modify it to make it consistent with the requirements of this Part. The carrier shall implement the program within 90 days of its approval by DOT.

(d) Each such carrier shall ensure that personnel required to receive training shall complete the training by the following times:

(1) For crewmembers subject to training required under 14 CFR Part 121 or 135, who are employed on the implementation date of the carrier's program, before or as part of their next scheduled recurrent training.

(2) For other personnel employed on the implementation date of the carrier's program, within 180 days of that date.

(3) For crewmembers whose employment in any given position commences after the implementation date of the carrier's program, before they assume their duties.

(4) For other personnel whose employment in any given position commences after the implementation date of the carrier's program, within 60 days of the date on which they assume their duties.

(e) Each such carrier shall ensure that all personnel required to receive training receive refresher training on the matters covered by this section, as appropriate to the duties of each employee, at least once a year.

(f) Each such carrier shall require its contractors to provide training to their employees concerning travel by handicapped persons. This training is required for contractor employees who deal directly with the traveling public at airports, and it shall be tailored to the employees's functions.

(g) Each carrier operating only aircraft with 19 or fewer passenger seats shall provide training for flight crewmembers and appropriate personnel to ensure that they are familiar with the matters listed in paragraph (a) of this section.

(h) Current employees designated as complaints resolution officers, for purposes of § 382.69 of this part, shall receive training concerning the requirements of this part and the duties of a complaints resolution officer within 60 days of the effective date of this part. Employees subsequently designated as complaints resolution officers shall receive this training before assuming their duties under § 382.69.

§ 382.69 Enforcement procedures.

(a) Each carrier shall establish and implement a complaint resolution mechanism, including the following elements:

(1) A complaints resolution official or officials shall be designated by carriers providing scheduled service for each airport which the carrier services.

(i) The official(s) shall be available to persons concerning alleged violations of the provisions of this Part or other matters related to the requirements of this Part during all times the carrier is operating at the airport.

(ii) The carrier may make the official(s) available via telephone, at no cost to the passenger, if the official is not present in person at the airport at the time of the complaint.

(iii) Each complaints resolution official shall be thoroughly familiar with the requirements of this Part and the carrier's procedures with respect to handicapped passengers.

(iv) Each complaints resolution official shall have the authority to make dispositive resolution of complaints on behalf of the carrier.

(2) Each carrier shall establish a procedure for resolving written complaints alleging violation of the provisions of this part.

(b) A carrier is not required to respond to a complaint made more than 30 days after the date of the alleged violation.

(c) When a complaint is made to a carrier complaints resolution official, the official shall promptly take dispositive action as follows:

(1) If the complaint is made to a carrier complaints resolution official before the action or proposed action of carrier personnel has resulted in a violation of a provision of this Part, the official shall take or direct other carrier personnel to take action, as necessary, to ensure compliance with this part.

(2) If an alleged violation of a provision of this part has already occurred, and the complaints resolution official agrees that a violation has occurred, the carrier shall compensate the handicapped individual as provided in paragraph (f) of this section within ten working days of the official's determination.

(3) If the carrier complaints resolution official determines that the carrier's action does not violate a provision of this part, the official shall provide to the complainant a written statement including a summary of the facts and the reasons, under this part, for the determination. The statement shall inform the complainant of his or her right to refer the matter to the Department of Transportation under paragraph (e) of this section. The statement shall be provided in person to the complainant at the airport if possible; otherwise, it shall be forwarded to the complainant within five working days of the complaint.

(d) The carrier shall make a dispositive written response to a written complaint alleging a violation of a provision of this part within 30 days of its receipt. If the carrier agrees that a violation has occurred, the response shall include compensation as provided in paragraph (f) of this section. If the carrier denies that a violation has occurred, the response shall include a short statement of the facts and the carrier's reasons, under this part, for the determination and shall inform the complainant of his or her right to refer the matter to the Department of Transportation under paragraph (e) of this section.

(e) If the carrier, under paragraph (c) or (d) of this section, denies that a violation of a provision of this part has occurred, or does not reply in a timely manner, the complainant may refer the matter to OST.

(1) The complainant shall make such a referral within 10 days of the receipt of the carrier's denial.

(2) The referral shall be in writing and shall state the allegation of a violation, describe the facts and circumstances involved, include a daytime telephone number, and include a copy of the carrier's statement or letter denying that a violation occurred.

(3) OST shall transmit a copy of the complainant's letter of referral to the carrier, requesting a written response from the carrier concerning the facts and circumstances of the alleged violation and the carrier's reasons for believing that no violation of a provision of this part occurred. If the carrier wishes to respond, it shall do so within 30 days of receiving the transmittal from OST.

(4) OST shall determine, on the basis of the information provided under this paragraph, whether a violation of a provision of this part has occurred. OST shall issue a written determination to the carrier and the complainant concerning whether a violation has occurred, unless the Department has decided to commence an enforcement proceeding under 14 CFR Part 302. This determination shall be administratively final.

(5) If OST determines that a violation has occurred, OST shall direct the carrier to compensate the individual as provided in paragraph (g) of this section.

(f) Compensation to passengers for violations of this part shall be calculated as follows in cases where it is awarded by the carrier under paragraphs (c)(2) or (d) of this section:

(1) If the carrier's violation resulted in a requirement that the passenger travel with an attendant, the compensation shall be the cost of the air transportation for the attendant and other documented expenses for the attendant paid by the handicapped person. The total amount of compensation need not exceed twice the cost of the air transportation for the attendant.

(2) In other cases, compensation shall be a payment equal to the sum of the face value of the person's ticket coupons, with a $200 maximum.

(i) In any case in which the carrier's violation results in a denial of transportation for the handicapped person, a service animal acceptable as provided in § 382.51, or essential personal equipment needed for mobility, and the airline cannot arrange alternate transportation for the person and his equipment or animal, the compensation is doubled (to a maximum of $400).

(ii) The value of a ticket coupon is the one-way fare for the flight shown on the coupon including any surcharge and air transportation tax, minus any applicable discount. All flight coupons, including connecting flights, to the passenger's final destination or first four-hour stopover (whichever is first) are used to compute the compensation.

(iii) Alternate transportation is air transportation or other transportation used by the passenger which, at the time the arrangement is made, is planned to arrive at the passenger's next stopover (of four hours or longer) or final destination (whichever is first) no later than two hours (for flights between U.S. points, including territories and possessions) or four hours (for international flights) after the arrival time of the original flight.

(iv) In the event that the carrier's violation precluded the person from obtaining a ticket, the amount of compensation shall be calculated as provided in paragraph (f)(2)(i) of this section on the basis of the value of the coupon(s) that would have been issued, but for the violation.

(v) Carriers may offer free or reduced-rate air transportation in lieu of the cash due under this paragraph if (A) the value of the transportation benefit is equal to or greater than the cash payment otherwise required and (B) the carrier informs the passenger of the amount of cash that would otherwise be due and that the passenger may decline the transportation benefit and receive the cash payment.

(g) If the compensation is awarded pursuant to an OST determination that a violation has occurred, under paragraph (e) of this section, the amount of compensation shall be $150 in addition to the amount provided in paragraph (f) of this section for the violation in the case.

(h) Nothing in this section shall preclude any person from filing a complaint under 14 CFR Part 302, or from seeking other available legal remedies, with respect to an alleged violation of this part or the Air Carrier Access Act of 1986.

[FR Doc. 88-13999 Filed 6-17-88; 11:55 am]
BILLING CODE 4910-62-M

Reader Aids

Federal Register

Vol. 53, No. 120

Wednesday, June 22, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JUNE

19879-20088.....1
20089-20274.....2
20275-20594.....3
20595-20806.....6
20807-21404.....7
21405-21618.....8
21619-21790.....9
21791-21976.....10
21977-22124.....13
22125-22290.....14
22291-22460.....15
22461-22646.....16
22647-23106.....17
23107-23202.....20
23203-23378.....21
23379-23602.....22

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5618 (*See* Proc. 5832).....23199
5829.....22289
5830.....22461
5831.....22463
5832.....23199
5833.....23201
5834.....23377

Executive Orders:
12641.....21975

Administrative Orders:
Presidential Determinations:
No. 88-15 of May 20, 1988.....20595
No. 88-16 of May 20, 1988.....21405
No. 88-18 of June 3, 1988.....21407

5 CFR

307.....20807
316.....20807
752.....21619
1200.....22465
1600.....23379

Proposed Rules:
300.....23123

7 CFR

2.....21977, 22466, 23167
28.....20089
58.....20275
250.....20416, 20597, 22466
272.....22291, 23484
273.....22291, 23484
405.....20278
440.....20279
713.....20280
770.....20280
795.....21409
800.....21791
910.....20599, 21792, 22647
911.....21624, 22125
915.....20599, 21624
916.....22609
918.....21624
923.....21624
925.....22126
944.....20599, 22126
946.....21793
948.....22469
982.....21624
987.....19879
989.....19880
998.....20290, 22470
1033.....21626
1046.....21626
1413.....20280
1421.....20280
1425.....19882, 21964
1470.....20280
2003.....20090
3403.....21966

Proposed Rules:
27.....22178
51.....22497, 22498
68.....20636
319.....22330
401.....20331-20333, 21455
905.....20121
907.....21651
908.....21651
916.....23243
917.....23243
919.....23243
928.....20121
958.....23404
998.....21666
1001.....21825
1002.....21825
1004.....21825
1076.....23405
1106.....22499
1126.....22003, 22499
1230.....21456, 21836
1446.....19923, 21964
1809.....23406
1922.....23406
1930.....21460
1944.....19924
1945.....23406
1980.....22764

8 CFR

235.....23379
245a.....23380
274a.....20086

9 CFR

78.....21979
92.....2030, 21794, 22128
94.....22128
331.....20099
381.....20099

10 CFR

11.....21979
25.....21979
30.....23382
34.....23382
35.....21627
50.....20603, 21981, 23203
71.....23382
73.....23382
625.....20508

Proposed Rules:
2.....20335
50.....19930, 20856
71.....21550, 23484

12 CFR

4.....20611

208.....20808
210.....21983
261.....20812, 23383
265.....22129
324.....22130
346.....21986
563.....20611
606.....19884
612.....22134
620.....21986
725.....22471
745.....22472

Proposed Rules:
225.....21462
563c.....23244
571.....23244
575.....21474
576.....21474
577.....21474
584.....21838
611.....20637
612.....20637
618.....20637, 20647
620.....20637
701.....22656
704.....20122

13 CFR
121.....21547

Proposed Rules:
121.....20857
124.....21482
125.....22015

14 CFR
39.....20101, 20825–20830, 21411, 21412, 21628, 21630, 21809, 22647, 23219
71.....20102, 20414, 20832, 20833, 21396, 21811, 22137, 23219–23221
73.....23221, 23222
91.....20103, 21986, 23356
95.....20264, 23222
97.....21811, 23227
99.....21989
135.....20264, 21986

Proposed Rules:
Ch. I.....20124, 22331
21.....20860
23.....20860
39.....20414, 21489, 21669, 22018, 22020, 22181, 22332, 22657, 22659, 23250–23253
71.....20864, 22182, 22183, 23255–23257
73.....20125
75.....20126, 22183, 23258
382.....23574

15 CFR
370.....23228
372.....22474, 23229
379.....21989
386.....22474, 23228
390.....20833
399.....21989

Proposed Rules:
801.....23124

16 CFR
13.....20834
444.....19893
500.....20834
1501.....21964

Proposed Rules:
13.....19930, 20127, 20131, 22022
305.....22022, 22106
1500.....20865
1501.....20865

17 CFR
249.....23383

Proposed Rules:
1.....21490
31.....22138
146.....22660
150.....23411
210.....21670
230.....22661
239.....23258
240.....21670
249.....21670
270.....21670, 23258
274.....21670, 23258

18 CFR
161.....22139
250.....22139
271.....21415
284.....20835, 22139
375.....21992
381.....21992

Proposed Rules:
4.....21824
16.....21824
141.....21853
260.....21853
357.....21853
420.....22501

19 CFR
132.....19896
134.....20836

Proposed Rules:
134.....20869
177.....19933

20 CFR
416.....23230
654.....23346

Proposed Rules:
205.....20136
243.....22184
262.....22184
350.....22184
404.....21685, 21687, 23484
416.....21685, 23126

21 CFR
5.....22292
172.....20637–20842, 21631, 22293, 22294, 23340
184.....20936
186.....20936
193.....20307, 23107, 23385–23388
201.....21633
510.....20842, 21993, 22297
520.....21993, 23389
522.....20842, 22297, 23340, 23389
548.....20842
555.....23389
558.....20842, 22298
561.....20307, 23107, 23385–23388
862.....21447
1301.....21813

Proposed Rules:
Ch. I.....23180
175.....20335
176.....20335
177.....20335
178.....20335
355.....22430
606.....23414
1010.....20137, 23167
1308.....21450

22 CFR
136.....23186

Proposed Rules:
20.....21854

23 CFR
650.....21637

24 CFR
8.....20216
35.....20790
200.....20790
201.....19897
203.....19897
234.....19897
510.....20790
570.....20790
882.....20790
885.....19899
886.....20790
941.....20790
965.....20790
968.....20790

Proposed Rules:
208.....20649
596.....20556

25 CFR
11.....21993
13.....21993
20.....21993
21.....21993
23.....21993
69.....21995
125.....21993
151.....21993
175.....21993
176.....21993
177.....21993
271.....21993

Proposed Rules:
61.....20335

26 CFR
1.....20308, 20612–20614, 20718, 22163, 23231
602.....20308

Proposed Rules:
1.....20337, 20650, 20651, 20719, 21688, 22186

27 CFR

Proposed Rules:
4.....22678
5.....22678
7.....22678

28 CFR
0.....21996

Proposed Rules:
11.....22026
31.....21770

29 CFR
452.....23233
505.....23540
1926.....22612
2676.....22298

Proposed Rules:
70.....22680
1910.....20960, 21694

30 CFR
7.....23486
18.....23486
701.....21764
800.....21764
816.....21764
817.....21764
904.....19903, 21450
925.....22475
934.....22478
946.....22479

Proposed Rules:
Ch. I.....23286
7.....23506
20.....23286
25.....23506
75.....22502, 23286
77.....23286
701.....23522
772.....23532
785.....23526
815.....23532
827.....23526
916.....21494
917.....23287
918.....20338
931.....23415
935.....22503
936.....19934
942.....23532
944.....20338

31 CFR
565.....20566

Proposed Rules:
103.....23289

32 CFR
72.....22648
114.....20843
285.....19905
286.....22649
391.....22649

Proposed Rules:
199.....20576–20592
701.....22027

33 CFR
3.....21814
4.....22650
100.....19906, 20319, 21815, 21997, 21998, 22484–22486, 22651, 23233
110.....20319, 20617
117.....20320
160.....21814
165.....21815

Proposed Rules:
100.....22680
110.....20339, 20652
117.....22506
126.....22118
154.....22118
155.....22118
156.....22118
162.....20339
165.....20339, 20653
173.....21856
174.....21856

34 CFR
350 ... 23350
360 ... 23350
562 ... 21400
Proposed Rules:
670 ... 22072

36 CFR
Proposed Rules:
327 ... 21495

37 CFR
Proposed Rules:
10 ... 20871
201 ... 20347
202 ... 21817

38 CFR
1 ... 22652
3 ... 23234
13 ... 20618
Proposed Rules:
19 ... 20653

39 CFR
111 ... 21820
3001 ... 23107

40 CFR
52 ... 20321, 21638, 22486, 23237
60 ... 22172, 23390
147 ... 21450
180 ... 19907, 20322, 21451, 21452, 22299, 23390-23394
232 ... 20764
233 ... 20764
250 ... 23546
261 ... 20103, 21639
271 ... 20845
300 ... 23108
303 ... 23394
372 ... 23108
761 ... 21641
795 ... 22300
796 ... 21641, 22300
799 ... 22300
Proposed Rules:
52 ... 20347, 23416, 23418
60 ... 20139
80 ... 21500
81 ... 20139, 20722, 23127
82 ... 20718
86 ... 21500
180 ... 20872, 23420, 23421
228 ... 19934
261 ... 20140, 20350, 22334
264 ... 20738
265 ... 20738
270 ... 20738, 23342
372 ... 23128
471 ... 21774
600 ... 21500
763 ... 19945

41 CFR
101-38 ... 21821
Proposed Rules:
101-41 ... 19946

42 CFR
400 ... 21762
405 ... 22850
431 ... 20448
435 ... 20448
440 ... 20448
442 ... 20448, 22850
483 ... 20448
488 ... 22850
Proposed Rules:
405 ... 22335, 22506, 22513
411 ... 22335
412 ... 22028
417 ... 21696
435 ... 19950
440 ... 19950
441 ... 19950
482 ... 22506
489 ... 22335, 22513
1001 ... 22513
1003 ... 22513

43 CFR
1571 ... 22326
3000 ... 22814
3100 ... 22814
3110 ... 22814
3120 ... 22814
3130 ... 22814
3160 ... 22814
3180 ... 22814
3200 ... 22814
3280 ... 22814
4100 ... 22325
5150 ... 22326
Public Land Orders:
6679 ... 20846
6680 ... 22488
6681 ... 22489
6682 ... 22489
6683 ... 22326
6684 ... 22327
Proposed Rules:
4 ... 23291
11 ... 20143
426 ... 21857

44 CFR
64 ... 19907, 19909, 20846, 22172-22176, 22654
65 ... 22489, 22491
67 ... 22492
Proposed Rules:
67 ... 21705, 22527

45 CFR
302 ... 21642
303 ... 21642
1080 ... 23568
1801 ... 23239
Proposed Rules:
670 ... 19964
707 ... 22534

46 CFR
10 ... 21822
15 ... 21822
69 ... 20619
77 ... 20623
96 ... 20623
195 ... 20623
249 ... 23112
586 ... 20847
Proposed Rules:
10 ... 20654
15 ... 20654

47 CFR
73 ... 19912, 19913, 20624-20626, 21645, 21646, 21762, 22495, 22496, 23396-23398
94 ... 21453
97 ... 21822
Proposed Rules:
1 ... 20146, 22356, 23132
25 ... 20146
61 ... 22356
65 ... 22356
68 ... 22035
69 ... 22356
73 ... 19964-19966, 20658, 20659, 22035, 22036, 22544-22548, 23135, 23422-23428
74 ... 21861
94 ... 23132

48 CFR
204 ... 20626, 22426
205 ... 20626, 22426
206 ... 20626, 22426
209 ... 20631
219 ... 20626, 22426
226 ... 20626, 22426
227 ... 20632, 22609
235 ... 20626, 22426
252 ... 20626, 20631, 20632, 22426, 22609
519 ... 21823
970 ... 21646
Proposed Rules:
4 ... 22105
215 ... 19966, 21862
252 ... 19966

49 CFR
1 ... 23121
30 ... 19914
566 ... 20119
1001 ... 23398
1002 ... 23398
1035 ... 20853
1071 ... 23400
1072 ... 23400
1104 ... 20853
1115 ... 20853
Proposed Rules:
382 ... 22268
383 ... 20147
391 ... 20147
392 ... 20147
571 ... 20659
604 ... 20660, 23340
1002 ... 19969

50 CFR
23 ... 19919
253 ... 20323, 22609
301 ... 20327
652 ... 20854
658 ... 21999
661 ... 20119, 22000, 22655
663 ... 20634, 22001
672 ... 19921, 21649, 22327, 23401, 23402
675 ... 21454, 22328, 23402
Proposed Rules:
Ch. VI ... 20661
20 ... 20874
600 ... 21863
601 ... 21863
604 ... 21863
605 ... 21863
625 ... 23292
642 ... 22036
644 ... 21501
661 ... 19971
663 ... 22366

LIST OF PUBLIC LAWS

Last List June 21, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 1100/Pub. L. 100-336

To authorize the Secretary of the Interior to provide assistance to Wildlife Prairie Park, in the State of Illinois, and for other purposes. (June 17, 1988; 102 Stat. 617; 1 page) Price: $1.00

H.R. 3869/Pub. L. 100-337

To amend the Act providing for the establishment of the Tuskegee Institute National Historic Site, Alabama, to authorize an exchange of properties between the United States and Tuskegee University, and for other purposes. (June 17, 1988; 102 Stat. 618; 1 page) Price: $1.00

H.R. 4799/Pub. L. 100-338

To extend the withdrawal of certain public lands in Lincoln County, Nevada. (June 17, 1988; 102 Stat. 619; 1 page) Price: $1.00

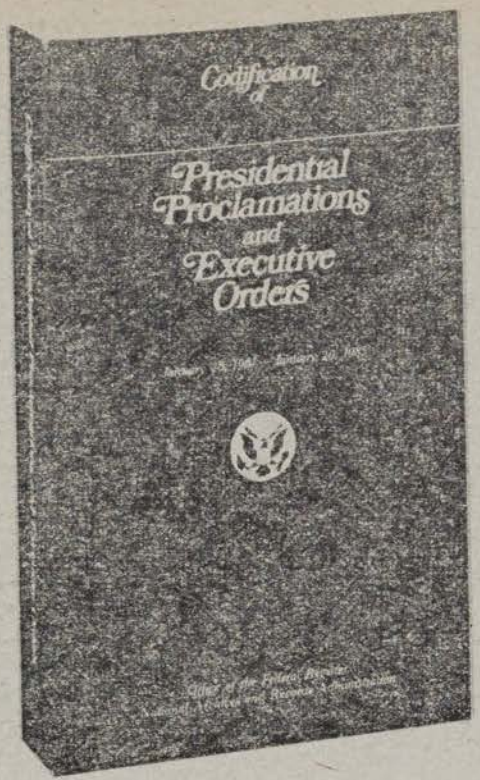
S. 1652/Pub. L. 100-339

To authorize the establishment by the Secretary of Agriculture of a plant stress and water conservation research laboratory and program at Lubbock, Texas. (June 17, 1988; 102 Stat. 620; 2 pages) Price: $1.00

S. 2304/Pub. L. 100-340

To amend the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1986, to extend the life of the Commission on the Ukraine Famine (June 17, 1988; 102 Stat. 622; 1 page) Price: $1.00

New edition now available....



For those of you who must keep informed about **Presidential Proclamations and Executive Orders**, there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period January 20, 1961, through January 20,1985, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1961-1985 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

MAIL ORDER FORM To

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ *check,* ☐ *money order, or charge to my*

Deposit Account No. ☐☐☐☐☐☐☐–☐ *Order No.* _____

master charge VISA

Credit Card Orders Only

Total charges $ _____ Fill in the boxes below

Credit Card No ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

★6105

Expiration Date Month/Year ☐☐☐☐

Master Charge Interbank No ☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00a.m. to 4:00p.m eastern time, Monday-Friday (except holidays).

Please send me _____ *copies of the* ***Codification of Presidential Proclamations and Executive Orders*** *at $20.00 per copy. Stock No. 022-022-00110-0*

NAME—FIRST, LAST

COMPANY NAME OR ADDITIONAL ADDRESS LINE

STREET ADDRESS

CITY STATE ZIP CODE

(or) COUNTRY

PLEASE PRINT OR TYPE

(Revised 10-15-85)