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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 316, 330 and 332

Placement Programs for Displaced Federal Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing placement programs for employees displaced from their Federal positions through no fault of their own. These regulations set forth basic criteria for programs operated by OPM as well as Federal agencies.

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Sylvia Cole, (202) 632-6817.

SUPPLEMENTARY INFORMATION: Proposed regulations were published for comment on December 28, 1987 (54 FR 48824) to amend 5 CFR Parts 330 and 332 governing placement assistance for employees who will be displaced or have been separated from their Federal jobs as a result of agency work force reductions, compensable on-the-job injury, or discontinued services or disability retirement. The proposed regulations set forth criteria for two programs operated by OPM—the Interagency Placement Assistance Program (IPAP) and the Displaced Employee Program (DEP)—as well as agency responsibilities for operating positive placement programs and providing placement assistance to displaced employees.

Written comments on the proposed regulations were received from seven Federal agencies, two employee organizations, and one individual. The comments dealt primarily with the OPM operated placement programs. Several agencies suggested clarifications which are not appropriate for inclusion in the regulation, but will be incorporated into instructional material issued through the Federal Personnel Manual System. Since the final regulations contain a variety of editorial changes, and one section was divided into two, the section numbers below are different than those in the proposed regulations. Key comments are summarized below.

One agency felt that OPM placement assistance should be limited to the commuting area only, rather than nationwide. We do not agree with this approach. When Federal employees are displaced, we should provide maximum possible placement assistance for them (unless they have demonstrated they are not mobile), especially if the availability of jobs may be limited in the local commuting area.

One agency did not agree with the current practice of permitting employees to transfer their DEP eligibility to a new commuting area if they were separated from employment because they declined reassignment outside the current commuting area. When these employees register for OPM placement assistance, we do limit the assistance to the current commuting area. They are not permitted to register for nationwide referral. We did not alter our current procedure because we think it is fair to permit the registrants to take their eligibility with them to their new local area, should they later relocate. Placement assistance would still be limited to one commuting area, rather than nationwide.

Most agencies supported our proposal to exclude from the IPAP and DEP those employees who have a performance rating of unacceptable. Two agencies further suggested that individuals with a rating below "Fully Successful" be disqualified or that agencies be permitted to pass over them without going through the formal objection procedures in effect for the DEP. We retained the rating requirement as proposed. Under reduction in force procedures, employees with unacceptable performance ratings are denied displacement rights and are the first employees to be released. We believe our regulation balances that requirement with our efforts to maximize placement assistance for displaced Federal employees. Because some employees, such as administrative law judges, are exempt from performance evaluations, we revised § 330.302 (now numbered § 330.303) to exclude them from the rating requirement. We have also excluded individuals separated due to on-the-job injury, because we feel it is inappropriate to require performance appraisals from employees who, in many cases, have been off agencies' rolls for a long period of time and cannot provide a meaningful appraisal.

One employee organization suggested that registration for the IPAP should be in 6-month increments, renewable by the employee, rather than the current practice of registration in 120-day increments, renewable by the agency. We did not adopt this suggestion. IPAP registrants are employees who have a job but are faced with possible separation because they have been identified as surplus. It is the agency, not the employee, that decides if a person is surplus. The 120-day registration period ensures there is a continuing need for OPM placement assistance and we permit renewals until the employee is no longer surplus or has been separated.

That same organization also suggested that OPM placement assistance under the DEP should continue indefinitely for career employees or be extended in 6-month increments up to four years. In addition, the individual commenter suggested that the periods of eligibility for placement assistance should be extended during hiring freezes in the Federal Government. We believe the current time periods for OPM assistance are appropriate. To find a new job is primarily the employee's responsibility and also an obligation of the agency in which the separation occurs. OPM's placement programs only supplement these efforts and are not intended to relieve the employee or the agency of its responsibility to seek alternative employment.

One agency requested that we clarify the nature of assistance given to IPAP candidates who have no competitive status and cannot be appointed noncompetitively. Clarifying language has been added to § 330.304 (now numbered § 330.305).

Another agency disagreed with the provision permitting DEP candidates to reopen competitive registers at grades higher than the last job occupied. This privilege has been in effect for many years and we see no need to take this

benefit away. The candidates do not receive priority consideration on these registers. They are processed and certified as all other competitors are.

The final regulations contain two clarifications on the eligibility criteria for the IPAP. Since the program is designed to help employees under most types of appointments, including nonstatus employees, we have recorded § 330.302 (now numbered § 330.303) to indicate that any employee serving under an appointment not limited to one year or less is eligible for placement assistance. We have also updated the conditions under which IPAP eligibility will terminate. OPM placement assistance ceases not only under the conditions specified in the proposed regulations, but also when the registrants are placed in or decline an offer of continuing employment in State or local government, or in the private sector. This was inadvertently omitted from the proposed regulations.

After consideration of the comments received, we are adopting the proposed revisions to Parts 330 and 332 as final regulations, with modifications as discussed above and some editorial clarifications.

The final regulations for Part 330 no longer contain the provision that requires agencies to separate Tenure Group III employees when there are no suitable vacancies for DEP registrants. This provision is also cross referenced in Part 316, Subpart J. The subpart deals with the separation of temporary and term employees in response to specific displacement orders by OPM. Since this subpart contains outdated material, it has been removed.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation affects only the procedures used to provide placement assistance to certain Federal employees.

List of Subjects

5 CFR Part 316

Government employees, Veterans.

5 CFR Part 330

Government employees, Intergovernmental relations.

5 CFR Part 332

Government employees, Examination for government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Parts 316, 330 and 332 as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for Part 316 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, and E.O. 10577; § 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371, E.O. 12137), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585.

§ 316.80 (Subpart H) [Removed]

2. In Part 316, Subpart H is removed.

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

3. The authority citation for Part 330 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577; § 330.102 also issued under 5 U.S.C. 3327; Subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; Subpart H also issued under 5 U.S.C. 8337(h) and 8457(b).

4. Subpart C and its heading are revised to read as follows:

Subpart C—Placement Assistance Programs for Displaced Employees

Sec.

330.301 Coverage.
330.302 OPM programs.
330.303 Eligibility.
330.304 Period of eligibility.
330.305 Placement assistance.
330.306 Termination of eligibility.
330.307 Agency responsibilities.

Subpart C—Placement Assistance Programs for Displaced Employees

§ 330.301 Coverage.

This subpart covers placement programs for employees who will be displaced or have been separated from their Federal jobs as a result of agency work force reductions, compensable on-the-job injury, discontinued service retirement or disability retirement. Agencies have the primary responsibility for providing placement assistance to their surplus or displaced employees, and for operating positive placement programs as set forth in § 330.307 of this subpart. OPM supplements these agency efforts by administering placement programs which give surplus or displaced employees priority referral to positions in other agencies.

§ 330.302 OPM programs.

(a) OPM operates two placement programs—the Interagency Placement Assistance Program (IPAP) and the Displaced Employee Program (DEP). In general, the IPAP provides placement assistance in advance of an impending work force reduction to employees who have been identified by their agencies as surplus. The DEP provides assistance to employees who have received a specific notice of separation or who have been separated.

(b) The IPAP is also used as a referral mechanism when OPM is required by statute to provide placement assistance to certain individuals.

§ 330.303 Eligibility.

(a) For the *IPAP,* the registrant must:

(1) Be serving under an appointment not limited to one year or less, in an agency whose personnel system is subject to competitive service requirements (except individuals entitled to placement assistance by law);

(2) Have a rating above "unacceptable" on his or her most recent performance rating of record as described in § 351.203 of this chapter (except employees in positions excluded from any performance appraisal system by law, regulation or OPM administrative action);

(3) Have been identified as surplus under one of the following conditions:

(i) The employee is occupying a position scheduled to be abolished;

(ii) The employing agency, or one of its components, is scheduled to be abolished;

(iii) The activity in which the employee's position is located is undergoing an efficiency study under the provisions of OMB Circular A–76 and solicitation of bids has begun; or

(iv) The employee is otherwise targeted for involuntary separation; and

(4) Must register for the program within time limits specified by OPM.

(b) For the *DEP,* the registrant must:

(1) Be a present or former career or career-conditional employee, or excepted employee with competitive status and in tenure group I or II as defined in Part 351 of this chapter (except that an employee occupying a Schedule C position as defined in Part 213 of this chapter is not entitled to placement assistance);

(2) Be serving in or have been separated from a position in an agency whose personnel system is subject to competitive service requirements;

(3) Have a rating above "unacceptable" on his or her most recent performance rating of record as

described in § 351.203 of this chapter (except individuals qualifying under paragraphs (b)(4)(iii) and (b)(4)(v) of this section or those who are in positions excluded from any performance appraisal system by law, regulation or OPM administrative action);

(4) Must be subject to one of the following:

(i) Has received a specific notice of separation through reduction in force;

(ii) Has declined a transfer of function to another commuting area or has declined reassignment to another commuting area (as defined in Part 351 of this chapter);

(iii) Has been separated or furloughed because of a compensable injury in accordance with the provisions of Subchapter I of Chapter 81 of Title 5, United States Code;

(iv) Has applied for an annuity or has retired under the discontinued service retirement provision in section 8336(d)(1) or 8414(b)(1)(A) of Title 5, United States Code; or

(v) Has retired due to disability under section 8337, 8451 or 8457 of Title 5, United States Code; and

(5) Must register for the program within time limits specified by OPM.

§ 330.304 Period of eligibility.

IPAP registrants receive placement assistance in 120-day increments renewable by the registering agencies. For the DEP, tenure group II employees receive 1 year of placement assistance and tenure group I employees receive 2 years of assistance.

§ 330.305 Placement assistance.

(a) IPAP and DEP registrants are referred ahead of other candidates when they are qualified and available for vacancies expected to last more than 1 year and that are filled through competitive registers held by OPM or by an agency with delegated examining authority. (IPAP registrants without noncompetitive appointment eligibility for competitive service positions will be referred separately for consideration for positions in the excepted service.) No individual may be selected for such a vacancy from an OPM or agency competitive register as long as a qualified DEP registrant is available. Referrals are based on the qualifications of registrants and on the duties of the positions.

(b) Placement assistance under both programs is nationwide except that registrants who decline transfer or reassignment outside the commuting area may register for placement assistance only within the commuting area of the position from which they will be or were separated. However, these registrants may transfer their eligibility to another commuting area if they later relocate.

(c) A registrant will be referred to vacancies that are at or below the grade level of and have no more promotion potential than the position from which separated. Eligible registrants separated from positions above GS–15 will receive assistance at the GS–15 level and below.

(d) When an agency selects an IPAP or DEP registrant, it employs him or her under appropriate appointments such as reinstatement, transfer, position change, or excepted appointment.

§ 330.306 Termination of eligibility.

(a) Eligibility for assistance under the *IPAP* will be terminated if one of the following occurs:

(1) The registrant's 120-day period of eligibility expires and is not renewed by the agency;

(2) The registrant requests, in writing, that placement assistance be terminated;

(3) The agency notifies OPM that the employee is no longer surplus;

(4) The registrant is placed in a nontemporary position in the competitive or excepted service, in State or local government, or in the private sector;

(5) The registrant is enrolled in the DEP; or

(6) The registrant declines an offer of continuing employment in the competitive or excepted service, in State or local government, or in the private sector, under conditions (i.e., grade, salary, geographic location, or work schedule) the registrant previously indicated were acceptable, unless OPM determines that an exception is warranted.

(b) Eligibility for assistance under the *DEP* will be terminated if one of the following occurs:

(1) A tenure group I registrant's 2-year period of eligibility expires (except for preference eligibles who are eligible for up to 1 year of additional assistance as specified in § 330.407 of this part);

(2) A tenure group II registrant's 1-year period of eligibility expires (except for preference eligibles who are eligible for up to 1 year of additional assistance as specified in § 330.407 of this part);

(3) The registrant requests, in writing, that placement assistance be terminated;

(4) The registrant is placed in a nontemporary position in either the competitive or excepted service; or

(5) The registrant declines an offer of continuing employment in the competitive or excepted service under conditions (i.e., grade, salary, geographic location, or work schedule) the registrant previously indicated were acceptable, unless OPM determines that an exception is warranted.

§ 330.307 Agency responsibilities.

(a) *Agency programs.* (1) Each agency has a primary obligation to assist, to the maximum extent practical and in keeping with the requirements set forth in paragraph (a)(2) of this section, in the placement of its surplus and displaced employees. OPM's placement programs only supplement these efforts and are not intended to relieve an agency of its responsibility to provide the maximum placement assistance possible.

(2) Each agency is required to operate a positive placement program for its own surplus and displaced employees. The program must, at a minimum, provide for the establishment and maintenance of a reemployment priority list for the commuting area for those employees who have received a specific notice of separation through reduction in force, as provided for in Subpart B of this part. Additionally, each agency is expected to supplement this basic requirement with other forms of appropriate assistance to be given to employees prior to actual separation. An agency's positive placement program should include the following elements:

(i) Criteria of eligibility for assistance;

(ii) The duration of eligibility;

(iii) The types of assistance provided, including counseling, job referral, and training;

(iv) Consideration of the appropriateness of placing restrictions on filling vacancies by any means when qualified surplus or displaced employees are available in the agency's positive placement program.

(b) *Registration of eligible employees.* Agencies are encouraged to participate in the IPAP and inform their employees about this program as soon as they are reasonably sure that separations will be necessary. In accordance with Subpart H of Part 351 of this chapter, agencies must inform affected employees about the Displaced Employee Program at the same time that specific reduction-in-force notices are distributed. Agencies are responsible for assisting employees with their registration forms, for completing the information requested on the forms, and for sending them to appropriate offices as instructed by OPM.

(c) *Consideration of individuals*

referred. Agencies will give full consideration to individuals referred through OPM's placement programs. Full consideration is a careful and open review of the qualifications of the registrant as described in the individual's application forms, contact to determine interest and availability, and an interview, if possible, to further assess the registrant's ability to perform the duties of the position within a reasonable period of time. An appointing officer may not pass over a DEP eligible to select a non-DEP eligible unless an objection to the DEP eligible is sustained by OMP or an agency with delegated examining authority. The objection procedure does not apply to IPAP registrants.

§ 330.404 [Amended]

5. In § 330.404(c), the words "as specified in OPM issuances" are removed and the word "are" is substituted for "is".

6. In § 330.701, paragraph (b) is revised to read as follows:

§ 330.701 Coverage.

* * * * *

(b) Has been retired under sections 8337 or 8451 of title 5, United States Code.

PART 332—RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION

7. The authority citation following § 332.406 is removed. The authority citation for Part 332 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

8. Section 332.314 is revised to read as follows:

§ 332.314 Displaced employees eligible for placement assistance.

Subject to the time limits and other conditions published by OPM in Federal Personnel Manual Chapter 332, a person who is eligible for placement assistance through the Displaced Employee Program described in Subpart C of Part 330 of this chapter is entitled to file applications for competitive examinations after the closing date for receipt of applications when there is an existing register or a register is about to be established. Applications may be filed at any grade or level above the position from which the person is about to be or was displaced, for which such person is qualified.

[FR Doc. 88–17006 Filed 7–27–88; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 890

Federal Employees Health Benefits Program; Medically Underserved Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its Federal Employees Health Benefits (FEHB) Program regulations to specify (1) how it determines which states qualify as Medically Underserved Areas, and (2) how and when it will announce the results of this determination. This action is necessary to expedite notice of Medically Underserved Areas to the public.

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Myers, (202) 632–4634.

SUPPLEMENTARY INFORMATION: On January 14, 1988, OPM published proposed regulations in the **Federal Register** (53 FR 898) that specified how it determines which states qualify as Medically Underserved Areas under the FEHB Program. The regulations proposed a change to the method by which OPM announces the results of this annual determination. This change would begin with OPM's determination for calendar year 1989, which would be announced before the beginning of the November 1988 open season.

OPM received two written comments on the proposed regulations: One from an association and one from an FEHB carrier. While both were generally in favor of the proposed change, the FEHB carrier expressed concern about the timing of the public notice. The carrier believes that the results of OPM's determination should be announced by September 1 to be sure that the states are included in the plan brochures for the next calendar year. We acknowledge the importance of including this information in the brochures, but do not think it is necessary to require a specific date by which the states must be published in the **Federal Register**. As soon as the necessary data becomes available to us, we will make every effort to determine which states qualify as Medically Underserved Areas for the next calendar year and share this information with the carriers.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104.

2. In § 890.701, the following three sentences are inserted between the first and second sentences in the definition "Medically underserved area" to read as follows:

§ 890.701 Definitions.

* * * * *

"Medically underserved area" * * * OPM makes its annual determination by comparing the latest Department of Health and Human Services state-by-state population counts on primary medical care manpower shortage areas with U.S. Census figures on state resident population. The determination will be made prior to the annual FEHB open season and will be for the next calendar year. OPM will announce the results of this determination before each open season in a public notice in the **Federal Register.** * * *

* * * * *

[FR Doc. 88–17009 Filed 7–27–88; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 88–125]

Horse Protection Regulations; Interim Rule and Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Horse Protection Regulations to revise the list of devices and equipment prohibited for use on horses at any horse show, exhibition, sale, or auction. We are removing provisions established by an earlier interim rule that would have phased in a maximum pad height of 1 inch, and are substituting a prohibition on the use of pads that exceed 50 percent of the horse's natural foot length or that fail to comply with other specified requirements. We are also prohibiting packing materials between pad and hoof, except for certain approved materials, and are expanding restrictions on the use of weights on horses. Additionally, we are amending the regulations to allow the use of pliant plastic pads on horses. These amendments are necessary to better protect horses under the Horse Protection Act.

DATE: This interim rule is effective August 1, 1988. Consideration will be given only to comments postmarked or received on or before October 31, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090–6464. Please state that your comments refer to Docket No. 88–125. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7833.

SUPPLEMENTARY INFORMATION:

Background Information

On April 26, 1988, we published an interim rule in the **Federal Register** (FR 53 14778–14782, Docket No. 88–052) that amended the Horse Protection regulations in 9 CFR Part 11 (referred to below as the regulations) to prohibit and restrict certain devices and practices to prevent the soring of horses. On May 2, 1988, we published another interim rule in the **Federal Register** (FR 53 15640–15641), Docket No. 88–079) that amended the regulations with regard to weight added to a horse's foot, including the weight of horseshoes and certain boots.

Comments on Interim Rules

We invited written comments on our interim rules, stipulating that they had to be postmarked or received on or before June 27, 1988. The comment period was then reopened and extended, and closed July 15, 1988.

We received over 2,100 comments on the interim rules, and have carefully considered these comments in developing this new interim rule. Many of the comments we received dealt with matters outside the scope of the interim rules on which we requested comments. For example, some commenters requested amendments to the Horse Protection Act, or addressed enforcement of regulatory provisions not discussed in the interim rules. We are responding in this interim rule to comments on changes effected by the earlier interim rules.

The comments were from state agriculture officials, representatives of horse associations, representatives of animal protection associations, members of Congress, breeders, owners, exhibitors, veterinarians, farriers, and other interested persons. In terms of number of comments filed, the majority generally opposed one or more of the provisions of the interim rules, but a large minority either supported the interim rules or supported the intent of the interim rules but wanted stronger regulatory restrictions. All comments were carefully considered, and objections are discussed in this supplementary information section.

Pads

Among the provisions established by the April 26 interim rule was a schedule for phasing down the allowable height of pads on horses. The interim rule provided for a maximum pad height of 3 inches through July 31, 1988, and of 2 inches from August 1, 1988, through October 31, 1988. After October 31, 1988, full pads were to be limited to ½ inch, with total pad height including rim pads, limited to 1 inch.

Among the comments we received was one that was jointly signed and submitted by the American Horse Council (AHC), on behalf of its member organizations, and by the American Horse Protection Association (AHPA). The AHC represents over 150 horse industry associations, councils, establishments, and suppliers. Its membership represents a large majority of the major horse organizations in the country. We understand that the joint comment was the result of intensive study and discussion among AHPA officials and officials and representatives of the AHC, and its constituent organizations affected by these rules. Among the issues addressed by the joint comment was the issue of pads used on horses. The joint commenters stated that pads serve the following legitimate needs: (1) To protect the hoof from abrasions or penetration on hard or uneven surfaces; (2) to provide a cushioning agent for the hoof and limb when working or showing surfaces are unduly hard or rough; (3) to maintain the natural angle of the foot and pastern; (4) to compensate for conformation abnormalities of the foot and limb; (5) to aid in keeping the shoes intact on those horses with thin-walled or brittle feet; (6) to permit the use of packing under the pad to maintain proper softness and flexibility of the hoof; (7) to protect the foot from the development of septic processes; (8) to facilitate the application of therapeutic medication to the hoof; (9) to increase or decrease support to the foot and limb as an aid in the treatment of lameness; and (10) to build up the proper matching length and angle of any foot that has been broken or damaged.

According to the joint commenters, pads used in these ways are applied in such a manner as to maintain or achieve normal hoof-pastern axis; therefore pads used in a protective/therapeutic manner are in the best interest of the horse's health and soundness. For these reasons, the joint commenters stated, the use of pads should not be prohibited or arbitrarily limited. The joint commenters additionally stated that the length of the natural hoof of a horse is an important consideration with regard to the use of pads, and that due to the varying sizes of different breeds, ages, and uses of horses, it is inappropriate to set an absolute limit on an acceptable or appropriate pad height to be used on all horses' feet. The joint commenters noted that pads are also used to facilitate certain gaits in show horses, stating that this is a legitimate use as long as the pad does not otherwise cause or result in a violation of the Horse Protection Act (Act). Through their intensive discussion, and in consultation with experienced veterinarians and farriers, the joint commenters developed and submitted guidelines that they believe would assure compliance with the Act while facilitating legitimate uses of pads.

According to the joint commenters, a pad that is no longer than 50 percent of the length of the horse's natural hoof at the toe cannot reasonably be expected to sore the horse, if the horse is properly shod. They stated that the proper use of pads depends on a variety of factors, including maintenance of the appropriate hoof-pastern axis, proper trimming of the hoof wall and the sole, and the avoidance of any practice that inflicts pressure or pain to the sensitive tissues of the foot. The joint commenters noted that the current prohibitions in

§ 11.2(b)(18), redesignated by this interim rule as § 11.2(b)(17), are important determinations in determining if a horse is properly shod with pads. For this reason, the joint commenters suggested that we amend the 1-inch maximum on pad height to permit the use of a pad that is no longer than one-half the length of the horse's natural hoof.

This recommendation, and all other recommendations made by the joint commenters regarding pads, as explained below, were supported in separate comments submitted by the Humane Society of the United States, representing 800,000 members and constituents, and by the Friends of the Show Horse Association, Inc. (Friends Association), a non-profit corporation of owners, trainers, and breeders of Tennessee Walking Horses that participate in approximately 480 horse shows annually. Additionally, we received a supplementary comment and supporting material regarding pads from the Tennessee Walking Horse Breeders' and Exhibitors' Association (TWHBEA, Inc.), a member organization of the AHC that represents a major segment of the industry. It is unclear from its comments what the ultimate position of the TWHBEA, Inc, is. Although the comment states that the TWHBEA, Inc., supports a 4-inch limit on pad height, it also states that the association supports the AHC/AHPA joint recommendation on pads, at least as far as it will facilitate the current show season. Because we are requesting comments on this interim rule, the TWHBEA, Inc., will have an opportunity to clarify its position before any action is taken to make this interim rule final.

We believe that the recommendation presented in the AHC/AHPA joint comment would serve to prevent soring due to excessive pad heights, while allowing the legitimate use of pads in excess of 1-inch. Therefore, we are amending the regulations to prohibit artificial extension of the toe length that exceeds 50 percent of the natural hoof length. Any artificial extension of the toe length must assume the slope of the dorsum (front) of the hoof wall. The natural hoof length is to be measured from the coronet band, at the center of the front pastern along the front of the hoof wall, to the distal portion of the hoof wall at the tip of the toe. The artificial extension is to be measured from the distal portion of the hoof wall at the tip of the toe to the proximal (foot/hoof) surface of the shoe at the toe.

In a separate supplementary comment, the AHPA indicated that it does not anticipate a problem with horses' feet being grown to excessive lengths merely to accommodate high pads. The AHPA stated that as a practical matter, those breeds of horses, including the Tennessee Walking Horse, that have historically used high pads, are not known for their ability to grow hoof and are not likely to be able to grow natural toe length in excess of 4 to 5 inches. AHPA maintained that beyond that length, the hoof wall will not support the weight of the pad assembly allowed by this interim rule, or the concussion of the horse's stride, without cracking or crumbling.

The AHPA further stated that the requirement that the pad assembly conform to the slope of the hoof wall at the toe will be a limiting factor on those breeds, including the Tennessee Walking Horse, that have historically used high pads. The AHPA stated that this "slope" requirement will, as a practical matter, increase the length of the foot (measured from tow to heel) as more pad is added—contrary to the current practice among the breeds that have used high pads, which is to trim the toe of the pad assembly more or less perpendicular to the ground. The longer the foot becomes as pads are added, the slower the horse will "break over" as it strides. In gaited horses such as the Walking Horses, a slow "breakover" is undesirable, because it allows the overstriding rear foot to interfere with the front foot as it leaves the ground. Therefore, according to the AHPA, the new regulations regarding pads will discourage the use of excessively high pads where a flat walk and running walk are being performed.

A large number of commenters, including, as noted, the TWHBEA, Inc., requested either a 3- or 4-inch maximum height on pads. Several requested a 2-inch maximum. Because we agree with the AHC/AHPA joint comment that the most appropriate way to govern pad height is to base that height on the natural hoof of the individual horse, we are not adopting the recommendations to establish a specific maximum pad height for all horses.

In their joint comment, the AHC and AHPA acknowledged that with a flexible limit on pads, based on the length of the natural hoof, it is possible that the pad height may exceed 1 inch. The joint commenters therefore stated that our existing provisions governing a horse's heel/toe ratio, which provides that tow length must exceed the height of the heel by 1 inch or more, be retained permanently with respect to the use of pads less than two inches in length at the toe. With respect to pads that may measure 2 inches or more in length, the joint commenters recommended that the height of such a pad at the heel be limited to no more than 1½ inches greater than the length of the pad at the toe. We agree with these recommendations and are adopting them in this interim rule. The tow length will be measured from the coronet band at the center of the front pastern along the front of the hoof wall to the ground. The heel will be measured from the coronet band, at the most lateral portion of the rear pastern, at a 90 degree angle to the ground, not including normal caulks at the rear of a horseshoe that are not more than ¾ of an inch in length. That portion of caulk at the rear of a horseshoe that is more than ¾ of an inch will be added to the height of the heel in determining the heel/toe ratio.

One commenter suggested that the angle of the pastern and the hoof should remain constant, with no deviation at the coronet band. In other words horses should not walk on their toes. Another commenter expressed concern that horses that wear high pads and heavy shoes often have foot angles that are too low for the horse's bone structure, even when overall angles of the pad and shoe package are normal or high. The commenter suggested that hoof angles be required to be between 48 degrees and 60 degrees. We agree that an unnatural hoof angle can be harmful to a horse. However, for purposes of measurement and inspection, it would be impracticable to establish requirements based on specific angles.

The joint commenters also recommended that to allow for corrective shoeing, the requirements described above not apply to a broken or damaged hoof, as long as its contralateral hoof meets the above requirements. We agree and are amending the regulations to include such a provision. One commenter suggested that any horse that has undergone corrective shoeing should be considered unsound and be prohibited from taking part in shows, exhibits, sales, or auctions. We do not believe such action is necessary. In many cases, corrective shoeing is done to remedy something as simple as a cracked hoof. In other cases horses, such as those with one leg shorter than the others, are more sound when shown with corrective shoeing than without. Another commenter stated that if a horse needs corrective shoeing in violation of the regulations, that horse should be considered unsound and not be allowed to compete in the show ring, or be exhibited or ridden at auction. We

agree and will enforce the regulations uniformly for all horses.

Several commenters stated that pads change a horse's center of balance and cause a greater percentage of a horse's weight to be shifted to its hind end. The commenters indicated that such a change in angulation can cause problems such as bone spavin and bog spavin. As we stated in our April 26 interim rule, we agree that excessive pad height can cause injurious changes in angulation. However, no scientific research has been conducted to determine precisely when a change in angulation becomes harmful. Based on the evidence available to us at this time, we believe that the regulations we are establishing that base permissible pad height on hoof length, and that control the buildup of the heel, will ensure that horses are not subjected to harmful changes in angulation.

A number of commenters stated that 4-inch pads should be allowed on all horses, because, historically, horses wearing pads of that height have been able to perform in the show ring, and therefore could not be sore. According to the commenters, a sore horse could not go, and therefore would be useless in the ring. We disagree that the test of whether a horse has been sored should be whether it can go or not. A horse will not go only if it is subjected to acute or chronic pain. The pain caused by soaring is often temporary, inflicted only for a particular show. Following the show, the horse is administered to. For evidence that sore horses will perform in the show ring, it is only necessary to look to the period before passage of the Horse Protection Act, when many horses were sored badly, yet still performed at shows.

In our April 26 interim rule, as one of the reasons for establishing a 1-inch maximum pad height, we stated that high pads make it difficult to detect pressure shoeing and the insertion of objects between the pad and the foot to cause soring. Several comments, including the joint comment from the AHC and the AHPA, suggested that the most appropriate way of dealing with pressure shoeing and the insertion of objects is through enhanced enforcement, rather than through establishment of a specific maximum pad height. In their joint comment, the AHC and AHPA stated that a thorough preshow inspection of a horse, including a visual inspection of the way a horse moves, is an effective means of detecting soreness in the horse. The joint commenters point out correctly that APHIS officials and Designated Qualified Persons (DQPs) have the authority to direct that pads and shoes be removed to permit visual inspection of the bottom of the hoof, when there is in their view a reasonable basis to suspect the presence of pressure shoeing or foreign objects other than acceptable packing material on a particular horse. We agree that a thorough inspection of a horse improves an inspector's ability to detect soreness. We also agree that the problem of pressure shoeing and like violations can be dealt with through enforcement rather than through the establishment of a particular maximum pad height. Department inspectors will continue to carry out through inspections and we will continue to emphasize that all individuals carrying out inspections under the DQP program follow similar procedures. Also, as recommended by the AHC/AHPA joint comment, we are adding provisions at new § 11.2(b)(12) to specify those materials, used for the well-being of the horse, that can be placed between the pad and the hoof. All other materials will be prohibited. Further, as noted by the AHPA in its supplementary comment, it is likely that the provisions of this interim rule regarding pad height will tend to limit pressure shoeing, by encouraging the growth of natural hoof as a condition of pad use.

Several commenters suggested that requiring a minimum hoof length would make pressure shoeing impossible. While we agree that hoof length can be a factor in protecting a horse from pressure shoeing, the length of hoof that would provide this protection will vary from breed to breed, and even from horse to horse within a breed. For this reason, it would be inappropriate for us to establish a minimum hoof length in order to minimize pressure shoeing. As noted above, it is likely that the regulations regarding pad height established by this interim rule will limit pressure shoeing by encouraging the growth of the natural hoof.

Two commenters expressed concern that our requirement that pads be made of leather or some similar material would lead to an increase in cases of thrush, a degenerative condition of the foot, due to leather pads soaking up and retaining moisture. One commenter stated that leather pads wear out faster than other pads and would therefore necessitate more frequent shoeing of horses than would pads of other materials. Another commenter stated that leather pads tend to soak up water and become heavy and warped. The AHC/AHPA joint comment stated that a requirement that leather or similar material be used for pads would prohibit the use of plastic, which is lighter and sometimes more flexible than leather. We believe that these are legitimate concerns and are therefore including plastic among the materials that may be used for pads, and are removing the requirement that pad materials be made of soft materials.

Several commenters suggested that we require that any pads used on a horse be rim pads, to allow for better detection of pressure shoeing. While there would be obvious inspection advantages to the use of rim pads, their exclusive use would eliminate the protection from stones and other objects the horse is provided by a sole pad. Additionally, the use of rim pads alone would reduce the stability of a horse that steps down on the pad heavily. We are therefore making no changes based on these comments.

Other commenters suggested that transparent pads would allow better detection of pressure shoeing and foreign objects. We agree, but we are unaware of any transparent material appropriate for pads that would not quickly become opaque when subjected to the scuffing and abrasion pads must endure. We are therefore making no changes based on these comments.

One commenter stated that full pads—those that cover the entire sole of a horse's foot—can cause pathological conditions in the horse if not replaced, and that therefore any padding used should be limited to rim pads. According to the commenter, the sole and frog of the foot may become soft and flaky and be eroded when full pads are worn. The commenter stated that a full pad supports an excessive growth of horn and sole that is soft and flaky dead tissue that makes the horse's foot longer and weaker than nature intended. We agree that pads, improperly maintained, can cause foot problems in a horse. However, a horse with pathological problems is not necessarily a sore horse. We strongly agree that horse caretakers should strictly follow a maintenance regimen that protects each horse from the problems described above, from thrush, and from other foot problems. If there is evidence that such pathological conditions have resulted in a horse being sored, we will take appropriate action under the regulations.

In discussing in our April 26 interim rule the relationship between excessively high pads on horses and soring, we referred to the Auburn University study's findings that altering the angulation of a horse's feet and legs can cause lameness, soreness, and inflammation. Several commenters stated that, following the study's release, its author indicated that "horses

with normal shoeing and padding, when examined by three evaluation procedures, did not provide any evidence of soreness or induced inflammation in response to normal use of the pad." Based on this statement, the commenters asked that we remove our restrictions on pad height.

We agree that the Auburn University study did not include the study of the effect of pad height, other than the effect of changes in angulation. However, the commenters who stated that the Auburn study did not address pad height did not address our additional evidence that pads can cause soring by altering the angulation of a horse. Therefore, while we are removing our prohibition of pads totalling more than one inch, we are continuing to regulate maximum pad height, through the 50 percent of natural foot length standard discussed above.

We received comments from a number of veterinarians who had conducted small-scale studies of horses that were given workouts while wearing 3-inch pads. Each of the veterinarians reported no evidence of soring in the horses tested. While we welcome all information regarding the effects of pads on horses, we are unable to accept these studies as scientifically sound. We cannot tell from the comments how the horses were selected for testing; nor do we know what level of sensitivity was used to gauge soreness. Further, certain types of soreness are difficult to detect by visual inspection or palpation alone, and are apparent only through the use of thermography. No indication is given of whether thermography was used in these studies.

Chains

Our April 26 interim rule restricted the maximum weight of chains and rollers to 6 ounces. The joint comment of the AHC and the AHPA did not address the issue of chains. Several commenters stated that we should prohibit the use of all chains because allowing any chains contributes to the practice of soring. These commenters, including the AHPA and other animal protection organizations, stated that the use of chains will not alter a horse's gait unless the horse's pastern area has already been sensitized to cause the horse pain when the chain is used. In a separate comment, the Humane Society of the United States (HSUS) stated that while 6-ounce chains and rollers may not, in and of themselves, cause soreness to horses, the constant rubbing of these devices against chemically sensitized skin will serve to keep horses sore. According to the AHPA, the HSUS, and other commenters, this sensitizing can be accomplished with a number of substances, ranging from commercial skin softeners to mustard oil, and can be masked by anesthetics, ointments, and other materials. Several commenters stated that a chain will not create a "show gait" in a horse, unless the horse has at some time been sored. They argued that a horse will soon grow accustomed to and ignore an action device on its pasterns, unless it reminds the animal of pain caused by such a device in the past.

A large number of commenters requested that chains weighing more than 6-ounces be permitted. Most of these commenters requested a 10-ounce chain; some requested an 8-ounce chain; four requested a 12-ounce chain; one asked for chains up to 14 ounces. The TWHBEA, Inc., stated that in their opinion scientific evidence indicates that 9-ounce action devices are unlikely to cause soring and should not be prohibited.

A comment submitted by the Friends Association supported the prohibition on chains and rollers weighing more than 6 ounces. In addition to referencing the Auburn University study referenced in our April 26 interim rule, the Friends Association cited the conclusions of a clinic conducted by the Department in Shelbyville, Tennessee in 1973, and Department inspection records, as evidence that chains weighing 6 ounces or less do not cause soring.

Although we agree that the use of any chain on a pastern that is already sensitive will cause a horse discomfort, the best evidence available to us, including the Auburn University study and a Department study conducted at the National Veterinary Services Laboratories in Ames, Iowa in 1975, shows that while chains and other action devices weighing more than 6 ounces can sore horses, those weighing 6 ounces or less are not themselves likely to cause soring. Therefore, we are retaining the provisions in the regulations that limit chains and rollers to 6 ounces or less. We believe that inspection procedures, properly conducted, should identify those horses whose pasterns are already sore before entering a show ring. However, we acknowledge and share the commenters' concern that substances and techniques may be used in some cases to mask soreness in a horse. We will carefully review the information made available to us regarding these practices, and once again we are requesting comments on when and where they are occurring, and how prevalent they are, to help determine what action, if any, we should take.

As noted, in formulating the provisions in our interim rule regarding chains, we relied in part on the findings of the Auburn University study. Several commenters stated that following publication of the study, its author indicated that the study had not shown 10-ounce chains can sore horses. Several commenters questioned the soundness of the Auburn University study, based on the number of horses tested. These commenters stated that the use of only three horses to test 10-ounce chains made the study scientifically unreliable. We are making no changes based on these comments. Although the use of more horses might have provided statistically more reliable results, the Auburn University Study clearly indicates that 10-ounce chains can cause soring. Further, as noted, a study conducted by the Department in 1975 also concluded that 10-ounce chains can cause soring.

Several commenters stated that 10-ounce chains will not cause soring if the horse's pasterns are adequately lubricated with grease or some other ointment. Commenters also stated that the Auburn University study of chains was flawed because the researchers used no lubrication on the horses. We are making no changes based on these comments. We agree that lubricating a horse's pasterns will in some cases protect it from abrasion from action devices. However, this lubrication does not lessen the damage caused by an action device striking a horse's pastern, rather than sliding along it. Additionally, the lubrication can contribute to abrasion if it retains sand or dirt picked up in a show ring.

A number of commenters stated that 10-ounce chains can not sore horses, basing their assertion on the fact that a man or woman can wear bracelets, watches, or wrist and ankle weights, without harm. The commenters reasoned that because a human weighs approximately 10 times less than a large horse, the horse should be able to wear chains that weigh as much as or more than the devices worn by humans. We disagree that chains used as action devices on horses are directly comparable to bracelets, watches, or wrist and ankle weights on humans, and believe it is inappropriate to compare the anatomy of a human to that of a horse. A human wearing jewelry on an arm or wrist does not subject that limb to the constant and forceful pounding that a horse's limb undergoes; weights worn on a human's ankle do not move in the same way as chains on a horse's limb.

Many commenters based their objections to restrictions on pad height and to a 6-ounce limit on action devices on the fact that many horses that have been trained with 10-ounce chains and 4-inch pads are being shown into their late teens and beyond. According to the commenters, this is evidence the horses have not been sored. We disagree. Soring often has no effect on the longevity of a horse. It is important to distinguish between soreness and lameness. Lameness is only one of the possible results of soring; others include physical distress and inflammation. Soring can be a temporary condition brought about for a particular show. A sored horse that is well cared for between shows may never become lame.

Horseshoes and Other Weights

The provisions of our April 26 interim rule limited the weight of horseshoes on all horses to 16 ounces. However, based on infomation we subsequently received that suggested that a 16-ounce limit might be inappropriate for some horses, we amended the regulations in our May 2 interim rule to remove the 16-ounce horseshoe weight limit for horses other than yearling horses. At that time we requested comments concerning necessary limits on the use of weights, including horseshoes, both to prevent soring and to accommodate the needs of different breeds and sizes of horses. Several commenters suggested that we regulate horseshoe size, not weight. Others suggested maximum horseshoe weights according to breed or size of horse. A number of comments, including the joint comment of the AHC and AHPA, recommended that we establish no specific size or weight limit on horseshoes. In their joint comment, the AHC and the AHPA based their opposition to a specific limit on the great variation of hoof size between different breeds and sizes (heights and weights) of horses. The joint commenters stated that farriers show horses with different shoes based upon the size of the horse, its foot, the width of the hoof wall, the use of the horse, and the condition of the hoof. The joint commenters stated further that horse shoeing manuals recommend that a shoe be twice the width of the hoof wall, and that the width of the shoe is related to the natural bearing surface of the foot and should cover the wall, white line and outer border of the sole, which varies according to the size of the horse. The joint commenters noted that many breed associations have adopted rules regarding shoe dimensions, which have proved helpful in regulating horseshoe weight. Because we agree with the reasoning and recommendations jointly submitted by the AHC and AHPA, we are establishing no restrictions on the weight or size of horseshoes used on horses other than yearlings.

Several commenters expressed concern that prohibiting 10-ounce chains and restricting pad height would encourage some trainers to attach excessive amounts of lead weights to a horse's foot to help the horse achieve a desired gait. The commenters suggested that we therefore prohibit the use of weights other than horseshoes on a horse. We agree that the use of weights on horses should be restricted, and have already established regulations restricting such use. We have not restricted the use of added weight between the bars of horseshoes, however, because such weight can be useful in corrective shoeing and, based on our inspections at horse shows, exhibits, sales and auctions, has not contributed to the soring of horses.

In their joint comment, the AHC and AHPA suggested that our regulations restricting the addition of weight were in part unclear and should be rewritten for clarity. We agree and therefore are amending those provisions, which appear in new § 11.2(b)(18), to make them clearer. As suggested by the joint comment, we are also specifying that pads may not be hollowed out for the purpose of inserting or affixing weights, and that hollow shoes or artificial extensions filled with mercury or similar substances are prohibited.

One commenter stated that most of the horses she has owned that have been heavy shod or padded have developed sheared heels as a result of these shoeing techniques. She stated that sheared heels cause an excessive proportion of support to be thrown onto one side of the heel, resulting in a tearing of the laminae of the hoof wall and bars on either side. She indicated that these problems are precipitated by too much sole pressure by the branch of a shoe, pads, objects placed between pads and the foot, and accumulation of debris under the pads. We agree that horses that are improperly shod or maintained can develop pathological conditions in the foot. However, there is no scientific evidence to indicate that heavy shoeing or pads themselves are a direct cause of the problems described above. If those problems should lead to a horse being sore, however, we will take appropriate action under the Act and the regulations.

Bands

Two commenters requested that we prohibit the use of bands on horses, based on the possibility that, improperly applied, they could cause soring. Although we agree that improper application of bands can cause soring by bringing the bands in contact with sensitive areas of a horse's foot, a provision already exists at newly redesignated § 11.2(b)(14) that prohibits metal hoof bands that are placed less than ½ inch below the coronet band. We believe that this provision is adequate to ensure that bands do not cause soring.

Boots

According to one commenter, rubber bell boots have sometimes been used to hide chains on certain breeds of show horses. Because of this, the commenter called for a prohibition of any devices that hide the pastern. We are making no changes based on this comment. Normal inspection procedures by DQPs or Department inspectors will include a check for any items that might be concealed by boots. The commenter also suggested that breeds that use hinged quarter boots and bell boots in the show ring be restricted to using quarter boots or heel boots that do not touch the horse's coronary band. The commenter further requested that Tennessee Walking Horses and Racking Horses not be permitted to be shown in bell boots, or in fixed boots such as quarter boots or heel boots, alleging that the Walking Horse industry has a history of abusing any equipment allowed by the regulations. We believe that the current regulations regarding boots are sufficient to prevent soring by such equipment, and are therefore making no changes based on this comment.

Miscellaneous

Many commenters addressed issues unrelated to the provisions of the interim rules. Among the topics discussed were suggested improvements to the DQP inspection program, and the practices of masking a horse's pain during inspection and stewarding a horse not to react to pain during inspection. We will carefully review the information we received and take whatever action is appropriate.

Scar Rule

In our April 26 interim rule, we amended § 11.3 of the regulations to make it clear that our intent was to apply the "scar rule" to all horses 3 years old or younger in 1979, 4 years old or younger in 1980, 5 years old or younger in 1981, and so forth. However, in making that clarification, we inadvertently added language that stated that the scar rule applies to all horses born "on or after October 1,

1976," rather than "on or after October 1, 1975," as we had intended. Therefore, in this interim rule, we are amending § 11.3 to read that the scar rule applies to all horses born on or after October 1, 1975.

Request for Comments

The comment period for this interim rule extends through October 31, 1988. During that period, we invite and will accept comments relating to the issues raised in this interim rule and the interim rules published in the **Federal Register** on April 26, 1988 (FR 53 14778–14782, Docket No. 88–052) and May 2, 1988 (FR 53 15640–15641, Docket No. 88–079).

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists, which warrants publication of this interim rule without prior notice and opportunity for public comment.

On April 26, 1988, we published an interim rule in the **Federal Register** that restricted, after a phasedown period, the total allowable height of pads on horses to 1 inch. Under the phasedown, maximum pad height was restricted to 3 inches until July 31, 1988 and was to be restricted to 2 inches beginning August 1, 1988. However, information we have received since publication of that interim rule indicates that such a restriction is not the most appropriate method of restricting pad height. We are therefore establishing more appropriate provisions in this interim rule. These provisions would among other things, restrict artificial extension of a horse's toe length to no more than 50 percent of the horse's natural hoof length. Because it may be injurious to some horses to be reshod and subjected to varying pad heights over too short a period of time, it is necessary for the well-being of affected horses that the provisions of this interim rule become effective before the August 1 phasedown to 2 inches established by the April 26 interim rule.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective on August 1, 1988. We will consider comments postmarked or received on or before October 31, 1988.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291 and Departmental Regulation 1512–1, and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The changes to the regulations made by this interim rule will affect all horses equally, and will allow continued equitable competition among show horses.

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

Paperwork Reduction Act.

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

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Humane animal handling, Soring of horses.

PART 11—HORSE PROTECTION REGULATIONS

Accordingly, 9 CFR Part 11 is amended as follows:

1. The authority citation for Part 11 continues to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

2. Section 11.1 is amended by removing the definitions of "full pad" and "rim pad".

3. Section 11.2 is amended by revising paragraphs (b) (10), (11) and (12); removing (b)(13) and (b)(19); redesignating paragraphs (b)(14) through (b)(18) as (b)(13) through (b)(17) respectively, and adding new paragraph (b)(18) to read as follows:

§ 11.2 Prohibitions concerning exhibitors.

* * * * *

(b) * * *

(10)(i) Artificial extension of the toe length, which must assume the slope of the dorsum (front) of the hoof wall, whether accomplished with pads, acrylics or any other material or combinations thereof, that exceeds 50 percent of the natural hoof length, as measured from the coronet band, at the center of the front pastern along the front of the hoof wall, to the distal portion of the hoof wall at the tip of the toe. The artificial extension shall be measured from the distal portion of the hoof wall at the tip of the toe to the proximal (foot/hoof) surface of the shoe at the toe.

(ii)(A) If the artificial extension of the toe length is less than 2 inches, the toe length must exceed the height of the heel by 1 inch or more. The length of the toe shall be measured from the coronet band at the center of the front pastern along the front of the hoof wall to the ground. The heel shall be measured from the coronet band, at the most lateral portion of the rear pastern, at a 90 degree angle to the ground, not including normal caulks at the rear of a horseshoe that do not exceed ¾ of an inch in length. That portion of caulk at the rear of a horseshoe in excess of ¾ of an inch shall be added to the height of the heel in determining the heel/toe ratio.

(B) If the artificial extension of the toe length is 2 inches or more, the height of the artificial extension at the heel cannot exceed the length of the artificial extension at the toe by more than 1½ inches.

(iii) Nothing in paragraphs (b)(10) (i) and (ii) of this section shall limit the repair or reconstruction of a broken or damaged hoof as long as its contralateral hoof complies with paragraphs (b)(10) (i) and (ii) of this section.

(11) Pads that are not made of leather, plastic, or a similar pliant material.

(12) Any object or material inserted between the pad and the hoof other than acceptable hoof packing, which includes pine tar, oakum, live rubber, sponge rubber, silicone, commercial hoof packing or other substances used to maintain adequate frog pressure or sole consistency.

* * * * *

(18) Lead or other weights attached to the outside of the hoof wall, the outside surface of the horseshoe, or any portion of the pad except the bottom surface within the horseshoe. Pads may not be hollowed out for the purpose of inserting or affixing weights, and weights may not extend below the bearing surface of the shoe. Hollow shoes or artificial extensions filled with mercury or similar substances are prohibited.

* * * * *

4. Section 11.3 is amended by revising the first sentence in the introductory text to read as follows:

§ 11.3 Scar rule.

The scar rule applies to all horses born on or after October 1, 1975. * * * * * * * * *

Done in Washington, DC, this 25th day of July, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-17024 Filed 7-27-88; 8:45 am]

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DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 35

[Docket No. 88-11]

Agricultural Loan Loss Amortization

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is issuing this final rule to implement Title VIII of the Competitive Equality Banking Act of 1987 ("CEBA"). CEBA permits national agricultural banks to amortize losses on qualified agricultural loans. This final rule describes the procedures and standards applicable to national banks desiring to amortize those losses. It also describes the manner in which amortizations are to be done.

This final rule is intended to benefit small, agricultural banks by providing a form of capital relief and, thereby, added time to work out problems brought about by the extended downturn in the agricultural industry.

This action is needed to make final the temporary rule issued on November 2, 1987. After consideration of comments received, the OCC is making one substantive change and several technical changes to its temporary rule. The substantive change allows eligible national banks to amortize losses on the reappraisal or sale of real or personal property acquired in connection with a qualified agricultural loan and that the bank owned on January 1, 1983, or acquires prior to January 1, 1992, whether or not that property is "currently owned." Under the temporary rule, property had to be currently owned for the loss to qualify for deferral. The technical changes: (1) Amend the definition of "qualified agricultural loan" and "qualified agricultural bank" to clarify that the OCC intends to construe the phrases broadly; (2) add a definition of "agriculturally related other property"; (3) clarify the relationship between 12 CFR Part 35 and the alternative legal lending limit in 12 CFR 32.8; and (4) include various minor wording changes intended to enhance clarity.

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: James F.E. Gillespie, Jr., Senior Attorney, Legal Advisory Services Division (202) 447-1880; Jon A. Nagy, National Bank Examiner, Commercial Activities Division (202) 447-1164; or Lance Cantor, Analyst, Special Supervision Division (202) 447-1719.

SUPPLEMENTARY INFORMATION:

Background

CEBA permits an agricultural bank to amortize: (1) Losses on qualified agricultural loans shown on its annual financial statement for any year between December 31, 1983, and January 1, 1992; and (2) losses suffered as the result of an appraisal or sale of agriculturally related other property (related to a qualified agricultural loan) owned on January 1, 1983, or acquired prior to January 1, 1992.

CEBA also required that the federal banking agencies issue implementing regulations no later than November 9, 1987. The OCC initially published this regulation as a temporary rule on November 2, 1987 (52 FR 41959), effective November 9, 1987, in order to comply with this statutory requirement. Interested parties had the opportunity to comment by January 4, 1988. The Board of Governors of the Federal Reserve System, on November 3, 1987 (52 FR 42087), and the Federal Deposit Insurance Corporation ("FDIC"), on November 2, 1987 (52 FR 41966), proposed substantially identical regulations containing only those variations necessary to accommodate their own regulatory and organizational systems.

The intent of CEBA was to provide agricultural banks with added time to work out problems brought about by the extended downturn in the agricultural industry.

Discussion of Comments Received

Eight comments were received on the temporary rule. Comments were received from three banks, three banks trade associations (two national and one state-level), one law firm, and one Congressman. Comments were supportive of agricultural loan loss amortization, while suggesting that the OCC liberalize certain of the provisions in the temporary rule.

Specific Comments

The OCC received comments regarding the following specific items:

Definition of "Agricultural Bank"

Section 35.2(a) of the rule defines an agricultural bank as any bank: (1) With FDIC insured deposits; (2) located in an area of the country with an economy dependent on agriculture; (3) with total assets of $100 million or less; and (4) with at least 25 per cent of its total loans in qualified agricultural loans and agriculturally related other property or with less than 25 per cent of its total loans in qualified agricultural loans and agriculturally related other property but which the OCC still recommends to the FDIC as eligible.

Identification of Agricultural Areas

Some commenters urged that the OCC list specific criteria to identify agricultural areas. The OCC believes that the normal means of identifying agricultural areas—income levels, revenue flows, acreage in production—are abnormally depressed due to the current state of the agricultural economy. Adopting a list of acceptable counties or geographic regions could leave the erroneous impression that a bank located outside such an area could not qualify even though it met the other requirements of an "agricultural bank". Additionally, the relatively low level of farm income compared to other income could artificially mask local areas that traditionally are dependent upon agriculture but currently have a depressed level of income from agriculture.

Consequently, each application should include a description of the bank's location, dominant lines of commerce in its service area, and any other information to support the bank's belief that it is located in an agricultural area. This information will be used to insure that no bank qualified for participation will be excluded due to arbitrary geographic demarcation.

Bank Size

The definition of an agricultural bank includes the statutory requirement that the bank have total assets of $100 million or less. Comments were received by the other federal regulators asking for clarification as to what happens if a bank is approved for loss deferral and subsequently exceeds the size limitation. Congress did not intend for banks larger than $100 million to defer loan losses. If size was unimportant, the law could have easily excluded it as a factor.

At the same time, it is of little value for a bank to defer a loss one year if it must reverse that deferral the next year because it grew to over $100 million in assets. Therefore, the OCC expects a

bank to meet the definition of an agricultural bank, including the size limitation, upon initial application and as of every quarter that new agricultural losses are to be deferred. Any loss that was properly deferred initially, will be allowed to be fully amortized according to the regulation, regardless of a subsequent increase in the bank's size. However, if a bank exceeds the size limitation, new losses experienced in each quarter that the bank exceeds the size limitation may not be amortized.

Mergers

The OCC does not intend to allow banks to bypass the application/review process via a merger with another bank which has already been approved. Such mergers are not expected to be frequent. Therefore, the permissibility of loss deferral subsequent to a merger will be determined on a case-by-case basis. This issue should be discussed with representatives of the appropriate supervisory office and a determination made before a merger transaction is consummated.

Percentage of Agricultural Loans

Two commenters urged that the OCC be liberal when determining whether a bank meets the 25 per cent test. Prudent banks may have charged off substantial amounts of such loans but, due to the depressed agricultural economy, may not have been able to replace such loans with new agricultural loans. A commenter suggested that a bank should satisfy the test if, at any time since December 31, 1983, it met the requirements.

The OCC does not believe such a change is necessary since the 25 per cent test is not an absolute requirement, as it may be waived in some instances. Factors such as depressed collateral value or lack of prudent agricultural lending opportunities will be considered when applications for loan loss amortization are reviewed.

Definition of "Qualified Agricultural Loan"

Under section 801 of Title VIII of the CEBA,

> the term "qualified agricultural loan" means a loan made to finance the production of agricultural products or livestock in the United States, a loan secured by farmland or farm machinery, or such other category of loans as the appropriate Federal banking agency may deem eligible.

Section 35.2(b) of the temporary rule defines a qualified agricultural loan to include any loan qualifiying as "loans to finance agricultural production and other loans to farmers" or as "loans secured by farm land" for purposes of Schedule RC–C of the FFIEC Consolidated Reports of Condition and Income ("Call Report"). The term also includes other loans and leases that the applying bank proves to be sufficiently related to agriculture to qualify in the opinion of the OCC. These Call Report definitions are virtually identical to those contained in Title VIII of the CEBA but are more comprehensive and permit the agencies to use the Call Reports as the predominant monitoring device for the amortization program. Several commenters suggested that the OCC specifically mention particular types of loans in this definition.

The OCC initially saw no reason to repeat the definition in the statute when the regulatory definition was of a more descriptive nature and referred to Call Report terms with which banks are familiar. Additionally, as suggested by Title VIII of the CEBA, the OCC retained discretion to deem other types of loans and leases to be "qualified" and to recommend them to the FDIC as eligible if the requesting bank demonstrates those assets to be sufficiently related to agriculture.

To clarify that the regulatory definition of "qualified agricultural loan" is as broad as the statutory definition and is not intended to limit the types of loans which a national bank may include in an application, the final rule includes farm machinery loans in the regulatory definition.

Bankers should refer to the "Line Item Instructions" for Schedule RC–C of the Call Report for an indication of the other types of loans that qualify for amortization. For example, qualified agricultural loans include loans reported under line item 1(b)—loans secured by farmland (land known to be used or usable for agricultural purposes, such as crop and stock production, grazing or pasture land whether tillable or not and whether wooded or not).

Similarly, loans reported under line item 3 qualify. These loans include loans to finance agricultural production (such as for growing or sorting crops, or breeding, raising, fattening, or marketing livestock), or for purchases of farm machinery, equipment, or implements.

The Call Report definitions are not exclusive descriptions of eligible loans. If a bank believes that a loan was made for an agricultural purpose, it may apply to amortize a loss on it even though the loan was not reported on the Call Report as an agricultural loan. The OCC will determine on a case-by-case basis whether a particular loan qualifies.

Inclusion of Charge-offs in Loan Volume Tests

A commenter suggested that banks be permitted to include charged-off agricultural loans and agriculturally related other property acquired through foreclosure for purposes of the loan volume tests. The temporary rule allowed the use of charged-off loans by virtue of including them in the definition of "qualified agricultural loans". These loans are still assets of the banks, even though off the books, and represent part of the banks' total credit commitment to agriculture. A similar argument applies to assets acquired through foreclosure on agricultural loans. Therefore, the OCC has included such assets in determining compliance with the loan volume tests in the rule.

Amortization

Section 35.3(b) of the rule provides that amortization of each qualified agricultural loan be computed over a period not to exceed seven years on a quarterly, straight-line basis commencing with the first quarter after the charge-off, so that each loan is fully amortized by December 31, 1998. Thus, loans written off in accounting periods ending prior to the adoption of the rule can be amortized *pro rata* beginning with the Call Report for December 31, 1987.

Several commenters suggested that the bank, rather than the OCC, decide whether to use the full seven-year amortization period. One commenter also believes that adopting the *pro rata* treatment of loans written down prior to adoption of the rule unfairly penalizes banks that were diligent in adjusting their assets.

Under the temporary and final rule, a bank that wishes to use an amortization schedule shorter than the maximum seven years can apply to do so. The OCC anticipates that a seven-year schedule will be the normal schedule, but has not required its use. The OCC's decision to permit the use of a shorter amortization period depends upon the applicant bank's financial position and is not likely to require consideration of any extraordinary issues.

With regard to adopting a *pro rata* treatment of loans written down prior to adoption of the rule, the OCC does not believe banks that were diligent in adjusting their assets are penalized. The technique prescribed reflects amortizations as though the program had been in effect from the first year deferral was allowed. Amortization in this manner does reduce the initial amount of deferred losses which can be

established, but it also reduces the future amortizations which must be absorbed. The OCC does not view this as a penalty.

Furthermore, accepted banking practice and Call Report instructions require banks to record a loss in the period it becomes apparent. Banks which had losses, but declined to recognize them, would have been in contravention of proper procedures. Therefore, differences in the actual occurrence of an economic loss should be a much greater cause of different timing patterns in loan charge-offs than differences in how quickly management elects to take a loss.

Losses Due to Agriculturally Related Real Estate Sales or Reappraisals

Section 35.3(a)(2) of the temporary rule allows a bank to amortize any loss reflected in its financial statements resulting from a reappraisal or sale of real or personal property it acquired in connection with a qualified agricultural loan owned on January 1, 1983, and still held on November 9, 1987, and of any additional property acquired on or before December 31, 1991.

Several commenters objected to the requirement that such property had to be held on November 9, 1987, in order for any losses to be eligible for amortizing. Commenters pointed out that neither the statute nor its legislative history explicitly calls for ownership of such property on the effective date of the regulation. The commenters suggested that better reference dates might be the date the loss was actually recognized or the date the legislation was introduced, passed both houses of Congress, or signed. One commenter suggested that any loss on such property be treated in the same manner as a loss on the loan it secured, that is, amortization should be allowed at least beginning with the date the loss was recognized so long as the loss is otherwise an eligible loss.

The OCC agrees that losses attributable to property, acquired as the result of agricultural lending, are as much a part of the bank's agricultural problem as the original loan loss. The intent of the legislation is to mitigate the immediate effect of those losses. Therefore, the final rule provides that losses on holding or selling property will be treated in the same manner as losses on agricultural loans. This change is the only substantive change in the final rule.

Furthermore, CEBA allows amortization for agricultural loan losses that would be reflected on annual financial statements for 1984–1991. It also allows amortization for losses resulting from reappraisals on agriculturally related other property. To ensure that losses due to reappraisals are treated comparably to loan losses, the regulation requires that losses from reappraisals that the bank would be required to reflect on financial statements for 1983–1991 be amortized within seven years in the same manner as agricultural loan losses generally, *i.e.*, they must be fully amortized by 1998. For the same reason, the regulation provides that losses resulting from reappraisals after 1991 are not eligible for amortization.

"In need of Capital Restoration"

The language in the statute and legislative history of the provision indicate that Congress intended that only banks with capital in need of restoration be permitted to amortize losses. Further, it intended that only banks with reasonable prospects for survival be permitted to amortize losses. Section 35.5(b) provides that, (1) the current capital of a bank wishing to amortize qualifying losses must be in need of restoration, and (2) the bank must also be an economically viable, fundamentally sound institution. These are certainly not mutually exclusive conditions. A bank can have inadequate capital due to a variety of temporary problems or conditions yet also have enough underlying demand for banking services and earning capacity to restore capital if given sufficient time.

Several commenters suggested that this section is too restrictive and that any bank qualifying as an agricultural bank which has qualifying agricultural losses should be able to amortize those losses to restore capital to some higher level even if it is not "in need of" capital restoration for regulatory purposes.

The OCC believes most agricultural banks have strong capital positions and no need for loss deferral. The OCC further believes that Congress did not intend for these techniques to be used to artificially maintain unnecessarily high levels of capital. Congressional intent seems clear in that the statute required, as an essential condition of eligibility, the submission of "a plan to restore its capital * * * to a level" acceptable to the OCC. If capital is to be restored to an acceptable level it must, by definition, not already be at an acceptable level.

Nevertheless, whether a particular bank is "in need of" capital restoration depends on its particular circumstances. Thus, a bank might be deemed "in need of" capital restoration even though its capital ratio equals or exceeds the minimum capital levels prescribed by 12 CFR Part 3. Because the OCC will make the determination of need in each case, a bank applying to amortize agricultural loans should include a statement as to why it is "in need of" capital restoration.

Economically Viable and Fundamentally Sound

A commenter suggested that the requirement that a bank must be economically viable and fundamentally sound to be eligible is unnecessary. The OCC believes that no purpose would be served by allowing a non-viable and hopelessly unsound institution to temporarily avoid insolvency through the use of this accounting adjustment. The legislative history of the statute supports this interpretation.

A commenter also expressed concern over the conditions surrounding removal of a bank from the program once it has recovered financially. The OCC does not intend, as a matter of administrative practice, to remove a bank from the program so long as the bank continues to meet the Conditions on Acceptance prescribed in the regulation. Therefore, once a loss has been deferred a bank may continue to amortize it. However, once the bank has recovered sufficiently to no longer meet the eligibility requirements, because it is no longer "in need of" capital restoration, no new losses will be permitted to be deferred.

Other Issues

Evidence of Fraud

Several commenters suggested that the regulation clarify what constitutes evidence of fraud that would disqualify a loss from amortization.

The OCC decided not to list elements constituting fraud in the regulation. Some indicia might include criminal referral reports, for example, but the lack of such a report will not preclude excluding a loan if evidence of fraud exists. Normal sources of information used to determine whether fraud is present should include information collected in the examination process, as well. The OCC will use a case-by-case approach and will allow an applying bank an opportunity to explain ambiguous circumstances.

CEO Certification

The temporary rule required a certification by the bank's chief executive officer that there is no evidence that the losses resulted from fraud or criminal abuse. One commenter expressed concern over this requirement, in that it is not generally possible to be absolutely certain of every circumstance surrounding every loan.

The OCC understands this reluctance and therefore a specific form of certification was not dictated in the temporary or final regulation. A certification to the best of one's knowledge and belief was and is permissible.

Reference to Enforcement Proceedings

Several commenters suggested removing references to enforcement proceedings from the regulation. The presence of such references affirms that preexisting conditions or problems typically requiring correction by an enforcement action will be monitored and managed. Such references will not normally create information requirements or performance obligations not already existing. Accordingly, the references are retained in the final rule.

Compensation Levels

Several commenters also suggested removing references to compensation levels from the regulation. Compensation levels are typically an integral part of a capital plan. As with enforcement actions, the presence of such references in the rule only affirms that the program will be managed and monitored.

Legal Lending Limit

A commenter expressed concern over the interrelationship between 12 CFR 32.8 and the agricultural loan loss amortization program. Banks will be permitted to use the restated capital under this regulation for purposes of computing their regular legal lending limit under § 32.3. However, the OCC believes it would be inappropriate to permit a bank to include losses recapitalized under the amortization program is computing its substitute lending limit under § 32.8, because that would effectively give such losses double weight. In many cases, this would result in a legal lending limit far greater than the bank would have had if it had not suffered the agricultural losses. Accordingly, while a bank participating in the loan loss deferral program may calculate its lending limit under either section, the calculation of capital and surplus for purposes of the alternative lending limit under § 32.8 must be made without reference to the recapitalized unamortized losses permitted under this program.

Regulatory Impact Analysis

Pursuant to section 3(g)(1) of Executive Order 12291 of February 17, 1981, it has been determined that this final rule does not constitute a "major rule" within the meaning of the executive order. Consequently, no regulatory impact analysis is necessary.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the OCC certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act. (OMB Control No. 1557–0186). The estimated average burden associated with the collection of information contained in this final rule is 15 hours per respondent. The burden per respondent may vary depending on individual circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to: Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza E., SW., Washington, DC 20219 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Treasury Desk Officer.

List of Subjects in 12 CFR Part 35

Banks, Banking, National banks, Agriculture, Amortization, Loans, Loss, Capital.

Section-by-Section Analysis

A number of clarifying technical changes and the following material amendments are made to Part 35:

Section 35.1 "Office" is changed to "OCC" here and everywhere else it appears in the Part.

Section 35.2 In paragraph (a), the word "national" is added.

In paragraphs (a)(4) (i) and (ii), the phrase "agriculturally related other property" is added.

In paragraph (b), a new paragraph (2) has been added. Old paragraphs (b) (2) and (3) become (b) (3) and (4). Also, a reference to paragraph (b)(3) is added to new paragraph (b)(4).

In paragraph (b)(4), the word "regulation" is removed and the word "part" is substituted.

A new paragraph (c) is added. Former paragraph (c) becomes paragraph (d).

Section 35.3 Paragraphs (a) (1) and (2) are revised by removing the word "year" and substituting the word "period". Paragraph (a)(2) is also revised by removing "currently owned * * * prior to January 1, 1992" and substituting "agriculturally related other property."

Section 35.4 The original text is revised and becomes paragraph (a). A new paragraph (b) is added.

Section 35.5 The phrase "of this part" is removed. In paragraph (c) the term "related assets" is removed and the term "agriculturally related other property" is substituted.

Section 35.6 In paragraph (d), the phrase "agriculturally related other property" is substituted.

Section 35.7 In paragraph (a), the phrase "other related assets" is removed and the phrase "agriculturally related other property" is substituted. The phrase "reappraised property" is removed from paragraph (b)(6) and the term "agriculturally related other property" is substituted.

Authority and Issuance

For the reasons set out in the preamble, Part 35 of Chapter I of Title 12 of the Code of Federal Regulations is revised to read as follows:

PART 35—AGRICULTURAL LOAN LOSS AMORTIZATION

Sec.

35.1 Authority and OMB control number.
35.2 Definitions.
35.3 Loss amortization and reappraisal.
35.4 Accounting for amortization.
35.5 Eligibility.
35.6 Conditions on acceptance.
35.7 Submission of proposals.
35.8 Revocation of eligibility.

Authority: 12 U.S.C. 1823(j) and 93a.

§ 35.1 Authority and OMB control number.

(a) *Authority.* This part is issued by the Office of the Comptroller of the Currency ("OCC") pursuant to 12 U.S.C. 1823(j) and 12 U.S.C. 93a.

(b) *OMB control number.* The collection of information requirements contained in this regulation were approved by the Office of Management and Budget under control number 1557–0186.

§35.2 Definitions.

For purposes of this part:

(a) "Agricultural Bank" means a national bank—

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

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

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

(4) Which has—

(i) At least 25 percent of its total loans in qualified agricultural loans and

agriculturally related other property, as defined below; or

(ii) Less than 25 percent of its total loans in qualified agricultural loans and agriculturally related other property, but which bank the OCC has recommended to the Federal Deposit Insurance Corporation for eligibility under this part.

(b) "Qualified Agricultural Loans" means:

(1) Loans qualifying as "loans to finance agricultural production and other loans to farmers" or as "loans secured by farm land" for purposes of Schedule RC–C of the FFIEC Consolidated Reports of Condition and Income or such other comparable schedule that may be in effect;

(2) Loans secured by farm machinery;

(3) Other loans or leases that a bank proves to be sufficiently related to agriculture for classification as an agricultural loan by the OCC; and

(4) The remaining unpaid balance of any loans, as described in paragraphs (b) (1), (2) and (3) of this section, that have been charged off since January 1, 1984, and that qualify for deferral under this part.

(c) "Agriculturally related other property" means any property, real or personal, that a bank owned on January 1, 1983, and any such additional property that it acquires prior to January 1, 1992, in connection with a qualified agricultural loan. For purposes of §§ 35.2(a)(4)(i) and 35.6(d) the value of such property includes amounts previously charged-off.

(d) "Accepting Official" means the head of the appropriate supervisory office designated by the OCC for the applicant bank.

§ 35.3 Loss amortization and reappraisal.

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

(1) Any loss on any qualified agricultural loan reflected in a bank's annual financial statements for any period between and including 1984 and 1991; and

(2) Any loss reflected in a bank's financial statements for any period between and including 1983 and 1991 resulting from a reappraisal or sale of agriculturally related other property.

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

§ 35.4 Accounting for amortization.

(a) *General rule.* Any bank which is permitted to amortize losses in accordance with § 35.3, above, may restate its capital and other relevant accounts and account for future authorized deferrals and amortizations in accordance with the instructions to the FFIEC Consolidated Reports of Condition and Income. Any resulting increase in the capital account shall be included in primary capital under § 3.100 of this chapter.

(b) *Relationship with the substitute lending limit.* Unamortized losses on loans and other assets, which are capitalized under this rule for agricultural loan loss amortization, are not to be included in capital for the purpose of calculating the substitute lending limit under § 32.8 of this chapter.

§ 35.5 Eligibility.

A proposal submitted in accord with § 35.7 shall be accepted, subject to the conditions described in § 35.6, if the Accepting Official finds that:

(a) The proposing bank is an agricultural bank;

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

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

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

§ 35.6 Conditions on acceptance.

All acceptances of proposals shall be subject to the following conditions:

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

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

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

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

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

§ 35.7 Submission of proposals.

(a) A bank wishing to amortize losses on qualified agricultural loans or agriculturally related other property shall submit a proposal to the appropriate Accepting Official.

(b) The proposal shall contain the following information:

(1) Name and address of the bank;

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

(3) A copy of the bank's most recent Reports of Condition and Income;

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

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

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

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

(ii) The date on which the loss was declared; and

(iii) The basis upon which the loss resulted from a qualified agricultural loan.

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

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

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

§ 35.8 Revocation of eligibility.

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

Date: July 19, 1988.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88-16684 Filed 7-27-88; 8:45 pm]

BILLING CODE 4810-33-M

Customs Service

19 CFR Part 10

[T.D. 88-45]

Customs Regulations Amendment Concerning Reciprocal Privileges Extended To Aircraft of Japan

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by changing the list of countries whose aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft. The amendment indicates that aircraft of Japanese registry are no longer entitled to free withdrawal of ground support equipment.

Prior to 1986, Japan had been extending aircraft of U.S. registry exemption privileges in connection with international commercial operations which were substantially reciprocal to those exemption privileges the U.S. provided to aircraft of foreign registry by sections 309 and 317 of the Tariff Act of 1930, as amended. Accordingly, the Customs Regulations provided that aircraft of Japanese registry were entitled to free withdrawal privileges. However, the Department of Commerce has informed Customs that Japan is no longer extending the exemption privileges to ground support equipment of U.S. aircraft. Accordingly, the U.S. will no longer exempt aircraft of Japanese registry from the payment of duties and taxes when their ground support equipment is withdrawn from Customs or internal revenue custody.

EFFECTIVE DATE: July 28, 1988.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Entry Rulings Branch, (202) 566-6040.

SUPPLEMENTARY INFORMATION:

Background

Sections 309 and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin for use as supplies (including equipment), ground equipment, maintenance or repair of the aircraft from Customs or internal revenue custody without the payment of Customs duties and/or internal revenue taxes. This privilege is granted if the Secretary of Commerce finds and advises the Secretary of the Treasury, that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to U.S. registered aircraft. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those countries whose aircraft have been found to be entitled to these privileges.

By virtue of the authority vested in the President by section 5 of the Act of May 28, 1908, 35 Stat. 425, as amended (46 U.S.C. 104), the President has delegated the authority to issue this list of nations to the Secretary of the Treasury by E.O. 10289, September 17, 1951. By Treasury Department Order 165-25, the Secretary of the Treasury delegated authority to the Commissioner of Customs to prescribed regulations relating to § 10.59(f) and other sections of the Customs Regulations relating to lists of countries entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82-201), dated October 13, 1982, the Commissioner delegated authority to amend these sections to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office of Regulations and Rulings, who then redelegated it to the Chief, Regulations and Disclosure Law Branch.

In accordance with 19 U.S.C. 1309(d), the Secretary of Commerce previously found, and advised the Secretary of the Treasury that Japan allowed privileges substantially reciprocal to those provided for in 19 U.S.C. 1309 and 1317 to aircraft registered in the U.S. and engaged in foreign trade. Therefore, by T.D. 53550, Japan was listed in § 10.59(f), Customs Regulations and corresponding privileges were extended to aircraft registered in Japan engaged in foreign trade.

The Commerce Department has not determined, and conveyed to the Customs Service, that Japan no longer exempts ground support equipment of aircraft of U.S. registry from taxes and duties. The finding became effective on August 1, 1986. This document amends § 10.59(f), Customs Regulations (19 CFR 10.59(f)), by changing the list of countries whose aircraft are exempt from the payment of Customs duties and internal revenue taxes on suppliers and equipment withdrawn from Customs or internal revenue custody for use by aircraft to indicate that Japan has discontinued its exemption regarding ground support equipment.

Executive Order 12291

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

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulation Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601, *et seq.*), it is certified that the change set forth in this document will not have a significant economic impact on any substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures but merely announces the recision of a previously granted exemption for which there is a statutory basis, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that notice and public procedure thereon are unnecessary. As Japan has been found by the Department of Commerce to have discontinued its exemption privileges reagarding ground support equipment in 1986, a delayed effective date is not appropriate.

Drafting Information

The principal author of this document was Lee H. Kramer, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Exports, Oil imports, Petroleum.

Amendment To The Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

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

1. The general authority citation for Part 10 and specific relevant authority continues to read as follows:

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

* * * * *

2. Section 10.59 also issued under 19 U.S.C. 1309, 1317.

* * * * *

§ 10.59 [Amended]

2. In the list of countries in § 10.59(f), the listing for Japan is amended by adding ", 88–45" under the column marked "Treasury Decision(s)" and by adding "not applicable to ground support equipment as of August 1, 1986" in the column marked "Exceptions if any, as noted—".

Dated: July 22, 1988.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 88–17000 Filed 7–27–88; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 82F–0295]

Food Additives Permitted For Direct Addition To Food For Human Consumption; Acesulfame Potassium

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acesulfame potassium as a nonnutritive sweetener. This action responds to a petition filed by American Hoechst Corp.

DATES: Effective July 28, 1988; objections and requests for hearing by August 29, 1988. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 172.800(b) effective July 28, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION:

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I. Summary of the Petition

In a notice published in the **Federal Register** of October 15, 1982 (47 FR 46139), FDA announced that a peitition (FAP 2A3659) has been filed by American Hoechst Corp. (now Hoechst Celanese Corp.), Route 202–206 North, Somerville, NJ 08876, proposing that the food additive regulations be amended to provide for the safe use of acesulfame potassium (potassium salt of 6-methyl–1,2,3–oxathiazine-4(3*H*)-one-2,2-dioxide) as a nonnutritive sweetener.

Acesulfame potassium has also been called "acesulfame K" or "acetosulfam," and is a derivative of acetoacetic acid. It can be manufactured by reacting *tert*-butyl acetoacetate with fluorosulfonyl isocyanate. The reaction product is converted to an amide which is then cyclized with concomitant removal of fluoride and formation of the potassium salt. The sweetener is water soluble and is stable at normal temperatures and moderate pH. It is approximately 200 times sweeter than sucrose based on comparison to a 3 percent aqueous solution of sucrose.

This petition has requested the use of acesulfame potassium as a table-top sweetener and as an ingredient in chewing gum, confections, hard candy, soft candy, and dry bases for beverages, instant coffee and tea, gelatins, puddings, pudding desserts, and dairy product analogs. In this final rule, the agency is listing all of the requested uses except confections, hard candy, and soft candy. Before acting on these uses, FDA must first consider further whether acesulfame potassium or other nonnutritive sweeteners can be listed for use in confectionary under section 402(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(d)(3)). Section 402(d)(3) bars the use of any nonnutritive substance in confectionary, unless the subtance is used for some practical functional purpose and does not promote deception of the consumer. In interpreting section 402(d)(3), the agency's position has been that the use of nonnutritive artificial sweeteners in confectionary for the purpose of caloric reduction is not a practical functional purpose. The agency is reexamining this interpretation.

The petitioner submitted a series of toxicity studies concerned with the safety of acesulfame potassium. These include studies on reproduction in rats and rabbits, teratology in rats, and mutagenicity. There are reports on metabolism, kinetics, distribution, and elimination studies using rats, pregnant rats, dogs, pigs, and humans. There are also various pharmacological investigations and a study in rats with artificially induced diabetes. There are reports from studies done concerning acute toxicity, subchronic toxicity, chronic toxicity, and potential carcinogenicity.

Data from four long-term studies were submitted. One is a 2-year toxicity study in beagle dogs in which groups of four male and four female dogs were fed 0, 90, 300, or 900 milligrams per kilogram of acesulfame potassium in their diet. Another is a carcinogenicity study in Swiss mice. Diets containing 0, 0.3, 1.0, or 3.0 percent of the test compound were fed to groups containing 100 male and 100 female mice. There are two long-term studies in rats; both are chronic toxicity and carcinogenicity studies with in utero exposure. In each case, 0, 0.3, 1.0, or 3.0 percent acesulfame potassium in the diet was fed to groups containing 60 females and 60 males. The first rat study was conducted with the CIVO-bred Wistar strain. The second rat study used CPB-WU Wistar rats. The agency discusses its evaluation of these studies below.

II. Evaluation Of The Petition

A. Estimated Daily Intake

In determining whether the proposed use of an additive is safe, FDA considers whether an individual's estimated daily intake of the additive will be less than the acceptable daily intake established from safety data. The

agency determines the estimated daily intake for various age groups by making projections based on the amount of additive proposed for use in particular foods and on data about the consumption levels of each particular food. The use levels of acesulfame potassium considered by the agency to estimate consumer exposure are supported by analytical data and taste panel testing reported in the petition. The petitioner also submitted survey information on the consumption of the food types for which use of acesulfame potassium was requested (Ref. 1).

The agency commonly uses the estimated daily intake for the 90th percentile consumer of a food additive as a measure of high chronic exposure because that level of consumption is significantly above the intake of the average consumer, thus providing an added margin of safety with respect to the acceptable daily intake for those individuals who regularly consume food containing the additive. For the requested food uses of acesulfame potassium, the agency has determined the 90th percentile estimated daily intake to be 1.6 milligrams per kilogram of body weight (for further details on this estmate see Ref. 1).

B. Safety Studies

The metabolism studies of acesulfame potassium revealed no evidence that this substance is metabolized. The reproduction and teratology studies produced no evidence of compound-related teratogenic or adverse reproductive effects. The mutagenicity studies did not indicate any genotoxic effects from acesulfame potassium. None of the various short-term studies showed any untoward adverse effects from acesulfame potassium. The 2-year toxicity study in beagle dogs did not show any toxic effects associated with the consumption of acesulfame potassium.

For the carcinogenicity study in mice, the petitioner had a consulting pathologist, as well as the testing laboratory, review the data and microslides. The testing laboratory, the consulting pathologist, and the agency all concluded that the data did not reveal any association between neoplasms and use of the substance, or between any other adverse effects and use of the substance (Ref. 2). Lymphocytic leukemia was reported as increased in the high-dose female mice, but the incidences were within the range of spontaneous incidences with this strain in the laboratory. The control, low-, and mid-dose groups had incidences of 1 percent and the high-dose group had 4 percent incidence. The historical control groups from eight other studies at this testing laboratory had an overall incidence of 5.2 percent. In rodent studies, lymphocytic leukemia should more properly be considered within the context of the other lymphoreticular neoplasms such as lymphosarcoma and reticulum cell sarcoma (Ref. 3) instead of separately as was done here. The agency concludes that there was no increase in neoplastic disease of the lymphoreticular system in mice due to treatment with acesulfame potassium. FDA also finds that this study met the minimum standards of testing for length of treatment and degree of survival.

For the first of the two long-term rat studies submitted, the testing laboratory stated that the results showed a slightly higher incidence, and a somewhat earlier appearance, of lymphoreticular pulmonary neoplasms (reticulm cell sarcomas) in the mid- and high-dose groups of both male and female rats than in the concurrent control group. The laboratory discussed several reasons to support its conclusion that these effects were not caused by treatment.

The agency concludes that this study, is inadequate to demonstrate safety and does not establish a carcinogenic effect of acesulfame potassium (Refs. 2 and 4). A major deficiency in the study is the fact that only 20 of the 60 rats in the control and high dose groups were subject to a complete histopathological examination, thereby limiting the proper interpretation of the results of the study. Moreover, the presence of extensive, severe chronic respiratory disease in the lungs of rats of all groups confounded diagnosis and interpretation of lung lesions in these animals. Generally, reticulum cell sarcomas in most strains of rats arise from lymph nodes and disseminated to many organs (Ref. 5). However, in the CIVO-bred Wistar rats, the occurrence of reticulum cell sarcomas in the lung seems to be linked with the presence of chronic respiratory disease (Ref. 5). These neoplasms in the CIVO strain are generally localized in the lungs and do not disseminate to other organs or tissues. Reticulum cell sarcomas are known to occur spontaneously in this strain of rat; incidences as high as 32 percent had been reported in untreated CIVO-bred Wistar rats (Ref. 2). These findings on the lymphoreticular neoplasms observed in treated and control rats from this study reinforce the agency's judgment that these neoplasms were not caused by acesulfame potassium treatment and that, therefore, the study is inadequate and does not provide a basis for assessing the carcinogenicity of the compound.

Because the first study was not adequate for the safety evaluation of a prospective food additive, a second long-term rat study was conducted. In the original report by the testing laboratory on this study, submitted with the initial petition, tissues from some of the animals were reviewed by the study pathologist of the performing laboratory and the remainder were reviewed by a consulting pathologist. This division of labor resulted in inconsistencies in the diagnostic criteria applied to the observations reported in the study. Although the data appeared to show treatment-related differences in a few of the observations, these were subsequently found to be due to the different way categories of lesions were summarized. This was shown when the petitioner, in response to the agency's request for more detailed and explicit listings of the results of the study, had all the data and microscopic slides reviewed by a consulting pathologist, who prepared a new report.

After a comprehensive review of the data from this second study, the agency has concluded that it is adequate for the safety evaluation of a food additive and that there is no association between the occurrence of neoplasms and treatment with acesulfame potassium (Ref. 2). Moreover, these rats did not show lymphoreticular neoplasms in the lungs or lymphoreticular disease in any other organs that could be ascribed to treatment. The highest level fed, 3 percent of the diet, produced no adverse toxic effects.

Among the issues in the initial review that received attention were differences in incidence of mammary gland neoplasms in the female rats. Most of the mammary tumors were fibroadenomas; there incidences in the female rats were: Control group—17 of 56 rats examined (30.4 percent); 0.3 percent test compound—26 of 60 (43.3 percent); 1.0 percent test compound—28 of 59 (47.5 percent); 3.0 percent test compound—28 of 59 (47.5 percent) (Ref. 6). The mammary gland neoplasms other than fibroadenomas were few in number and were distributed randomly among the different groups. The incidences of mammary gland hyperplasia were similar and uniformly high in all groups of treated famales and in the control females. Thus, the occurrence of mammary gland hyperplasia was unrelated to treatment with acesulfame potassium.

The agency concludes that there was no association between the occurrence of mammary gland neoplasms and

treatment with acesulfame potassium. This conclusion is based on the following:

(1) Fibroadenomas are a common old age tumor in this strain of rats and their incidence is variable.

(2) The incidence of mammary fibroadenomas in female control rats from seven comparable studies, performed at this testing laboratory around the same time period as the acesulfame potassium study, is 250 of 452 or 55.3 percent (Ref. 6). This incidence is higher than the incidences for any of the treated groups in the acesulfame potassium study and is much higher than that for the concurrent control group. The concurrent control group had an unusually low incidence of these tumors.

(3) In the treated groups, the lack of a dose response in incidences of fibroadenomas, as well as of all mammary tumors and of hyperlasia, is evidence that there is not a treatment-related effect of the sweetener on the incidence of fibroadenomas.

(4) There was no evidence of progressive stages of mammary gland neoplasms (hyperplasia to malignant neoplasms) that would indicate a treatment-related induction of tumors.

The reproduction and teratology studies, and the long-term safety studies did not show any toxic effects due to treatment with acesulfame potassium. From the highest feeding level in the long-term rat study, 3 percent acesulfame potassium, the agency, using a 100-fold safety factor, finds that the acceptable daily intake in 15 milligrams per kilogram body weight. This acceptable daily intake level is well above the expected intake for the food uses requested.

III. Comments

The Center for Science in the Public Interest (CSPI), a consumer advocacy group, wrote to the agency to express its concerns about the testing and safety of this sweetener, and included a copy of a newsletter article it had published on this subject. Several individuals also wrote to the agency echoing the concerns in the newsletter article. CSPI urged that FDA not approve the petition as submitted.

CSPI stated that some of the treated groups in the first long-term rat study showed higher mortality than the controls and this increase was associated with chronic respiratory disease and cancers of lung lymphoid tissue. CSPI also claimed that the occurrence of pulmonary lymphoreticular tumors was relatively high in mid- and high-dose groups of both sexes and was "statistically significant" in high-dose females. The group also mentioned an earlier appearance of these tumors in mid- and high-dose males than in control and low-dose males.

The agency has evaluated this study comprehensively and, as outlined in the proceding Section, finds that deficiencies in the study prevent anyone from drawing any conclusions concerning treatment-related effects. For the reasons described above, the agency found no evidence of a neoplastic effect that is casually associated with acesulfame potassium from this study. Moreover, as noted above, the agency believes that the deficiencies in this study render it inadequate for assessing the carcinogenic potential of the test compound or for any other purposes of a safety evaluation. The second rat study is adequate however, for such purposes and forms a basis for the agency's final conclusion of safety.

On the second long-term rat study, CSPI stated "Although excess pulmonary tumors were not observed in this study, excess mammary gland tumors were found. According to the petitioner, the 'total incidence of mammary gland tumors in each of the test groups was about twice as high as in the controls * * *. In addition, malignant mammary tumors * * * were found only in test animals * * *.'" (Omissions made by CSPI)

The agency disagrees with CSPI's conclusion that this study is not adequate to demonstrate safety. FDA made a detailed evaluation based on the comprehensive reexamination of all the histological slides by the consulting pathologist (see preceding Section). As stated in the previous Section, fibroadenomas are common old-age tumors in female rats of this strain. The quotation of the petitioner's statement omits the fact that no mammary gland tumors were found in any of the male rats of this study. Based on the lack of dose response, the unusually low incidence of tumors in the concurrent control group compared with other contemporary controls, and the other reasons given in the previous Section, the agency concludes that there is no basis to find a causal relationship between acesulfame potassium treatment and development of mammary gland tumors.

In its letter to FDA, CSPI maintained that a positive dose response is not needed to reach a conclusion of carcinogenicity. The group also stated its belief that comparison with historical controls does not excuse the high tumor rates in either rat study. In this regard, they quote the Environmental Protection Agency's "Guidelines for Carcinogen Risk Assessment" as saying, "To evaluate carcinogenicity, the primary comparison is tumor response in dosed animals as compared with that in contemporary matched control animals" (September 24, 1986; 51 FR 33992 at 33995).

FDA disagrees with CSPI's interpretation of these guidelines. CSPI omitted from its quotation the sentences that follow it in the guidelines with respect to consideration of historical controls. The Environmental Protection Agency goes on to state, "Historical control data are often valuable, however, and could be used along with concurrent control data in the evaluation of carcinogenic responses * * *. The review of tumor data at sites with high spontaneous background requires special consideration * * *. For instance, a response that is significant with respect to the experimental control group may become questionable if the historical control data indicate that the experimental control group had an unusually low background incidence" (citations omitted).

FDA has long followed the principles stated in these guidelines, and in the Office of Science and Technology Policy, in reviewing the safety of food and color additives (November 2, 1982; 47 FR 49628 at 49629). The Office of Science and Technology Policy (March 14, 1985; 50 FR 10372 at 10418) stated:

> * * * With such data, the toxicologist may conclude that a study yielding statistical significance is not biologically significant or conversely that an effect is real, even though there is no "significant" difference between test and concurrence controls. Of 27 bioassay study reports issued by the NCI (National Cancer Institute) from 1978–1980, historical controls were used in 14 studies to show that an apparent increase of a specific tumor was not related to treatment. In 13 studies, the use of historical controls showed that an increase in tumors was related to treatment. Historical control data can be valuable when used appropriately, especially when the differences in incidence rates between treated and concurrent negative controls are small and can be shown to be within the anticipated historical incidence.

The agency points out that a determination of whether a compound is carcinogenic should be based on the overall weight of the evidence. The evidence can reasonably include a dose response or a lack of a dose response, consideration of historical controls, associated pathological data, the time to induction tumors, and the multiplicity of tumors. In the second long-term rat study, none of these factors lends weight to a finding of carcinogenicity (Ref. 6).

CSPI also questioned the results in a study the petitioners had volunteered which was conducted for 4 weeks with rats made diabetic by treatment with streptozotocin. CSPI stated that blood cholesterol levels were elevated 15 to 20 percent in groups of rats fed acesulfame potassium and suggested a relation to an increased risk of heart disease for diabetic humans who use this artificial sweetener.

FDA does not agree. The serum cholesterol levels were higher than the controls only in the low- and mid-dose groups but not in the high-dose group. These data do not show a dose-response relationship. In addition, differences in levels were relatively small and well within the normal cholesterol levels for rats (Ref. 7). FDA finds no relation between ingestion of the test compound and the levels of serum cholesterol in this study.

IV. Conclusions

FDA has evaluated the data in the petition and other relevant material and concludes that acesulfame potassium is safe under the conditions of use in a new 21 CFR 172.800 and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)) the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment prepared under proposed 21 CFR 25.31(b) as published in the **Federal Register** of December 11, 1979 (44 FR 71742) may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's current regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under § 25.31a(a).

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before August 29, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing on any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Kuznesof, P. M., Food and Color Additives Review Section, Memoranda of October 30, 1986, April 9, 1987, and August 5, 1987.

2. Cancer Assessment Committee, Memorandum of Conferences, November 21, 1983, February 21, 1985, December 12, 1985, and June 17, 1986.

3. Della Pora, G., L. Chieco-Bianchi, and N. Pennelli, "Tumors of the Haematopoietic System," *in* IARC Scientific Publications, No. 23, Vol. 2, "Tumors of the Mouse," p. 532, 1979.

4. Taylor, L. L., Additives Evaluation Branch, Memorandum of June 19, 1986.

5. Swaen, G. J. V., and P. Van Heerde, "Tumors of the Haematopoietic System," *in* IARC Scientific Publications, No. 5, Vol. 1, "Tumors of the Rat," Part 1, p. 187, 1973.

6. Hines, F. A., Diagnostic Pathology Branch, Memorandum of June 6, 1986.

7. Irausquin, H., Standards and Monitoring Branch, Memoranda of November 6, 1987, and October 20, 1982.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61

2. A new § 172.800 is added to Subpart I to read as follows:

§ 172.800 Acesulfame potassium.

Acesulfame potassium (CAS Reg. No. 55589–62–3), also known as acesulfame K, may be safely used as a sweetening agent in food in accordance with the following prescribed conditions:

(a) Acesulfame potassium is the potassium salt of 6-methyl-1,2,3-oxathiazine-4(3*H*)-one-2,2-dioxide.

(b) The additive meets the following specifications:

(1) Purity is not less than 99 percent on a dry basis. The purity shall be determined by a method titled "Acesulfame Potassium Assay," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the **Federal Register**, 1100 L St. NW., Washington, DC 20408.

(2) Fluoride content is not more than 30 parts per million, as determined by method III of the Fluoride Limit Test of the Food Chemicals Codex, 3d Ed. (1981), p. 511, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) The additive may be used in the following foods when standards of identity established under section 401 of the Federal Food, Drug, and Cosmetic Act do not preclude such use:

(1) Dry, free-flowing sugar substitutes in package units not to exceed the sweetening equivalent of 2 teaspoonsful of sugar.

(2) Sugar substitute tablets.

(3) Chewing gum.

(4) Dry bases for beverages, instant coffee, and instant tea.

(5) Dry bases for gelatins, puddings, and pudding desserts.

(6) Dry bases for dairy product analogs.

(d) If the food containing the additive is represented to be for special dietary uses, it shall be labeled in compliance with Part 105 of this chapter.

(e) The additive shall be used in accordance with current good manufacturing practice in an amount not to exceed that reasonably required to accomplish the intended effect.

Dated: July 19, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-16972 Filed 7-27-88; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 185 and 186

[OPP-00264; FRL-3422-1]

Tolerances for Pesticides in Food and Animal Feeds; Transfer of Regulations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that transferred former Parts 193 and 561 of Title 21 of the Code of Federal Regulations (CFR) regarding tolerances for pesticides in food and animal feeds into new Parts 185 and 186, respectively, of Title 40 of the CFR.

EFFECTIVE DATE: July 28, 1988.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Chief, Federal Register Staff (TS-788B), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G009, 401 M St., SW., Washington, DC 20460, (202)-382-2253.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-14718, published in the **Federal Register** of June 29, 1988 (53 FR 24666), EPA transferred former 21 CFR Parts 193 and 561 into new 40 CFR Parts 185 and 186, respectively. The following corrections are made to the document:

1. On page 24666, in the third column under the "old section-new section" table, in the entry for old section 193.80 change the new section entry from 185.375 to 185.410.

2. On page 24667, ir the first column, under the "old section-new section" table, in the entry for old section 193.470 change the new section entry from 185.5500 to 185.5550.

3. On page 24667, in the first column under the "old section-new section" table in the entry for old section 561.51 change the new section entry from 186.400 to 186.375.

4. On page 24667, in the first column, under the "old section-new section" table in the entry for old section 561.53 change the new section entry from 186.5050 to 186.4975.

5. On page 24667, in the first column, under the "old section-new section" table in the entry for old section 561.92 change the new section entry from 186.425 to 186.400.

PART 185—[CORRECTED]

6. On page 24667, in the third column, in the table of contents entry for section 185.375 1,1-Bis(*p*-chlorophenyl)-2,2,2-trichloroethanol, change the section number to 185.410 and reinsert the entry in numeric sequence.

PART 186—[CORRECTED]

7. On page 24668, in the third column, in the table of contents entry for section 186.400 Bentazon, change the section number to 186.375.

8. On page 24668, in the third column, in the table of contents entry for section 186.425 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine, change the section number to 186.400.

9. On page 24668, in the third column, in the table of contents entry for section 186.950, insert a hyphen after the first number 1 so that the entry reads "2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate."

10. On page 24668, in the third column, in the table of contents entry for section 186.1850, remove the hyphen in the word "oxazolidine-dione" so that it reads "oxazolidinedione."

11. On page 26449, in the second column, in the table of contents entry for section 186.5050, change "Propenofos" to read "Profenofos" and change the section number to "186.4975" and reinsert the entry in numeric sequence.

(21 U.S.C. 348)

Dated: July 22, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-17105 Filed 7-27-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3420-9]

Georgia; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Georgia has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Georgia's application and has made a decision, subject to public review and comment, that Georgia's hazardous waste program revision for the hazardous components of radioactive mixed wastes and for the closure, post-closure and financial responsibility requirements satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Georgia's hazardous waste program revision for the hazardous components of radioactive mixed wastes and for the closure, post-closure, and financial responsibility requirements. Georgia's application for program revision is available for public review and comment.

DATES: Final authorization for Georgia shall be effective September 26, 1988 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Georgia's program revision application must be received by the close of business August 29, 1988.

ADDRESSES: Copies of Georgia's program revision application are available during 8:00 a.m.-4:00 p.m. at the following addresses for inspection and copying: Georgia Department of Natural Resources, Land Protection Branch, Room 1154, 205 Butler Street SE., Floyd Towers East, Atlanta, Georgia 30334, Phone: 404/656-2833; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382-5926; U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365, Phone: 404/347-4216. Written comments on the application should be sent to Otis Johnson, at the address listed below.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., Chief, Waste Planning Section, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365, Phone: 404/347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Georgia received final authorization for HSWA provisions contained in the July 15, 1985 Codification Rule, 50 FR 28702 on September 18, 1986.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266 and 124 and 270.

B. Georgia

Georgia initially received final authorization on August 21, 1984. Georgia received authorization for revisions to its program on September 18, 1986. On December 31, 1987, Georgia submitted a program revision application for additional program approval for the hazardous components of radioactive mixed wastes and for the closure, post-closure, and financial responsibility requirements. Today, Georgia is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Georgia's application, and has made an immediate final decision that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Georgia. The public may submit written comments on EPA's immediate final decision up until August 29, 1988. Copies of Georgia's application for program revisions are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice

Approval of Georgia's program revision shall be come effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Georgia is not seeking authorization to operate in Indian lands.

C. Decision

I conclude that Georgia's application for program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted final authorization to operate its hazardous waste program as revised. Georgia now has reponsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its revised program application and previously approved authorities. Georgia also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Georgia's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Lee A. Dehihns,

Acting Regional Administrator.

Dated: June 28, 1988.

[FR Doc. 88–17027 Filed 7–27–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 424

[BERC–300–F]

Medicare Program; Indirect Part B Payment Procedure

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: Section 1842(b)(6) of the Social Security Act, as amended by section 2339 of the Deficit Reduction Act of 1984, authorizes a Medicare carrier to pay Medicare Part B benefits under certain circumstances directly to an entity that provides a health benefits plan complementary to Medicare and that pays the physician or supplier in full for the service. This rule sets forth the requirements these entities must meet to receive payment directly from Medicare.

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Ed Roth, 301–966–4486.

SUPPLEMENTARY INFORMATION:

Background

Under Medicare's Supplementary Medical Insurance program (Part B), the payment for the services of a physician or supplier is generally 80 percent of reasonable charges in excess of an annual deductible amount. Upon submission of a properly executed claim, this payment is made to the beneficiary, or alternatively to the physician or supplier if he or she accepts assignment of the claim.

Some beneficiaries have complementary insurance coverage that pays the annual deductible, the 20 percent coinsurance, and any amount by which the approved charge of the insurer exceeds the Medicare reasonable charge. In 1969 we established a procedure that allows a complementary insurance plan meeting certain conditions to pay a physician or supplier an amount that the physician or

supplier accepts as full payment for his services and then bill the Medicare carrier for the Part B payment that would otherwise be made to the beneficiary (42 CFR 405.1685).

Until July 1985, we limited the actual use of this procedure, under Medicare Carriers Manual instructions, to employment-related group insurance plans, group practice prepayment plans and HMOs, and, in the case of the latter two types of organizations, we made the procedure available only for limited types of services. Moreover, between May 1979 and July 1985, we prohibited carriers from accepting new applications by employment-related group insurance plans to use the procedure. In July 1985, we issued revised Medicare Carrier Manual instructions removing many of these limitations.

On July 1, 1986 (51 FR 23792), we proposed to amend § 405.1685, as well as other rules that have an impact upon this payment procedure, to implement section 1842(b) of the Act, as amended by section 2339 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) commonly referred to as "DRA". Section 1842(b)(6) now provides the authority for carriers to pay Medicare Part B benefits, for services that are reimbursable on a reasonable charge or fee schedule basis, to entities that meet the conditions specified below, if the beneficiary has agreed in writing for payment to such an entity. The entity must be one that—

- Provides coverage of the services under a complementary health services plan as described above; and
- Has paid the physician or supplier an amount that includes the amount payable under Medicare and is accepted by the physician or supplier as full payment for the service.

Under the broad language of amended section 1842(b)(6) of the Act, any entity that meets the stated requirements can use the indirect payment procedure. This includes employers, unions, insurance companies, and retirement homes. It also includes prepayment organizations such as HMOs, competitive medical plans, and other prepaid plans, when they deal with a carrier rather than directly with HCFA.

The procedure is available only for services paid on a reasonable charge or fee schedule basis, and only when Medicare is primary payer. It is not available for services of providers or of other entitites that are paid under prospective payment or cost basis systems and is not available when Medicare is secondary payer.

The Act sets forth the indirect payment procedure as an alternative to Medicare payment to the beneficiary on the basis of an itemized bill or to the physician or supplier on the basis of an assignment. Indirect payment is available even for services furnished by a participating physician or supplier, that is, one that has agreed to accept assignments.

Section 1842(h)(1) of the Act, as amended by section 2306 of the DRA (and as further amended by section 9301(d)(2)(A)(ii) of Pub. L. 99–272), permits a participating physician or other supplier to accept payment under the indirect payment procedure in lieu of accepting Medicare assignment. Indirect payment is also available for clinicial diagnostic laboratory tests furnished by a physician or independent laboratory. Section 1833(h)(5)(C) of the Act, as amended by section 2303 of the DRA, permits a physician or independent laboratory to accept payment for clinical diagnostic laboratory tests under the indirect payment procedure in lieu of accepting Medicare assignment for those tests. Until December 22, 1987, when a physician or laboratory used this procedure for clinical diagnostic laboratory tests, Medicare payment for those tests was subject to deductible and coinsurance and was not 100 percent of the fee schedule amount or the actual charge (whichever is less) as it was when Medicare paid for the tests under assignment. This was changed by section 4085(i)(1) of the Omnibus Budget Reconciliation Act of 1987 Pub. L. 100–203), effective for services furnished on or after the date of enactment, December 22, 1987. Deductible and coinsurance no longer apply to clinical diagnostic laboratory tests for which payment is made under the indirect payment procedure.

Provisions of the Proposed Regulations

Since the amendments did not change the essential conditions for use of the procedure as set forth in the existing rules, we proposed primarily technical changes to conform the rules more closely to the language of the law, with minor revisions and clarifications. Specifically, we proposed to amend §§ 405.1672, 405.1679, 405.1685, and 405.1686, as discussed below.

A. Section 405.1672, Individual's Request For Direct Payment—General Provisions

A parenthetical statement at the end of § 405.1672(c) indicated that "for payment to organizations that pay bills on behalf of enrollees, see § 405.1685." In line with proposed changes in § 405.1685 discussed below, we proposed to change this statement to read: "For payment to entities that pay for services on behalf of entitled individuals, see § 405.1685."

B. Section 405.1679, Execution of Claim For Payment

This section made no reference to the indirect payment procedure. It discussed who could execute a claim for an individual. We proposed to add a new paragraph (e) to clarify that an entity that provides complementary health insurance and meets the requirements of the indirect payment procedure could execute a claim on behalf of the beneficiary under that procedure. The beneficiary would authorize the entity to receive his or her Part B payments. Section 1842(b)(3)(B) of the Act (following clause (ii)), requires that a Part B bill be submitted in such form as is provided by regulations. Section 1835(a)(1) of the Act requires (in the case of services furnished by certain "providers of services") that the beneficiary submit a written request for payment "except in cases in which the Secretary finds it impracticable for the beneficiary to do so". Since the main purpose of the indirect payment procedure is to simplify the billing process, for beneficiaries and for physicians and other suppliers, and since the beneficiary must give written authorization for the complementary coverage plan to receive the Part B payments, we believe that a request for payment signed by the beneficiary, or a written statement authorizing the plan to submit claims on his or her behalf, is unnecessary.

C. Section 405.1685, Payment to Organizations That Pay Bills on Behalf of Enrollees.

We proposed to change the title of this section to "The indirect payment procedure." All the proposed special requirements for payment under the indirect payment procedure would be set forth in the revised § 405.1685(a). We proposed that Medicare Part B payment for the services of a physician or supplier otherwise payable to a beneficiary or to his or her legal representative or representative payee could be made to an entity that provides coverage to the beneficiary under a complementary health benefits plan. (This was to make it clear that payment under the indirect payment procedure is an exception to the rule that benefits that are not assigned to the physician or supplier must be paid to the beneficiary or to his or her legal representative or representative payee.) Paragraphs (a)(1) through (a)(6) and (b), discussed below, would specify the requirements the entity must meet to receive the payment.

To improve technical accuracy, we also proposed to change references

throughout paragraphs (a) and (b) from "organization" to "entity," and from "bills" to "services."

Any entity using the indirect payment procedure would have to meet the general criterion set forth in a new § 405.1685(a)(1). This provision provided explanatory language to indicate that the plan would have to be complementary to Medicare, in line with current practice.

In paragraph (a)(2) of the proposed regulations we proposed to continue the current requirement that the entity must have made full payment to the person furnishing the service. Editorial changes were to be made to follow the language of the law more closely.

In paragraph (a)(3), we proposed to clarify the role of an "authorized representative" of a beneficiary in executing an agreement for Medicare Part B payment to the entity. (We proposed also to revise § 405.1672(c) to provide that any of the persons specified in § 405.1679 could execute a claim on behalf of the beneficiary.)

We proposed to redesignate current paragraph (a)(3) as paragraph (a)(4) and revise it editorially, and to combine the contents of the current paragraphs (a)(4) and (a)(5) in paragraph (a)(5), requiring that the entity submit any information the carrier needs to meet requirements of the Medicare program.

In paragraph (a)(6) we proposed to require an entity to have in place a process that would identify and exclude from its requests for payment all services for which Medicare is the secondary payer. This is called for by the provision that the entity may request payment only in cases in which it pays for the service under a plan complementary to Part B. Section 1862(b) of the Act and 42 CFR 405.316–405.329 indicate when Medicare is secondary payer.

Paragraph (b) of § 405.1685 indicated that the entity could choose not to pay and claim reimbursement for all Part B bills on behalf of a beneficiary; the entity could establish criteria to determine at its discretion which bills it would pay. We proposed to revise the paragraph to show that the entity has discretion to determine which services, rather than which bills, it will pay. In addition, to prevent possible double billing (when the entity and the beneficiary bill the carrier for the same service), we proposed to require that the entity undertake to cover, and to pay and claim reimbursement for, either one or more well defined general categories of services, or all Part B services.

D. Section 405.1686, Organizations Qualified To Receive Payment on Behalf of Enrollee

This section described the types of organizations that could qualify to receive payment under the indirect payment procedure. Since the availability of the indirect payment procedure no longer would be limited to the types of organizations specified in § 405.1686, we proposed to delete this section.

Response to Comments

We received timely comments from a Medicare carrier, a State Medicaid Agency, and a private health benefits plan on the proposed regulations. Because there were so few comments and because each commenter's comments are so distinct from the others, we discuss them individually.

The carrier raised a number of issues regarding the administration of the indirect payment provision. These questions and our responses are as follows:

Question: Will the carrier be required to make programming changes to make deductible and coinsurance applicable to the charges for clinical diagnostic laboratory tests furnished by independent laboratories?

Response: Carriers should not make these programming changes. Under section 4085(i)(1) of the Omnibus Budget Reconciliation Act of 1987, the Part B deductible and coinsurance no longer apply to charges for clinical diagnostic laboratory tests for which payment is made under the indirect payment procedure.

Question: Will there be carrier involvement to ascertain that an entity using the indirect payment procedure meets the requirements of the final regulations?

Response: Yes. The entity will submit its request to use the procedure to the carrier to which it expects to submit the most claims. The carrier will determine whether the entity meets the requirements and notify HCFA.

Question: What mechanism will be developed to inform the carrier of the status of the entity?

Response: HCFA will add the entity to a list of approved entities in the Medicare Carriers Manual and assign it a national identification number ("approval number") to show on its claim.

Question: How will the carrier determine whether or not a private insurance plan should receive Medicare reimbursement, since the plan might be obligated by its terms to pay for the service in full regardless of Medicare?

Response: In applying to use the indirect payment procedure, the entity must agree to claim payment for a service only when it covers the service under a plan complementary to Medicare Part B and meets the requirements for reimbursement for that service. Medicare beneficiaries who are members of the plan receive from the carrier an explanation of medical benefits detailing the services Medicare paid for and we anticipate that they would soon complain to the carrier or HCFA if Medicare payment is made to a plan for services for which the plan is obligated to pay in full regardless of Medicare.

The State Medicaid agency's comment on the regulations and our response are as follows:

Comment: The State Medicaid agency provides payment for medical services as a payer of benefits complementary to Medicare. In addition, the agency covers only the amount by which a Part B payment falls short of the charge approved for the service or the State's fee, whichever is less. Accordingly, the agency believes it should be considered an entity entitled to use the indirect payment procedure.

Response: While State Medicaid plans are similar in some respects to health benefits plans complementary to Medicare, we do not regard them as such plans for purposes of using the indirect payment procedure. Unlike private insurance plans, State Medicaid plans generally pay fees lower than the fees usually charged in the community. Under the indirect payment procedure, the amount the entity pays the physician or supplier for a service goes into his customary charge profile. If this amount is less than his usual charges, the physician's payment level may be penalized. The indirect payment procedure is designed for use by entities that pay physicians' and suppliers' usual charges.

Moreover, State agencies generally pay no more than (if as much as) the Medicare approved charge. There is no disadvantage, therefore, to a physician or supplier who participates in Medicaid in accepting Medicare assignments and submitting Medicare claims directly to the Medicare carrier. State agencies have procedures for obtaining Medicare claims information for purposes of making the supplementary Medicaid payment on these claims. Thus, it would merely create an administrative complication for the Medicare program to authorize the use of the indirect payment procedure by States.

The health benefits plan made a number of comments objecting to the

prohibition in the proposed regulations against the imposition of any copayment in connection with the indirect payment procedure. These comments and our responses to them are as follows:

Comment: There is no prohibition in the statute against imposing a copayment.

Response: While it is true that the prohibition is not stated explicitly in the statute, it is the most supportable interpretation of that part of section 1842(b)(6) of the Act that requires a physician (or supplier) to accept the plan payment as full payment. This part of the statutory language could mean either: (1) That the plan must be the entire ultimate source of payment for the service (exclusive of Medicare Part B); or (2) that the plan must merely be the entire immediate source of payment. The first interpretation would prohibit the billing of a copayment by either the plan or the physician; the second would merely prohibit the billing of a copayment by the physician. The first interpretation is more consistent with the objectives of the legislation that we stated in our recommendation that legislation in this area be initiated. In recommending the indirect payment provision to Congress, we stated that the provision should be designed to permit the physician to submit a single claim, relieve the beneficiary of any need to file a claim, and protect the beneficiary against any financial liability for the service, if Medicare and the plan together fully cover the services.

We believe that Congress fully agreed with out recommendation and did not contemplate the collection of a copayment by a plan under the indirect payment procedure. Congress did not provide guidance in the statute or in the legislative committee reports on determining the permissible amount of any copayment.

Comment: Prohibiting a copayment limits the availability of the indirect payment procedure and disadvantages carrier-dealing health benefits plans relative to HMOs that enter into contracts with HCFA and may impose copayments.

Response: In the case of a health benefits plan that uses the indirect payment procedure (unlike a health benefits plan that has a contract with HCFA as an HMO or competitive medical plan), we do not regulate the amount of premiums the plan may charge. For a plan that pays physicians on a fee-for-service basis, this makes the indirect payment procedure an attractive alternative to entering into a risk-capitation contract with HCFA (i.e., a contract under which HCFA pays the plan, as an HMO or competitive medical plan, a capitation rate with the plan assuming the financial risk of providing services covered under Part A or Part B of Medicare). Permitting the imposition of a copayment would make the indirect payment procedure an even more attractive alternative to a risk-capitation contract if the plan believes that a copayment would help it to reduce utilization and other costs. Making the indirect payment procedure this attractive, however, conflicts with our initiative encouraging plans to enter into risk-capitation contracts. We find little basis for permitting such a disincentive to risk capitation contracts without an explicit statutory requirement to do so.

Comment: This prohibition precludes use of a copayment as a utilization control mechanism.

Reponse: Copayments are certainly one form of utilization control. However, other control exist, such as careful review of claims, partial refund of premiums to plan members, etc. The indirect payment procedure was basically intended for Medigap plans that ordinarily do not charge a copayment and that assume full responsibility for the difference between the Medicare payment and the approved charge of the plan.

Final Rule

While the final rule was under development, HCFA undertook to redesignate all rules on conditions for Medicare payment (including Subpart P of Part 405) as a new Part 424. Accordingly, the section numbers of Part 424 are substituted in the final rule, as shown in the following discussion.

We are adopting the proposed rule as final without substantive changes. For clarity and precision we are making the following editorial revisions in § 405.1685, which is now § 424.66:

1. Provide a more descriptive heading;

2. Revise paragraph (a)(6) to require that the entity "identify and exclude from its requests for payment all services for which Medicare is secondary payer * * *." (The wording of the proposed rule appeared to emphasize the process leading to identification rather than exclusion as such.)

3. Clarify (in paragraph (b)) that an entity that does not pay and claim reimbursement for all Part B services must establish in advance precise criteria for determining the services for which it will pay.

Language in the proposed rule was misleading.

By referring to "cover" and "pay and claim reimbursement for" in the same sentence, we created the erroneous impression that the entity must pay and claim reimbursement for any service that it covers. Actually, an entity's health benefit plans might have copayment requirements or approved charge limitations that would prevent it from claiming reimbursement for some services. Also, an entity might choose to use the indirect payment procedure for some of its plans but not others.

By stating that an entity must determine which well-defined categories of services for which it would pay, we created the erroneous impression that there are HCFA-defined categories from which the entity can choose.

The paragraph (e) that we proposed to add to § 405.1679, redesignated as § 424.36, under which an entity authorized to use the indirect payment procedure could execute a claim on behalf of the beneficiary, appears in the final rule as paragraph (d).

Other proposed changes to § 405.1672 (paragraphs (c) and (d)) became inappropriate or unnecessary as we simplified our rules in a final rule published March 2, 1988 (53 FR 6629). The content of these paragraphs is found in new § 424.34(a) and § 424.54. In that regard, paragraph (a) of new § 424.66, which includes the content of former § 405.1686 is being removed, as we proposed and as it is inconsistent with current law.

Regulatory Impact Statement

A. Executive Order 12291

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on 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. While this rule may result in administrative savings because it will permit the physician or supplier to file a single claim and receive payment in a single check, the overall effect will be negligible. Coverage and payment amounts will not be affected. Therefore, because no threshold criteria under E.O. 12291 will be exceeded, this rule is not considered a major rule and an impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not small entites, but we treat all physicians or suppliers as small entities. While, in some cases, physicians or suppliers may benefit slightly because a single claim will be permitted for a given service, the overall impact on the physician or supplier will be minimal.

For these reasons, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

C. Paperwork Reduction Act

These changes will not impose paperwork collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget (EOMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 424

Administrative practice and procedure, Conditions for payment, Medicare claims, Physician certification, Plan of treatment, Request for payment.

42 CFR Part 424 is amended as set forth below:

PART 424—[AMENDED]

1. The authority citation continues to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1935, 1842(b), 1861, 1866(d), 1870 (e) and (f), 1871, and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g, 1395n, 1395u, 1395x, 1395cc, 1395gg, 1395hh, and 1395ii).

2. Section 424.36 is amended to redesignate paragraph (d) as (e) and add a new paragraph (d) to read as follows:

§ 424.36 Signature requirements.

* * * * *

(d) *Claims by entities that provide coverage complementary to Medicare.* A claim by an entity that provides coverage complementary to Medicare Part B may be signed by the entity on the beneficiary's behalf.

(e) *Acceptance of other signatures for good cause.* * * *

3. Section 424.60 is amended by revising paragraph (a) to read as follows:

§ 424.60 Scope.

(a) This subpart sets forth provisions applicable to payment after the beneficiary's death and payment to entities that provide coverage complementary to Medicare Part B.

* * * * *

4. Section 424.66 is amended to revise the section heading, remove paragraphs (a) and (b), redesignate paragraph (c) as (a) and revise it, and add a new paragraph (b). As amended, § 424.66 reads as follows:

§ 424.66 Payment to entities that provide coverage complementary to Medicare Part B.

(a) *Conditions for payment.* Medicare may pay an entity for Part B services furnished by a physician or other supplier if the entity meets all of the following requirements:

(1) Provides coverage of the service under a complementary health benefit plan (this is, the coverage that the plan provides is complementary to Medicare benefits and covers only the amount by which the Part B payment falls short of the approved charge for the service under the plan).

(2) Has paid the person who provided the service an amount (including the amount payable under the Medicare program) that the person accepts as full payment.

(3) Has the written authorization of the beneficiary (or of a person authorized to sign claims on his behalf under § 405.1679) to receive the Part B payment for the services for which the entity pays.

(4) Relieves the beneficiary of liability for payment for the service and will not seek any reimbursement from the beneficiary, his or her survivors or estate.

(5) Submits any information HCFA or the carrier may request, including an itemized physician or supplier bill, in order to apply the requirements under the Medicare program.

(6) Identifies and excludes from its requests for payment all services for which Medicare is the secondary payer.

(b) *Services paid by the entity.* An entity is not required to pay and claim reimbursement for all Part B services furnished to members of its plans. However, if it does not pay and claim reimbursement for all those services, it must establish in advance precise criteria for identifying the services for which it will pay and claim reimbursement.

(Catalog of Fedral Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: August 18, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: June 10, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-16995 Filed 7-27-88 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6931]

Changes in Flood Elevation Determinations; Arkansas et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination. From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance

Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas	Crawford	City of Van Buren	Mar. 17, 1988, Mar. 24, 1988 *Press Argus Courier.*	The Honorable Robert E. Bell, Mayor of the city of Van Buren, P.O. Box 668, Van Buren, Arkansas 72956.	Mar. 4, 1988	050053
Georgia	DeKalb	Unincorporated areas.	June 23, 1988, June 30, 1988, *Decatur-DeKalb News/ERA.*	The Honorable Manuel J. Maloof, Chief Executive Officer, DeKalb County, 556 North McDonough, Decatur, Georgia 30030.	June 14, 1988	130065
Illinois	Cook	Village of Westchester.	July 21, 1988, July 28, 1988, *Westchester News.*	The Honorable John J. Sinde, Village President, village of Westchester, 10240 Roosevelt Road, Westchester, Illinois 60153.	Oct. 28, 1988	170170
Massachusetts.	Essex	City of Methuen	June 24, 1988, July 1, 1988, *Lawrence Eagle-Tribune.*	Mr. William F. Gallagher, Manager of the city of Methuen, 90 Hampshire Street, Methuen, Massachusetts 01844.	June 14, 1988	250093C
Texas	Montgomery	Unincorporated areas.	June 29, 1988, July 6, 1988, *The Courier.*	The Honorable Alvin Stahl, Montgomery County Judge, 326½ N. Main, Conroe, Texas 77301.	June 17, 1988	480483
Vermont	Windsor	Town of Royalton	June 16, 1988, June 23, 1988, *White River Valley Herald.*	The Honorable David I. Lyman, Chairman of the town of Royalton Board of Selectmen, P.O. Box 680, South Royalton, Vermont 05068.	June 8, 1988	500153B

Issued: July 20, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88–16985 Filed 7–27–88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

The authority citation for Part 65 continues to read as folllows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Georgia: Fulton (Docket No. FEMA-6928).	Unincorporated areas	Nov. 12, 1987, Nov. 19, 1987, *Atlanta Journal Constitution.*	The Honorable Sam Brownlee, County Manager, Fulton County, 207 Administration Building, 165 Central Avenue, SW., Atlanta, GA 30335.	Nov. 2, 1987	135160
Illinois: Cook (Docket No. FEMA-6928).	City of Prospect Heights.	Mar. 24, 1988, Mar. 31, 1988, *Daily Herald.*	The Honorable John E. Gilligan, Mayor, City of Prospect Heights, City Hall, 4 East Camp McDonald Road, Prospect Heights, IL 60070.	Mar. 15, 1988.	170919
Oklahoma: Oklahoma, Canadian, Cleveland, McClain, and Pottawatomie (FEMA Docket No. 6928).	City of Oklahoma City	Apr. 18, 1988, Apr. 25, 1988, *The Daily Oklahoman.*	The Honorable Ronald J. Norick, Mayor of the City of Oklahoma City, 200 North Walker, Oklahoma City, OK 73102.	Apr. 6, 1988	405378
South Carolina: Aiken (Docket No. FEMA-6928).	Unincorporated areas	Apr. 7, 1988, Apr. 14, 1988, *Aiken Standard.*	The Honorable W. Scott Barnes, County Administrator, Aiken County, 828 Richland Avenue, West, Aiken, SC 29801.	Mar. 31, 1988.	450002
Tennessee: Shelby (Docket No. FEMA-6928).	Unincorporated areas	May 13, 1988, May 20, 1988, *Memphis Daily News.*	The Honorable William N. Morris, Mayor, Shelby County, 160 North Mid-America Mall, 8th Floor, Memphis, TN 38103.	May 3, 1988	470214
Tennessee: Shelby (Docket No. FEMA-6928).	Unincorporated areas of Shelby County.	Mar. 3, 1988, Mar. 10, 1988, *Memphis Daily News.*	The Honorable William N. Morris, Mayor, Shelby County, 160 N. Mid-America Mall, 8th Floor, Memphis, TN 38103.	Feb. 22, 1988.	470214
Texas: Fort Bend (FEMA Docket No. 6928).	Unincorporated areas	Apr. 11, 1988, Apr. 18, 1988, *The Horald Coaster.*	The Honorable Jodie Stavinoha, Fort Bend County Judge, P.O. Box 368, Richmond, TX 77469.	Mar. 25, 1988.	480228 B

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Dallas, Denton, Collin, Rockwall, and Kaufman (FEMA Docket No. 6928).	City of Dallas	Apr. 22, 1988, Apr. 29, 1988, *The Dallas Morning News.*	The Honorable Annette Strauss, Mayor of the City of Dallas, City Hall, 5 E North, Dallas, TX 75201.	Apr. 1, 1988	480171 C
Texas: Tarrant (FEMA Docket No. 6928).	City of Hurst	Apr. 14, 1988, Apr. 21, 1988, *Mid-Cities Daily News.*	The Honorable Bill Souder, Mayor of the City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054.	Apr. 7, 1988	480601
Texas: Tarrant (FEMA Docket No. 6928).	City of North Richland Hills.	Apr. 14, 1988, Apr. 21, 1988, *Mid-Cities Daily News.*	The Honorable Dan Echols, Mayor of the City of North Richland Hills, P.O. Box 18609, North Richland Hills, TX 76180.	Apr. 7, 1988	480607
Texas: Dallas and Rockwall (FEMA Docket No. 6928).	City of Rowlett	Mar. 23, 1988, Mar. 30, 1988, *Dallas Times Herald.*	The Honorable H.C. Ruyle, Mayor of the City of Rowlett, P.O. Box 99, Rowlett, TX 75088.	Feb. 25, 1988.	480185 B

Issued: July 20, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-16987 Filed 7-27-88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; Colorado

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
COLORADO	
Commerce City (city), Adams County (FEMA Docket No. 6929)	
Sand Creek:	
Approximately 300 feet upstream of Brighton Boulevard	*5152
Approximately 1,580 feet upstream of Brighton Boulevard	*5154
Approximately 2,500 feet upstream of Brighton Boulevard	*5158
Downstream of Vasquez Boulevard	*5163
Maps are available for inspection at the City Hall—Community Development Department, 5291 East 60th Avenue, Commerce City, Colorado 80022.	
FLORIDA	
Delray Beach (city), Palm Beach County (FEMA Docket No. 6929)	
Lake Delray: Along entire shoreline	*12
Canal L-29: Along entire canal	*13
Canal C-15: Along entire canal	*12
Maps available for inspection at the Public Works Complex, 434 South Swinton Avenue, Delray Beach, Florida 33444.	
Polk County (Unincorporated areas) (FEMA Docket No. 6929)	
Lake Kissimmee: Along entire shoreline	*55
Maps available for inspection at the Planning Department, Graphics Section, Bartow, Florida	
MASSACHUSETTS	
Wilmington, (town), Middlesex County (FEMA Docket No. 6918)	
Tributary to Martins Brook:	
At confluence with Martins Brook	*82
Upstream side of Ainsworth Road	*82
Approximately 1,130 feet upstream of Andover Street	*82

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Maps available for inspection at the Department of Engineering or Planning Department, Town Hall, 121 Glen Road, Wilmington, Massachusetts 01887	
MISSISSIPPI	
Ellisville (city), Jones County (FEMA Docket No. 6929)	
Basie Branch:	
About 1760 feet downstream of State Highway 29	*211
About 880 feet upstream of State Highway 29	*224
Little Rocky Creek:	
About 0.9 mile downstream of Norfolk Southern Railway	*198
About 0.9 mile upstream of U.S. Highway 11	*213
Rocky Creek:	
About 3800 feet downstream of Norfolk Southern Railway	*200
About 3000 feet downstream of Norfolk Southern Railway	*200
About 2400 feet upstream of U.S. Highway 11	*207
Rocky Creek Tributary 2:	
At mouth	*207
Just downstream of Dubose Street	*208
Just upstream of Pettis Street	*216
Maps available for inspection at the City Hall, 110 Court Street, Ellisville, Mississippi.	
MISSOURI	
Elsberry (city), Lincoln County (FEMA Docket No. 6929)	
Mississippi River: Within community	*450
Maps available for inspection at the City Hall, 201 Broadway Avenue, Elsberry, Missouri.	
NEW JERSEY	
West Milford (township), Passaic County (FEMA Docket No. 6929)	
Pequannock River:	
1.9 miles downstream of CONRAIL Bridge just upstream of Charlotteburg Reservoir	*744
Approximately 300 feet downstream of Oak Ridge Reservoir Dam	*802
At Oak Ridge Reservoir Dam	*846
Maps available for inspection at the Engineering Department, 30 Marhill Road, West Milford, New Jersey.	
NEW MEXICO	
Gallup (city), McKinley County (FEMA Docket No. 6925)	
Puerco River:	
Approximately 0.73 mile upstream of Second Street	*6,516
Approximately 1.10 miles upstream of Second Street	*6,520
Maps available for inspection at the City Hall, 110 West Aztec, Gallup, New Mexico.	
NEW YORK	
Dover (town), Dutchess County (FEMA Docket No. 6925)	
Tenmile River:	
Approximately 250 feet downstream of Reagan's Mill Road	*341
Approximately 200 feet upstream of Reagan's Mill Road	*344
Approximately 1,400 feet upstream of Reagan's Mill Road	*346
Maps available for inspection at the Town Hall, Dover Plains, New York.	
OREGON	
Clackamas County (unincorporated areas), (FEMA Docket No. 6925)	
Johnson Creek:	
Immediately downstream of 282nd Avenue	*444
Immediately upstream of 282nd Avenue	*447
Approximately 655 feet downstream of Orient Drive	*494
Approximately 300 feet upstream of Orient Drive	*504
Approximately 900 feet downstream of Pleasant Home Drive	*528
Approximately 50 feet downstream of Pleasant Home Drive	*538
Maps available for review at Clackamas County Department of Transportation and Development, 902 Abernethy Street, Oregon City, Oregon.	
TEXAS	
North Richland Hills (city), Tarrant County (FEMA Docket No. 6925)	
Stream CB-1:	
Approximately 25 feet upstream of Fox Hollow Lane	*631
Approximately 450 feet upstream of St. Louis Southwestern Railroad bridge	*634
Approximately 50 feet downstream of Chapman Drive	*647
Approximately 270 feet upstream of Chapman Drive	*651
At downstream side of Briardale Drive	*665
Maps available for inspection at the City Hall, 7301 N.E. Loop 820, North Richland Hills, Texas.	
San Antonio (city), Bexar County (FEMA Docket No. 6925)	
Huebner Creek:	
At confluence with Leon Creek	*761
Approximately 2,100 feet upstream of confluence of Leon Creek	*763
Approximately 340 feet upstream of Whitby Road	*868
Approximately 2,000 feet upstream of Whitby Road	*877
Huebner Creek Tributary A:	
Approximately 600 feet downstream of Eckert Boulevard	*847
Approximately 900 feet upstream of Eckert Boulevard	*862
Tributary B Huebner Creek:	
Approximately 750 feet upstream of Oakland Road	*882
Approximately 2,350 feet upstream of Oakland Road	*897
San Antonio River:	
Approximately 200 feet upstream of South East Military Drive (Loop 13)	*549
Approximately 1,000 feet upstream of East Pyron Road	*554
State Hospital Creek: At confluence with San Antonio River	550
Leon Creek:	
Approximately 250 feet downstream of Babcock Road	*916
At West Prue Road	*891
Southwest Research Creek: At the corporate limit boundary, approximately 700 feet upstream of U.S. Route 410	*758
Beitel Creek:	
Approximately .91 mile upstream of U.S. Route 410	*724
Approximately 3,800 feet upstream of U.S. Route 410	*721
Maps available for inspection at the Department of Public Works, Drainage Engineering Section, 14 West Commerce Street, 7th Floor, San Antonio, Texas.	
Watauga (city), Tarrant County (FEMA Docket No. 6925)	
Singing Hills Creek:	
Approximately 1,320 feet upstream of Mackneal Trail	*591
Approximately 170 feet upstream of Watauga-Smithfield Road	*599
Maps available for inspection at 7101 Whitley Road, Watauga, Texas.	
VIRGINIA	
Staunton (city) (FEMA Docket No. 6925)	
Lewis Creek:	
At downstream corporate limits	*1,257
At upstream corporate limits	*1,468
Greenville Avenue Tributary:	
Approximately 300 feet upstream of Bessie Weller School Drive	*1,418
At upper limit of detailed study (approximately 2,840 feet upstream of Bessie Weller School Drive)	*1,470
Peyton Creek:	
Approximately 680 feet downstream of Donaghe Street	*1,432
Approximately 1,900 feet upstream of Surrey Road	*1,530
Buttermilk Spring Run:	
Approximately 100 feet upstream of Haile Street	*1,416
Approximately 170 feet upstream of Haile Street	*1,418
Approximately 980 feet upstream of CSX Transport Railroad	*1,542
Springhill Branch:	
At confluence with Peyton Creek	*1,444
Approximately 4,000 feet upstream of confluence with Peyton Creek	*1,491
West Beverley Tributary:	
Approximately 20 feet upstream of confluence with Peyton Creek	*1,444
Approximately 2,800 feet upstream of confluence with Peyton Creek	*1,479
Maps are available for inspection at the Inspection Engineering Division, 113 East Beverley, Staunton, Virginia.	
WISCONSIN	
Sheboygan County (unincorporated areas) (FEMA Docket No. 6929)	
Fisherman's Creek:	
At confluence with Black River	*584
About 870 feet upstream of U.S. Highway 141	*636
Maps available for inspection at the Planning Department, 615 North Sixth Street, Sheboygan, Wisconsin.	

Issued: July 20, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-16986 Filed 7-27-88; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 88-191]

Amendment of the Commission's Environmental Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to implement the Endangered Species Act, the National Historic Preservation Act and the American Indian Religious Freedom Act. The amended rules ensure that Commission actions subject to these Acts are evaluated to determine their effects on the environment, and that the views of appropriate entities are obtained before action is taken.

EFFECTIVE DATE: September 26, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: A. Holly Berland, Federal Communications Commission, Washington, DC 20554, (202) 632-6990.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, adopted June 8, 1988 and released July 19, 1988. The full text of this decision and the rule amendments may be purchased from the Commission's contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. In 1985, the Commission amended its environmental rules to conform to regulations issued by the Council on Environmental Quality (CEQ). CEQ is the agency responsible for overseeing federal efforts to comply with the National Environmental Policy Act.

2. Since 1985, the Commission has reviewed all other federal environmental rules to ensure that the agency is fully meeting its responsibilties. The Commission has determined that a further revision of its environmental rules is necessary to effectuate the Endangered Species Act, the National Historic Preservation Act, and the American Indian Religious Freedom Act. By this Order, the Commission is amending § 1.1307 of its rules to require the preparation of environmental assessments (EAs) for facilities that likely will affect: (1) Endangered and threatened species and their critical habitats; (2) historic engineering sites of national significance listed or eligible for listing in the National Register of Historic Places; and (3) Indian religious sites. Further, when considering actions subject to those Acts, the amended rules require the Commission to initiate consultation procedures with appropriate government authorities, as provided in the Endangered Species Act and the National Historic Preservation Act. Finally, the amended rules require the Commission to solicit the views of Indian tribes when considering actions that may affect Indian religious sites.

3. Because these rule amendments merely implement responsibilities and procedures required by law, the Commission finds for good cause that it is unnecessary to use the prior notice and comment procedures of the Administrative Procedure Act. See 5 U.S.C. 553(b)(B).

4. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified public information collection requirements. Implementation of the rule amendments will therefore be subject to approval by the Office of Management and Budget.

5. The rule amendments will be effective September 26, 1988, in order to allow the Office of Management and Budget to review the rules pursuant to 44 U.S.C. 3507(b).

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

Part 1 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 1.1306 is amended by revising paragraphs (b)(1) and (b)(2) and Note 1 as follows:

§ 1.1306 Actions which are categorically excluded from environmental processing.

* * * * *

(b) * * *

(1) Involve a site location specified under § 1.1307(a) (1)-(7), or

(2) Involve high intensity lighting under § 1.1307(a)(8).

* * * * *

Note 1.—The provisions of § 1.1307(a) do not encompass the mounting of antennas on an existing building or antenna tower, unless the antenna(s) to be mounted is (are) subject to the provisions of § 1.1307(b) and would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in § 1.1307(b), or unless the provisions of 1.1307(a)(4) are applicable. Otherwise, the use of existing buildings and towers is an environmentally desirable alternative to the construction of new towers and is encouraged.

* * * * *

2. Section 1.1307 is amended by redesignating paragraphs (a)(3), including the note as (a) (4), (5), and (6), as (a) (4), (6), (7), and (8) respectively, revising newly redesignated paragraph (a)(4), adding new paragraphs (a) (3) and (5), and republishing newly redesignated paragraphs (a) (6) through (8) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(a)(3) Facilities that: (i) May affect listed threatened or endangered species or designated critical habitats; or (ii) are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973.

Note.—The list of endangered and threatened species is contained in 50 CFR 17.11, 17.22, 222.23(a) and 227.4. The list of designated critical habitats is contained in 50 CFR 17.95, 17.96 and Part 226. To ascertain the status of proposed species and habitats, inquiries also may be directed to the Regional Director of the Fish and Wildlife Service, Department of the Interior.

(4) Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places. (*See* 16 U.S.C. 470w(5); 36 CFR 60 and 800.)

Note.—The National Register is updated and re-published in the **Federal Register** each year in February. To ascertain whether a proposal affects a historical property of national significance, inquiries also may be made to the appropriate State Historic Preservation Officer, *see* 16 U.S.C. 470a(b); 36 CFR Parts 63 and 800.

(5) Facilities that may affect Indian religious sites.

(6) Facilities to be located in a flood Plain (*See* Executive Order 11988.)

(7) Facilities whose construction will involve significant change in surface features (e.g., wetland fill, deforestation or water diversion). (In the case of wetlands on Federal property, *see* Executive Order 11990.)

(8) Antenna towers and/or supporting structures that are to be equipped with high intensity white lights which are to

be located in residential neighborhoods, as defined by the applicable zoning law.

* * * * *

3. Section 1.1308 is amended by adding a Note at the end of paragraph (b) and revising paragraphs (c) and (d) as follows:

§ 1.1308 Consideration of Environmental Assessments (EAs); findings of no significant impact.

* * * * *

(b) * * *

Note.—With respect to actions specified under §§ 1.1307(a)(3) and 1.1307(a)(4), the Commission shall solicit and consider the comments of the Department of Interior, and the State Historic Preservation Officer and the Advisory Council on Historic Preservation, respectively, in accordance with their established procedures. *See* Interagency Cooperation—Endangered Species Act of 1973, as amended, 50 CFR Part 402; Protection of Historic and Cultural Properties, 36 CFR Part 800. In addition, when an action interferes with or adversely affects an American Indian tribe's religious site, the Commission shall solicit the views of that American Indian tribe. *See* § 1.1307(a)(5).

(c) If the Bureau or the Commission determines, based on an independent review of the EA and any applicable mandatory consultation requirements imposed upon federal agencies (*see* note above), that the proposal will have a significant environmental impact upon the quality of the human environment, it will so inform the applicant. The applicant will then have an opportunity to amend its application so as to reduce, minimize, or eliminate environmental problems. *See* § 1.1309. If the environmental problem is not eliminated, the Bureau will publish in the **Federal Register** a Notice of Intent (*see* § 1.1314) that EISs will be prepared (*see* §§ 1.1315 and 1.1317), or

(d) If the Bureau or Commission determines, based on an independent review of the EA, and any mandatory consultation requirements imposed upon federal agencies (*see* the note to paragraph (b) of this section), that the proposal would not have a significant impact, it will make a finding of no significant impact. Thereafter, the application will be processed without further documentation of environmental effect. Pursuant to CEQ regulations, *see* 40 CFR 1501.4 and 1501.6, the applicant must provide the community notice of the Commission's finding of no significant impact.

4. Section 1.1311 is amended by adding paragraph (a)(6) as follows:

§ 1.1311 Environmental information to be included in the environmental assessment.

* * * * *

(a)(6) If endangered or threatened species or their critical habitats may be affected, the applicant's analysis must utilize the best scientific and commercial data available, *see* 50 CFR 402.14(c).

* * * * *

§ 1.1314 [Amended]

5. Section 1.1314 is amended to remove the note following paragraph (d).

[FR Doc. 88-16894 Filed 7-27-88; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 69

[CC Dockets Nos. 78-72, 80-286; FCC 88-228]

Access Charges

AGENCY: Federal Communications Commission.

ACTION: Final rule with request for comments.

SUMMARY: The Commission affirmed the fundamental decisions reached in the Commission's Order (MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Report and Order*, 2 FCC Rcd 2953 (1987)) in this proceeding, and denied most of the petitions seeking reconsideration of that Order. The Commission did, however, adopt several limited modifications to its Part 69 Rules in response to technical concerns raised by petitioners. The Commission also initiated a pleading cycle inviting comments on an appropriate schedule for terminating bifurcated carrier common line charges (§ 69.207).

EFFECTIVE DATES: August 29, 1988, except for §§ 69.116 and 69.117 which are effective August 1, 1988.

Comment dates: Comments on § 69.207 are due on or before August 29, 1988 and reply comments are due on or before September 28, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Diane Cornell, Policy and Program Planning Division, Common Carrier Bureau (202) 632-9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration and Order Inviting Comments (FCC 88-228), adopted July 8, 1988, and released July 12, 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.

Summary of Memorandum Opinion and Order on Reconsideration

1. The Memorandum Opinion and Order on Reconsideration, adopted July 8, 1988, affirmed the fundamental decisions reached in the Commission's *Order* (MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of Joint Board, *Report and Order*, 2 FCC Rcd 2953 (1987)) in this proceeding, and denied most petitions seeking reconsideration of that *Order*. The Commission did, however, adopt several limited modifications to its Part 69 Rules in response to technical concerns raised by petitioners.

2. In its May 1987 *Order*, the Commission had adopted a comprehensive set of measures concerning the implementation of subscriber line charges (SLCs), the federal lifeline assistance programs, high cost assistance, and common line pooling that had been recommended by the Joint Board. On reconsideration, the Commission affirmed its fundamental decisions reached on the level and timing of SLC increases, the allocation of the decreases in the carrier common line (CCL) charge, and the structure of the non-traffic sensitive (NTS) pool, thus denying most reconsideration requests.

3. The Joint Board Recommended Decision had called for a phasing-in of the subscriber line charge increases in small increments over a period of time and implementation of a monitoring program that is specifically designed to detect any future changes in penetration levels for telephone service. The Commission adopted these recommendations in its May 1987 *Order*. In its reconsideration order, the Commission noted that the issues and concerns raised by the petitioners that challenged the scheduled increases were fully examined during the course of the extensive Joint Board and FCC proceedings. The Commission pointed out that petitioners failed to provide new arguments or information that warranted modifying carefully considered decisions of the Joint Board and the FCC.

4. The Commission declined to adopt MCI's proposal that the decrease in the CCL charges resulting from the July 1987 incremental SLC increase be applied equally to originating and terminating

minutes. The Commission noted, however, that the system of bifurcated carrier common line charges was intended as an interim measure (*See* 47 CFR 69.207 (1987)), and it requested comment on how long bifurcated charges should be continued prior to returning to equalized charges. The Commission extended the date for expiration of the system of bifurcated rates beyond November 30, 1988 (to March 31, 1989), to avoid unnecessary rate churn and to allow time to receive and analyze comment on an approprite schedule for terminating bifurcated CCL charges. Comments on this issue are to be filed with the Commission no later than August 25, 1988; Replies are due no later than September 23, 1988.

5. The Commission denied Contel's request to allow holding company LECs to withdraw from the common line pool on a company-by-company or study area-by-study area basis. The Commission noted that these issues were addressed in the underlying proceeding, and explained why it had decided not to change its approach on reconsideration. The Commission reaffirmed its conclusion that the relief Contel suggested could eliminate or reduce the potential benefits of the Joint Board's pooling modifications since a holding company's high-cost companies or study areas would likely stay in the pool, while the lower-cost companies or areas would opt to leave it.

6. The Commission did, however, make limited modifications to its rules in response to technical concerns raised by petitioners. The FCC modified rule language to clarify the definition of Level 1 companies as those that own or control more than 300,000 access lines and have more than $150 million in revenues. The Commission also adopted the National Exchange Carrier Association (NECA) proposal that a "resizing" mechanism be incorporated into the rules that would make the SLC waiver lifeline assistance funding mechanism more efficient and accurate, and would avoid any adverse impact on either exchange carriers or IXCs caused by an over- or under-projection of the revenue requirement.

7. In addition, the FCC adopted NECA's proposal to change the annual date for the submission of presubscribed lines data from January 2 to December 30 of each year to conform to the filing date for optional updates of Universal Service Fund data. Finally, the Commission set August 1, 1988, as the date for the initial submission of the presubscribed lines data. Because the new billing system will not be implemented until April 1, 1989, an August 1, 1988, commencement date for the submission of presubscribed lines data will afford NECA adequate time to develop an efficient billing system.

Ordering Clauses

8. It is hereby ordered, that pursuant to 47 U.S.C. 154 (i) and (j), 201, 202, 203, 205, 403, 405, and 410 and 5 U.S.C. 553, the petitions for reconsideration filed in this proceeding are denied, except as provided herein.

9. It is further ordered, that the rule modifications contained in this rule are adopted, effective August 25, 1988, unless otherwise indicated.

10. It is further ordered, that the Petition for Rule Making filed by the Utility Consumer Counselor of Indiana on June 18, 1987, is denied.

11. It is further ordered, pursuant to the procedures set forth in § 1.415 of our Rules, that all interested parties may filed comments no later than August 26, 1988, relating to how long we should continue bifurcated carrier line charges prior to returning to equalized charges. Replies are to be filed no later than September 23, 1988. In accordance with the provisions of Section 1.419 of our Rules, an original and five copies of all statements, briefs, comments, or reply comments shall be filed with the Secretary, Federal Communications Commission 1919 M Street, NW., Washington, DC 20554. All such filings will be available for public inspection in the Docket Reference Room at the Commission's Washington, DC offices.

List of Subjects in 47 CFR Part 69

Common carrier, Access charges, Common carrier, Resale, Wide Area Telephone Service (WATS)

Part 69 of Title 47 of the Code of the Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.2 is amended by revising paragraphs (hh), (ii), (jj), and (kk) to read as follows:

§ 69.2 Definitions.

* * * * *

(hh) *Level I Contributors*—Telephone companies that are not association Common Line tariff participants, file their own Common Line tariffs effective April 1, 1989, and had a lower than average Common Line revenue requirement per minute of use in 1988 and thus were net contributors (*i.e.*, had a negative net balance) to the association Common Line pool in 1988.

(ii) *Level I Receivers*—Telephone companies that are not association Common Line tariff participants, file their own Common Line tariffs effective April 1, 1989, and had a higher than average Common Line revenue requirement per minute of use in 1988 and thus were net receivers (*i.e.*, had a positive net balance) from the association Common Line Pool in 1988.

(jj) *Level II Contributors*—A telephone company or group of affiliated telephone companies with fewer than 300,000 access lines or less than $150 million in annual operating revenues that is not an association Common Line tariff participant, files its own Common Line tariff effective January 1, 1990, and that had a lower than average Common Line revenue requirement per minute of use in 1988 and thus was a net contributor (*i.e.*, had a negative net balance) to the association Common Line pool in 1988.

(kk) *Level II Receivers*—A telephone company or group of affiliated telephone companies with fewer than 300,000 access lines or less than $150 million in annual operating revenues that is not an association Common Line tariff participant, files its own Common Line tariff effective Janaury 1, 1990, and that had a higher than average Common Line revenue requirement per minute of use in 1988 and thus was a net receiver (*i.e.*, had a positive net balance) from the association Common Line pool in 1988.

* * * * *

3. Section 69.104 is amended by revising paragraph (l) to read as follows:

§ 69.104 End user common line.

* * * * *

(l) In connection with the filing of access tariffs pursuant to § 69.3(a), telephone companies shall calculate for the association their projected revenue requirements attributable to the operation of § 69.104 (j) through (k). The projected amount will be adjusted by the association to reflect the actual lifeline assistance benefits paid in the previous period. If the actual benefits exceeded the projected amount for that period, the differential will be added to the projection for the ensuing period. If the actual benefits were less than the projected amount for that period, the differential will be subtracted from the projection for the ensuing period. The association shall so adjust amounts to the Lifeline Assistance revenue requirement, bill and collect such amounts from interexchange carriers pursuant to § 69.117 and distribute the

funds to qualifying telephone companies pursuant to § 69.603(d).

* * * * *

4. Section 69.116 is revised to read as follows:

§ 69.116 Universal service fund.

Effective August 1, 1988:

(a) A charge that is expressed in dollars and cents per line per month shall be assessed beginning on April 1, 1989, upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least: (1) One percent of the total common lines presubscribed to interexchange carriers in all study areas; or (2) five percent of the presubscribed lines in any study area and a minimum of one thousand presubscribed lines in that study area.

(b) The charge shall be computed by the association on a semi-annual basis by dividing one-twelfth of the projected annual Universal Service Fund revenue requirement by the total number of common lines presubscribed to interexchange carriers defined in § 69.116(a). Beginning on April 1, 1989, the association shall bill and collect the charge, and disburse associated revenue, on a monthly basis pursuant to § 69.603(c).

(c) Telephone companies shall provide the association the data necessary to compute the charge. These data shall include the number of presubscribed common lines in each study area and the number of those lines associated with each interexchange carrier serving that study area. In a study area served by a single interexchange carrier, all common lines shall be considered as presubscribed to that interexchange carrier. Information concerning presubscribed common lines shall be filed with the association on June 30 and December 30 of each year, except for the first such submission, containing presubscribed common line data calculated as of December 31, 1987, which shall be filed on August 1, 1988. Presubscribed common line data filed on June 30 shall be calculated as of December 31 of the preceding year, and presubscribed common line data filed on December 30 shall be calculated as of June 30 of the same year.

5. Section 69.117 is revised to read as follows:

§ 69.117 Lifeline assistance.

Effective August 1, 1988:

(a) A charge that is expressed in dollars and cents per line per month shall be assessed beginning on April 1, 1989, upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least: (1) One percent of the total common lines presubscribed to interexchange carriers in all study areas; or (2) five percent of the presubscribed lines in any study area and a minimum of one thousand presubscribed lines in that study area.

(b) The charge shall be computed by the association on a semi-annual basis by dividing the sum of one-twelfth of the projected annual Lifeline Assistance revenue requirement and one-twelfth of the projected annual revenue requirement calculated by all telephone companies pursuant to § 69.104(1) by the number of common lines presubscribed to interexchange carriers defined in § 69.117(a). Beginning on April 1, 1989, the association shall bill and collect the charge, and disburse associated revenue, on a monthly basis pursuant to § 69.603(d).

(c) Telephone companies shall provide to the association the data necessary to compute the charge. These data shall include the number of presubscribed common lines in each study area and the number of those lines associated with each interexchange carrier serving that study area. In a study area served by a single interexchange carrier, all common lines shall be considered as presubscribed to that interexchange carrier. Information concerning presubscribed common lines shall be filed with the association on June 30 and December 30 of each year, except for the first such submission, containing presubscribed common line data calculated as of December 31, 1987, which shall be filed on August 1, 1988. Presubscribed common line data filed on June 30 shall be calculated as of December 31 of the preceding year, and presubscribed common line data filed on December 30 shall be calculated as of June 30 of the same year.

6. Section 69.207 is revised to read as follows:

§ 60.207 Interim Carrier Common Line Charges.

Notwithstanding §§ 69.203 and 69.205, the transitional premium charges for the Carrier Common Line element shall be computed in accordance with this section during the period commencing June 1, 1986, and concluding March 31, 1989. For purposes of this section, the term "open end" of a call refers to the origination or termination of a call that utilizes exchange carrier common line plant. (A call can have no, one, or two open ends). The transitional premium charges for the Carrier Common Line element shall be expressed in dollars and cents per access minute. The charge shall be 4.33 cents per premium minute for: All terminating premium minutes on calls with two open ends (*e.g.*, an MTS or OCC MTS-type call); and all open end premium minutes on calls with one open end (*e.g.*, a WATS, OCC WATS-type or FX call). For purposes of this section, the term "originating-II minutes" refers to originating minutes on calls with two open ends. The charge on premium originating-II minutes shall be computed by subtracting the sum of the projected revenues generated from the 4.33 cents per minute premium charge described above and the corresponding non-premium charge, from the carrier common line revenue requirement and dividing the remainder by the sum of the projected premium originating-II minutes and a number equal to .45 multiplied by the projected non-premium originating-II minutes. For purposes of this section, if the calculations described above result in a negative per minute charge on originating-II minutes, such charge shall be adjusted to equal .00 cents, and the charge of 4.33 cents on terminating minutes shall be lowered accordingly.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-16892 Filed 7-27-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Ch. 12

[Docket No. 45256; Amdt. 3-2]

Acquisition Regulations

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule adopts as final, the Department's Transportation Acquisition Regulation (TAR) which was republished as an interim final rule in Part II of the **Federal Register** on November 19, 1987 (52 FR 44522). The interim final rule allowed for 60 days within which interested parties could submit comments on the interim final rule to the Department of Transportation. No formal comments were received; however, minor corrections and changes to the interim final rule are necessary as a result of changes in internal Departmental procedures and changes to the Federal Acquisition Regulation (FAR) since publication of the interim final rule.

DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Roger Martino at 400 Seventh Street SW., Room 9100, Washington, DC 20590, phone number (202) 366-4271.

SUPPLEMENTARY INFORMATION: The interim final rule amending 48 CFR Chapter 12, which was published at 52 FR 44522 on November 19, 1987, is adopted as a final rule with the minor changes indicated below. The interim final rule indicated that the TAR was updated and current through FAR change 84-30. Recently, FAR changes 84-31 through 84-33 were issued which included coverage on ratification of unauthorized commitments and Prompt Payment Act requirements. The new FAR coverage eliminated the need for TAR coverage, so we are deleting the TAR coverage on these subjects. This rule includes these changes and several minor editorial corrections, and several changes to internal administrative procedures and policy to preclude redundancy with the FAR and the Competition in Contracting Act. The TAR is now up to date and current through Federal Acquisition Circular 84-33. This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612.

Executive Order 12291

Under Bulletin No. 85-7, the Director of the Office of Management and Budget (OMB) withdrew the general exemption from Executive Order 12291 that OMB had created on February 17, 1981, for agency procurement regulations.

This interim final rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. The rule will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule is considered as nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) Since the economic impact of this rule is expected to be minimal, a formal economic analysis has not been prepared.

Regulatory Flexibility Act

Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities, because the rule modifies internal Departmental procurement procedures. To the extent changes are made to current regulations, they are designed to implement the required changes in the FAR.

Paperwork Reduction Act

The collection of information requirements contained in this interim final rule were submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1960 (44 U.S.C. 3504(h)), and were approved February 23, 1987. The OMB approval number for the TAR is 2105-0517.

National Environmental Policy Act

DOT has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 *et seq.* 1976). Therefore, neither an environmental impact statement nor an environmental assessment will be made pursuant to NEPA.

Administrative Procedure Act

Section 553 of the Administration Procedure Act exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB), has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. In OFPP letter 83-2, OFPP states than an agency must provide an opportunity for public comment before adopting procurement regulations if the regulations represent a "significant" change to existing regulations. "Significant" is defined generally as something that has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The Department has determined that this rule does not represent a significant change. As described in the preamble to the interim final rule, changes made to the DOT Transportation Acquisition Regulation are principally in the areas of format and internal procedures. The internal procedural changes are necessary primarily to implement new policies established by the Competition in Contracting Act of 1984 and by the FAR amendments.

The Department traditionally has provided for prior notice and comment even when not required by the Administrative Procedure Act. Although this is the general policy of the Department, we determined in this instance that it was unnecessary to delay the effectiveness of this largely procedural rule pending the receipt of public comments. Nevertheless, because of the possibility of public interest in portions of the rule, the Department published the TAR changes as an interim final rule and provided for a public comment period of 60 days. The Departmental Docket Clerk did not receive any comments within the allotted period for submission of comments.

List of Subjects in 49 CFR Chapter 12

Government procurement.

This rule is issued under delegated authority under 49 CFR Part 1.59(q).

Dated: July 21, 1988.

Jon H. Seymour,

Assistant Secretary for Administration.

Accordingly, the Department of Transportation amends 48 CFR Chapter 12 as follows:

1. The authority for 48 CFR Chapter 12 continues to read as follows:

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended 40 U.S.C. 486(c); 41 U.S.C. 255 et seq., 10 U.S.C. 2301 et seq., 41 U.S.C. 403 et seq., as amended by Pub. L. 98-369; 48 CFR 1.301; 49 CFR 1.49.

PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM

1201.403 [Amended]

2. Section 1201.403 is amended by revising the first sentence to read: "Requests for individual deviations from the FAR and the TAR shall be submitted by the head of the contracting activity (HCA) to the agency head for approval; however, for the Office of the Secretary, the request shall be submitted by the HCA to the Senior Procurement Executive for approval. All such requests shall be coordinated with legal counsel."

1201.602 [Amended]

3. Section 1201.602 is amended by revising the title of the section from "Contracting officer" to read "Contracting officers."

1201.670 [Removed]

4. Section 1201.670 is removed in its entirety.

PART 1202—DEFINITIONS OF WORDS AND TERMS

5. In section 1202.170 paragraph (d) is revised to read as follows:

1202.170 Definitions

* * * * *

(d) "Head of the contracting activity" (HCA) means the following:

In the Office of the Secretary:

The Chief, Procurement Division, Washington, DC
In the Federal Aviation Administration
The Director, Acquisition and Materiel Service, Washington, DC
The Director, Alaskan Region, Anchorage, AL
The Director, Western Pacific Region, Los Angeles, CA
The Director, Southern Region, Atlanta, GA
The Director, Northwest Mountain Region, Seattle, WA
The Director, Central Region, Kansas City, MO
The Director, Eastern Region, Jamaica, NY
The Director, Southwest Region, Fort Worth, TX
The Director, Aeronautical Center, Oklahoma City, OK
The Director, FAA Technical Center, Atlantic City, NJ
The Director, New England Region, Burlington, MA
The Director, Great Lakes Region, Des Plaines, IL

In the Coast Guard

Chief, Contract Support Division, Commandant (G–ACS), Washington, DC, for Headquarters and Resident Inspection Offices.
Chief, Procurement Management Division, Commandant (G–FPM), Washington, DC, for other designated Headquarters Units and Commandant (G–CAS–4).
Commander, First Coast Guard District, Boston, MA
Commander, Second Coast Guard District, St. Louis, MO
Commander, Fifth Coast Guard District, Portsmouth, VA
Commander, Seventh Coast Guard District, Miami, FL
Commander, Eighth Coast Guard District, New Orleans, LA
Commander, Ninth Coast Guard District, Cleveland, OH
Commander, Eleventh Coast Guard District, Long Beach, CA
Commander, Thirteenth Coast Guard District, Seattle, WA
Commander, Fourteenth Coast Guard District, Honolulu, HI
Commander, Seventeenth Coast Guard District, Juneau, AL
Superintendent, U.S. Coast Guard Academy, New London, CT
Commander, Maintenance and Logistics Command, Atlantic
Commander, Maintenance and Logistics Command, Pacific

In the Federal Highway Administration

Associate Administrator for Administration, Washington, DC
Federal Lands Highway Program Administrator, Direct Federal Construction Program, Washington, DC

In the Federal Railroad Administration

Director, Office of Procurement, Washington, DC

In the National Highway Traffic Safety Administration

Director, Office of Contracts and Procurement, Washington, DC

In the Urban Mass Transportation Administration

Director, Office of Procurement and Third Party Contract Review, Washington, DC

In the Research and Special Programs Administration

Chief, Acquisition Division, Transportation Systems Center, Cambridge, MA

In the Maritime Administration

Associate Administrator for Administration, Washington, DC
Central Region Director, New Orleans, LA
Western Region Director, San Francisco, CA
Assistant Superintendent for Administration, U.S. Merchant Marine Academy

* * * * *

PART 1204—ADMINISTRATIVE MATTERS

1204.602 [Amended]

6. Section 1204.602 is amended by revising the third sentence of paragraph (c) to read: "Those administrations which use automation for reporting the information normally included on the DOTF.4220.11, shall ensure that this information is readily available in the contract office."

7. Section 1204.804–5 is revised to read as follows:

1204.804–5 Detailed procedures for closing out contract files.

(a) In addition to those procedures set forth in FAR 4.804–5, the contracting officer shall, before final payment is made under a cost-reimbursement type contract, verify the allowability, allocability, and reasonableness of costs claimed. Verification of total costs incurred shall be obtained in the form of a final audit certification, unless the contract is below $1,000,000, in which case the contracting officer may choose to waive the audit certification requirement (with respect to both direct costs and indirect costs) provided that she or he determines in writing that the use of quick-closeout procedures is appropriate in accordance with paragraph (b) of this section. Similar verification of actual costs must be made for fixed-price contracts when cost incentives or price redeterminations are involved.

(b) DOT contracting officers may utilize quick-closeout procedures on cost-type contracts not exceeding $1,000,000 provided the stipulations at FAR 42.708(a) (1) through (3) are met and:

(1) All terms and conditions of the contract have been met satisfactorily;

(2) Invoiced costs are consistent with original cost estimates;

(3) There is no suspected fraud or wrongdoing; and

(4) The Contracting Officer determines in writing, that the use of this procedure will be beneficial to the Government.

PART 1205—PUBLICIZING CONTRACT ACTIONS

8. Subpart 1205.3 is added to read as follows:

Subpart 1205.3—Synopses of Contract Awards

1205.303 Announcement of contract awards.

Contracts and modifications valued at $200,000, or more shall not be executed, distributed, nor any information released to any source outside of DOT that the contract has been approved until the Director, Office of Public Information, has advised the contract activity that the contract can be released. The contracting officer shall prepare and submit a public and Congressional notification form, entitled "Proposed Award of Contract or Grant," for the purpose of obtaining this release.

9. Section 1205.402–70 is revised to read:

1205.402–70 Furnishing additional contract information to the general public.

(a) In addition to publicizing proposed contracts and contract awards in the Commerce Business Daily, it is DOT policy to furnish the general public, upon request, the following information on proposed contracts and contract awards.

(1) The names of firms invited to submit bids or proposals;

(2) The names of firms which attended pre-proposal briefing conferences when held;

(3) After the award of contracts, names of firms which submitted proposals; and

(4) After the date established for receipt of bids, names of firms which submitted bids.

(b) Exceptions to this policy will be permitted only when the head of the contracting activity determines that the disclosure of such information would be prejudicial to the interests of DOT.

PART 1206—COMPETITION REQUIREMENTS

1206.102 [Amended]

10. Section 1206.102 is amended by adding the following sentence at the end of paragraph (b): "See FAR 14.404–1 when contemplating cancellation of sealed bid solicitations after bid opening."

1206.302–1 [Amended]

11. Section 1206.302–1 is amended by revising the first sentence to read: "Unsolicited proposals with an estimated value in excess of $25,000, may be considered for award under FAR 6.302–1 only after they are reviewed and approved by the Senior Competition Advocate."

12. In section 1206.304, paragraphs (a)(1)(ii), (b) and (d) are revised to read as follows:

1206.304 Approval of the justification.

(a) * * *

(1) * * *

(ii) *For the Coast Guard:* The individuals cited at 1202.170(d) under the definition of "Head of Contracting Activity," excluding the District Commanders. The justifications for the units listed below shall be approved by the Commanding Officer or the Commander (redelegable to the individual of that unit with comptroller authority):

(A) Commanding Officer, U.S. Coast Guard Aircraft Repair and Supply Center, Elizabeth City, North Carolina.

(B) Commanding Officer, U.S. Coast Guard Supply Center, Brooklyn, New York.

(C) Commanding Officer, U.S. Coast Guard Training Center, Cape May, New Jersey.

(D) Commanding Officer, U.S. Coast Guard Training Center, Petaluma, California.

(E) Commanding Officer, U.S. Coast Guard Yard, Baltimore, Maryland.

(F) Commanding Officer, Electronics Engineering Center, Wildwood, New Jersey.

(G) Commander, Coast Guard Activities, Europe, London.

(H) Commanding Officer, U.S. Coast Guard Reserve Training Center, Yorktown, Virginia.

(I) [Reserved]

(J) [Reserved]

(K) Commanding Officer, U.S. Coast Guard Pay and Personnel Center, Topeka, Kansas.

(L) Commanding Officer, U.S. Coast Guard Resident Inspection Office, Middletown, Rhode Island.

(M) Commanding Officer, U.S. Coast Guard Resident Inspection Office, Bath, Maine.

(N) Commanding Officer, U.S. Coast Guard Resident Inspection Office, Lockport, Louisiana.

(O) Commanding Officer, U.S. Coast Guard Resident Inspection Office, Seattle, Washington.

(P) Commanding Officer, U.S. Coast Guard, Aircraft Program Office, Grand Prairie, Texas.

(Q) Commanding Officer, U.S. Coast Guard Air Station, Washington National Airport, Washington, D.C.

(R) Commanding Officer, U.S. Coast Guard Aviation Training Center, Mobile, Alabama.

(S) Commanding Officer, U.S. Coast Guard Station, Alexandria, Virginia.

(T) Commanding Officer, U.S. Coast Guard COMDAC Support Facility, Portsmouth, Virginia.

(U) Commanding Officer, U.S. Coast Guard Central Regional Recruiting Center, Hazelwood, Missouri.

(V) Commanding Officer, U.S. Coast Guard Eastern Regional Recruiting Center, Norfolk, Virginia.

(W) Commanding Officer, U.S. Coast Guard Western Regional Recruiting Center, Seattle, Washington.

* * * * *

(b) The approval authorities cited in 1206.304(a) may not be delegated. With respect to the approval authorities cited in 1206.304(a), individuals acting in the place of these approving officials must also meet the qualification requirements stipulated by the Competition in Contracting Act of 1984 and also, for the Coast Guard, the qualification requirements stipulated by Title 10 of the U.S. Code.

* * * * *

(d) In addition to the approvals stipulated in 1206.304(a), class justifications for other than full and open competition for requirements with an estimated value exceeding $25,000 must be reviewed and approved by the Senior Competition Advocate. A copy of the CBD synopsis, or a copy of the synopsis waiver, should be attached to the justification.

* * * * *

PART 1207—ACQUISITION PLANNING

13. Paragraph (a) of section 1207.305, is revised to read as follows:

1207.305 Solicitation provision and contract clause.

(a)(1) The contracting officer shall insert the clause at 1252.207–70, Implementation of Right of First Refusal of Employment, in solicitations and contracts which include FAR clause 52.207–3, Right of First Refusal of Employment, and in contracts in which required contractor performance causes Federal employees to be adversely affected. This clause is required in solicitations and contracts as stipulated herein, until that time when the FAR specifies contractual provisions for the implementation of right of first refusal.

(2) At their own discretion, contracting officers may use the clause with its alternate in lieu of the basic clause.

* * * * *

PART 1213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

14. Section 1213.203–1 is revised to read as follows:

1213.203–1 General.

Optional Form 347, Order for Supplies or Services, shall be used for BPAs unless an administration equivalent form has been authorized for use by the HCA.

1213.505–2 [Amended]

15. Section 1213.505–2 is amended by revising the first sentence to read: "Optional Forms 347 and 348 shall be used as prescribed in FAR 13.505 unless an administration equivalent form has been authorized for use by the HCA."

PART 1214—SEALED BIDDING

1214.406–3 [Amended]

16. Section 1214.406–3 is amended by inserting the word "senior" before the words "procurement executive" in the last sentence.

1214.470 [Amended]

17. Section 1214.470 is amended by revising the last sentence to read: "The revalidation must be accomplished immediately prior to award."

Subpart 1214.5 [Removed]

18. Subpart 1214.5 is removed in its entirety.

PART 1215—CONTRACTING BY NEGOTIATION

1215.612–70 [Removed]

19. Section 1215.612–70 is removed in its entirety.

20. Section 1215.807–70 is amended by revising paragraph (e) to read as follows:

1215.807–70 Content of prenegotiation memo.

* * * * *

(e) *Negotiation approval sought.* Indicate the negotiation approval sought.

1215.905-70 [Amended]

21. In section 1215.905-70, paragraphs (b)(5) (i) and (ii) are amended in the tables by revising the second entries reading "Cost-plus-fixed-fee" to read "Cost-plus-incentive-fee."

1215.7000 [Amended]

22. Section 1215.7000 is amended by revising the last sentence to read: "The revalidation should be accomplished prior to requesting best and final offers (BAFO's), or immediately prior to award when BAFO's are not requested."

PART 1216—TYPES OF CONTRACTS

1216.170 [Removed]

23. Section 1216.170 is removed in its entirety.

Subpart 1216.70 [Removed]

24. Subpart 1216.70 is removed in its entirety.

PART 1217—SPECIAL CONTRACTING METHODS

1217.7001 [Amended]

25. Section 1217.7001 is amended by removing the words "formally advertised" in the first sentence and replacing them with the words "sealed bid".

PART 1219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

26. In the Table of Contents at 1219.201-70, the word "Officer" is changed to read "Office".

1219.201 [Amended]

27. In the second sentence of section 1219.201, the term "supporting head of the contracting activity" is replaced with "head of the contracting activity".

PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1222.7002 [Amended]

28. Paragraph (a) of section 1222.7002 is amended by adding the words "as amended" after the words "Service Contract Act of 1965," at both places where these words appear.

29. In section 1222.7002, paragraph (b) is revised to read as follows:

1222.7002 Contract clauses.

* * * * *

(b) Clauses for contracts over $2,500. The contracting officer shall insert the full text of the following clauses in solicitations and contracts when the contract is subject to the Service Contract Act of 1965, as amended:

(1) The clause at 1252.222-75, Service Contract Act of 1965, as amended, when the contract is (i) for over $2,500 or (ii) for an indefinite dollar amount and the contracting officer expects the contract amount will exceed $2,500 during any 12-month period.

(2) The clause at 1252.222-77, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multi-year and Option Contracts), when the contract is expected to be a fixed-price service contract and is a multi-year contract or is a fixed-price services contract with options to renew.

(3) The clause at 1252.222-78, Fair Labor Standards Act and Service Contract Act-Price Adjustment, when the contract is expected to be a fixed-price service contract and is not a multi-year contract and does not contain options to renew.

(4) The clause at 1252.222-79, Service Contract Act Requirements as to Vacation Pay.

PART 1223—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

1223.7001 [Amended]

30. In section 1223.7001, paragraph (b) is amended by changing the title of FAR clause 1252.223-72, from "Protection of Human Subjects Compliance" to read "Protection of Human Subjects".

PART 1227—PATENTS, DATA, AND COPYRIGHTS

1227.409 [Amended]

31. Section 1227.409 is amended by changing the reference to "FAR 27.401" in paragraphs (a), (b), and (c), to read "FAR 27.402".

PART 1228—BONDS AND INSURANCE

32. Part 1228 is amended by changing the number of section "1228.306-70-1", in the table of contents, to read "1228.306-7001".

1228.306-70-1 [Amended]

33. Section "1228.306-70-1 Clause", is correctly numbered "1228.306-7001".

PART 1229—TAXES

34. Section 1229.7002 is revised to read:

1229.7002 Responsibilities.

(a) *Procurement Office.* Prior to award of small purchases, contracts, and lease agreements, the procurement office is responsible for: (1) Identifying the recipients subject to reporting, (2) obtaining the appropriate informational data i.e. the taxpayer identification number or social security number, and (3) providing this data to the accounting office.

(b) *Accounting Office.* The accounting office in each operating administration that processes the payments is responsible for preparing the related IRS information returns.

1229.7003 [Removed]

35. Section 1229.7003 is removed in its entirety.

PART 1232—CONTRACT FINANCING

Subpart 1232.70 [Removed]

36. Subpart 1232.70 is removed in its entirety as this subject is now covered by the FAR.

PART 1233—PROTESTS, DISPUTES, AND APPEALS

1233.104 [Amended]

37. Section 1233.104 is amended by changing the word "approval" in the second sentence of paragraph (c), to read "coordination".

PART 1236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

1236.603 [Amended]

38. Section 1236.603 is amended by revising the words "Installations and Logistics" in the second sentence to read "Acquisition and Grant Management".

PART 1242—CONTRACT ADMINISTRATION

39. Section 1242.705-2 is revised to read:

1242.705-2 Auditor determination procedure.

DOT contracting officers shall request final indirect cost rate determinations in accordance with DOT Order 8000.7, Audit Services for DOT Contracting Offices.

1242.708 [Amended]

40. Section 1242.708 is amended by revising the figure "$500,000" to read "$1,000,000".

41. Part 1243 is added to read as follows:

PART 1243—CONTRACT MODIFICATIONS

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c). 48 CFR 1.301; 49 CFR 1.59)

Subpart 1243.70—Scope of Work

1243.7001 Policy.

The contracting officer shall review all delivery orders and contract modifications which order, add, define, or change work to be performed under an existing contract. For all such delivery orders and contract modifications, the contracting officer shall ensure that the items or services being ordered are within the scope of work set forth in the basic contract.

PART 1245—GOVERNMENT PROPERTY

42 Section 1245.101 is revised to read as follows:

1245.101 Definitions.

"Capitalized equipment" as used in this part, means personal property (plant equipment) of a nonexpendable nature having a unit cost of $5,000 or more.

"Noncapitalized equipment" as used in this part, means personal property (plant equipment) of a nonexpendable nature having a unit acquisition cost of $50 or more but less than $5,000, and other items of personal property regardless of cost when so designated by the Government.

43. Section 1245.505–70 is revised to read as follows:

1245.505–70 Solicitation provisions and contract clauses.

Contracting officers shall insert the clause at 1252.245–70, Government Property Reports, in all solicitations and contracts which include either FAR clause 52.245–2, Government Property (Fixed Price Contracts) or 52.245–5, Government Property (Cost-Reimbursement, Time and Material, or Labor Hour Contracts).

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

44. Section 1252.207–70 is revised to read:

1252.207–70 Implementation of Right of First Refusal of Employment.

As prescribed in 1207.305, and for any contract when contractor performance causes Federal employees in the Government commercial activity to be adversely affected, insert the following clause in solicitations and contracts:

Implementation of Right of First Refusal of Employment (Mar 1988)

(a) *Policy.* The contractor shall give, and shall require each subcontractor to give, adversely affected Federal employees the right of first refusal for all employment openings under this contract for which they are qualified. The contractor shall require the substance of this clause to be included in each subcontract at every tier under this contract, other than subcontracts for raw materials, commercial stock items and subcontracts that do not exceed $25,000.

(b) *Definitions:* (1) An "adversely affected Federal employee" is any Federal employee who is assigned to the Government commercial activity, who is a competing employee under Office of Personnel Management reduction-in-force regulations, and who is, as a result of the award of this contract, released from his or her competitive level, causing separation reassignment, or downgrade.

(2) The term "contractor" as used in this clause shall include the contractor and each subcontractor at every tier. The term "subcontractor" as used in this clause shall include any person or firm which has a legal obligation to perform all or part of the work under a subcontract at any tier under this contract, other than a subcontract primarily for the supply of raw materials or commercial stock items or a subcontract that does not exceed $25,000.

(3) The "contract award date" is the date the contract is signed by the contracting officer.

(4) "Employment opening" is a position vacancy in the contractor's organization, created by the award of this contract or any subcontract under this contract, which the contractor is unable to fill with personnel on the contractor's active payroll, as of the contract award date, including any position within the local commuting area of the commercial activity which arises in the contractor's organization as a result of the contractor's reassignment of an employee due to the award of this contract or of any subcontract under this contract.

(5) "Working day" means a day other than a Saturday, a Sunday or a day on which either the Government's or the Contractor's office administering this contract is officially closed for business.

(c) *Filling employment openings.* (1) For a period beginning with the contract award date and ending *[the contracting officer shall fill in this blank with a number between 90 and 180]* days after all adversely affected Federal employees have been separated, reassigned, or downgraded as a result of the award of this contract, no person other than an adversely affected Federal employee, shall be offered a job filling an employment opening until each qualified, adversely affected Federal employee identified in the most current list provided to the contractor under paragraph (e) of this clause has been offered the job and either has refused it or has waived their right of first refusal.

(2) For a period beginning with the contract award date and ending *[the contracting officer shall fill in this blank with a number between 90 and 180]* days after all adversely affected Federal employees have been separated, reassigned or downgraded as the result of the award of this contract, the contractor shall, in filling employment openings, communicate written offers of employment to adversely affected Federal employees identified in the most current list provided to the contractor under paragraph (e) of this clause. Such offers shall specify at a minimum the following:

(i) Title, description, and location of employment opening being offered;

(ii) Pay and benefits (i.e., paid leave, holidays, health and life insurance, retirement and any other benefits such as stock options that would contribute to the total monetary value of the position);

(iii) Hours of work and leave schedule; and

(iv) Final date employee may accept job offer.

(3) At a minimum, adversely affected Federal employees shall be given five working days, excluding mail time, after receipt of a job offer to accept or reject the offer. At the contractor's request, the contracting officer, after consulting with the agency personnel office, shall determine whether any adversely affected employee has waived his or her right of first refusal by not responding to a job offer in a timely manner.

(4) If there are no qualified, available, adversely affected Federal employees on the most current list provided by the contracting officer or designee, the contractor may select for an employment opening any person not disqualified by any provision of this contract.

(d) *Contractor reporting requirements.* (1) No later than five (5) working days after the contract award date, the contractor shall provide the contracting officer or designee with the following:

(i) A list of employment openings along with a brief description of duties and qualification requirements for each position; and

(ii) Sufficient job application forms for adversely affected Federal employees.

(2) For the period beginning with the contract award date and ending *[the contracting officer shall fill in this blank with a number between 90 and 180]* days after all adversely affected Federal employees have been separated, reassigned or downgraded as the result of the award of this contract, the contractor shall inform the contracting officer or designee by telephone within one (1) working day after an employment offer is made to an adversely affected Federal employee. The contractor shall also notify the contracting officer or designee by certified mail no later than five (5) working days after each adversely affected Federal employee's acceptance or refusal of the employment offer. This notice shall contain the following information:

(i) The name and social security number of the adversely affected Federal employee offered an employment opening;

(ii) The date the offer was made;

(iii) The salary and benefits contained in the offer (benefits as defined in (c)(2)(ii) above);

(iv) A brief description of the position;

(v) Either the date of acceptance of the offer and the effective date of employment or the date of refusal of the offer; and

(vi) If not previously provided to the contracting officer or designee, the names and social security numbers of any adversely affected Federal employees who applied for, but were not offered, employment in the position, and the reason(s) for not making an offer to each of them.

(3) The contractor shall promptly inform the contracting officer or designee of the name and social security number of each adversely affected Federal employee hired by the contractor and any subcontractor during the [*the contracting officer shall fill in this blank with a number between 90 and 180*]-day period beginning with the day after the date of the separation from Federal employment of the last of the adversely affected Federal employees, and shall also inform the contracting officer or designee of the date or dates of such hiring or hirings.

(4) Upon receipt of the most current list of adversely affected Government employees from the contracting officer or designee pursuant to paragraph (e) of this clause, the contractor promptly shall provide, or cause to be provided, a copy of the list to each subcontractor under this contract.

(e) *Information provided to the contractor.* (1) On the contract award date or thereafter, but no later than ten (10) working days after the date of issuance of the initial reduction-in-force notices to adversely affected Federal employees, the contracting officer or designee shall provide the contractor with a current list of those adversely affected Federal employees who wish to exercise their right of first refusal.

(2) From time-to-time after issuance of the initial list pursuant to paragraph (e)(1) above, and until the last of the adversely affected Federal employees have been separated from Federal employment, the contracting officer or designee shall provide the contractor with an updated version of the current list of adversely affected Federal employees, reflecting those employees who have been recently released from their competitive level and reassigned, downgraded or separated and those who have indicated their unavailability for employment with the contractor.

(3) On the contract award date or as soon thereafter as feasible, the contracting officer or designee shall inform the contractor of the date on which all adversely affected federal employees will be separated, reassigned or downgraded as a result of the award of this contract.

(f) *Record of compliance.* Upon request of the contracting officer or designee, the contractor shall make available for examination by the Government, all pertinent books, documents, papers and records required to determine compliance with this clause.

(g) *Qualifications determination.* An adversely affected Federal employee who held a job in the Government commercial activity, that directly corresponds to or is not significantly different from an employment opening under this contract or a subcontract under this contract, shall be considered qualified to fill that employment opening, unless the contractor adequately documents the employee's lack of qualifications.

(h) *Relation to other statutes, regulations and employment policies.* (1) The provisions of this clause do not modify or alter any of the contractor's responsibilities and obligations under statutes, regulations or other contract clauses concerning non-discrimination, hiring and employment based on veteran's status, race, color, religion, sex, age, handicap or national origin.

(2) The contractor shall be aware of the post-employment restrictions prohibiting certain types of representations before, or communications to, the Federal Government by former employees (18 U.S.C. 207).

(i) *Penalty for noncompliance.* Failure of the Contractor to comply with any provision of this clause may be grounds for termination of the contract for default.

(End of clause)

Alternate I (April 1988). As prescribed in 1207.305, the following paragraph b(4) may be substituted for paragraph b(4) of the Clause:

(4) "Employment opening is a position vacancy in the contractor's organization, created by the award of this contract or any subcontract under this contract, which the contractor is unable to fill with personnel on the contractor's active payroll, as of the date of submission of initial bids or proposals, including any position within the local commuting area of the commerical activity which arises in the contractor's organization as a result of the contractor's reassignment of an employee due to the award of this contract or of any subcontract under this contract.

1252.215-72 [Amended]

45. Section 1252.215-72 is amended by revising the title of the first column in the table under Section 1, Direct Material, to read "Direct Material" instead of "Directed Material."

1252.222-70 [Amended]

46. In section 1252.222-70 is amended by adding the words "as amended" after the words "Service Contract Act of 1965", in the last sentence of the clause.

1252.222-75 [Amended]

47. In section 1252.222-75, paragraph (m) is amended by changing the word "be" in the second sentence to read "is".

48. In section 1252.222-75, paragraph (o) is amended as follows:

(a) The second heading of the chart in this paragraph is changed from "Monetary wage-fringe benefits" to read "Monetary wage".

(b) The heading of the subparagraph titled "Other Fringe Benefits" is changed to read "Fringe Benefits".

(c) The paragraph on "Annual Leave" under "Other Fringe Benefits" is revised to read: Annual Leave: Two hours per week for service of less than three years; three hours per week for service of three years but less than 15 years; and 4 hours per week for service of 15 years or more.

1252.245-70 [Amended]

49. Section 1252.245-70 is amended as follows:

(a) A date is added to the title of the clause, which changes the title to read: "Government Property Reports (Nov 1987)"

(b) Paragraph (b)(2) is revised to read: "(b)(2) Real property, as defined at FAR 45.101."

PART 1253—FORMS

50. Part 1253 is amended as follows:

In the Table of Contents, "1253.246-70, Material inspection and receiving (FAA)" is revised to read "1253.246-70, Inspection report of material and/or services (FAA FORM 256)".

51. In section 1253.215-70 paragraph (a) is revised to read as follows:

1253.215-70 Price negotiation (DOT F.4220.21; DOT F.4220.32; and DD 1861).

(a) ADP equipment and services. As prescribed in 1215.407(c), the form DOT F.4220.21 may be included in RFPs and required to be completed by offerors in addition to SF 1411 and other supporting documents.

* * * * *

1253.222-70 [Amended]

52. The title of section 1253.222-70 is revised to read: "1253.222-70, Labor standards interview (DD Form 1567)".

1253.227 [Redesignated as 1253.227-70]

53. Section 1253.227 is redesignated as section 1253.227-70, and a new section 1253.227 is added to read: "1253.227 Patents, data and copyrights."

1252.246-70 [Amended]

54. The title of section 1253.246-70 is revised to read: "1253.246-70, Inspection report of materials and/or services."

[FR Doc. 88-16963 Filed 7-27-88; 8:45 am]
BILLING CODE 4910-62-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 9, 13, 14, 15, 17, 19, 22, 23, 25, 30, 31, 35, 42, 45, 47, 52, and 53

Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments and final rule; correction.

SUMMARY: This document corrects an effective date in a final rule in Federal Acquisition Circular (FAC) 84-38

published in the **Federal Register** on Wednesday, July 20, 1988 (53 FR 27460).

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION: In FR Doc. 16269 beginning on page 27460 make the following correction in the dates caption on page 27460, first column, third paragraph, the effective date reading "Items XIII and IX" should read "Items VIII and IX"; and on page 27461, second column, third complete paragraph, the effective date reading "Items XIII and IX" should read "Items VIII and IX".

List of Subjects in 48 CFR Parts 5, 6, 9, 13, 14, 15, 17, 19, 22, 23, 25, 30, 31, 35, 42, 45, 47, 52, and 53

Government procurement.

Dated: July 22, 1988

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 88–16965 Filed 7–27–88; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 80630–8130]

High Seas Salmon Fishery Off Alaska

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

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice, closing for 10 days the U.S. exclusive economic zone (EEZ) off Southeastern Alaska to commercial fishing for all salmon species. This action is necessary to stop the harvest of coho salmon by the troll fishery and is intended to ensure that the coho stocks are not overharvested.

DATE: This notice is effective at 0001 hours Alaska Daylight Time (ADT), Tuesday, July 26, 1988, and will expire at 0001 hours ADT, Friday, August 5, 1988. Public comments are invited until August 26, 1988.

ADDRESS: Send comments to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection from 0800 through 1630 hours ADT, Monday through Friday, at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS), 907–586–7228.

SUPPLEMENTARY INFORMATION: Salmon fishing in the EEZ off Alaska is managed under the Fishery Managment Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175 Degrees East Longitude (FMP). The FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR Part 674. The FMP also implements provisions of the Pacific Salmon Treaty and the Pacific Salmon Treaty Act (16 U.S.C. 3631 *et seq.*). Article III of the treaty requires that each Party conduct its fisheries to prevent overfishing of the salmon stocks to the treaty. The coho stocks being protected by this action are subject to the treaty (Article I(a) and 1988 amendment of Annex IV, Chapter 5).

To prevent the troll fishery from overharvesting the coho stocks, the Alaska Board of Fisheries (Board) requires that the commercial salmon troll fisheries in Alaskan waters be closed "for approximately 10 days" if either "the number of coho reaching inside areas may be inadequate to provide for spawning requirements * * * [or] the proportional share of coho harvest by the troll fishery is larger than that of inside gillnet and recreational fisheries compared to average 1971–80 levels * * *" (5 AAC 33.365.3)).

In 1980, the Council amended section 8.3.1.4. of the FMP to provide for an area-wide closure of the entire troll fishery for 10 days to stabilize or reduce coastal and offshore fishing effort on coho salmon unless an evaluation of the coho runs and harvests indicated a "well above average magnitude and good movement inshore." The Council took this action in cooperation with the Board so that the troll fishery in the EEZ and in State waters would be under consistent management. The Council intended that if the States issued a closure for coho, a similar closure should be instituted for the EEZ, under the procedures outlined in section 8.3.1.5 of the FMP and specified in § 674.23 of the regulations.

Regulations implementing the FMP (at § 674.23(a)) also provide that the Secretary of Commerce (Secretary) may modify the fishing time and areas whenever he determines that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

(1) The effect of overall fishing effort within any part of the management area;

(2) The catch per unit of effort and the rate of harvest;

(3) The relative abundance of salmon stocks within the management area;

(4) The condition of salmon stocks throughout their ranges;

(5) Any other factors relevant to the conservation of salmon.

As of July 21, 1988, analyses of the harvest of coho salmon by the commercial troll, gillnet, and sport fisheries in Southeastern Alaska indicate that the 1988 coho run is either considerably below average in numbers of fish or is quite late. The available information points to the number of coho being scarce. The harvest by the commercial troll fishery is only about 30 percent of the 1981–1985 average harvest at this time (138,000 coho in 1988 vs. 462,000 for the average). The commercial gillnet coho harvests are from 20 to 50 percent of the average, and the Juneau-area sport harvest is only about 20 percent of the average.

Having reviewed the evidence of the coho harvest in the EEZ off Alaska and in Alaskan waters, the Secretary has determined that the effect of overall fishing effort, the catch per unit of fishing effort, and the below average rate of harvest throughout the management area indicate that the condition of coho stocks is substantially different from the condition anticipated in the FMP. He has also found that this difference reasonably requires a modification of fishing times if coho stocks are to be conserved and managed adequately.

Thus, according to the Board's guidelines and the Council's FMP, the troll fishery should be closed for 10 days. Accordingly, on July 22, 1988, the Alaska Department of Fish and Game and NMFS issued a joint announcement that the commercial troll fishery would close for 10 days, beginning at 0001 hours ADT on July 26, 1988. Implementing this 10-day closure now provides some immediate protection for the apparently depressed coho stocks and allows the State flexibility to impose additional conservation measures, if required, later in the year.

The Secretary, therefore, is implementing the 10-day closure prescribed by this action. The closure will become effective after this notice has been filed for public inspection with the Office of the Federal Register and the closure has been publicized for 48

hours through procedures of the Alaska Department of Fish and Game.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that the coho salmon stocks harvested in Southeastern Alaska will be subject to harm unless this notice takes effect promptly. He finds, therefore, that it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553 (b) and (c). However, in accordance with § 674.23(b)(3), the Secretary will accept and consider public comments for 30 days after the effective date of this notice. The aggregated data upon which this closure is based are available for inspection (see **ADDRESS**). If comments are received, the Secretary will reconsider the necessity for this action and will publish another notice in the **Federal Register** either confirming the notice's continued effect, modifying it, or rescinding it, unless the notice has already expired or been rescinded.

This action is authorized by 50 CFR Part 674 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, International organizations, Reporting and recordkeeping requirements.

(16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*)

Dated: July 25, 1988.

Richard H. Schaefer,

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

[FR Doc. 88–17025 Filed 7–25–88; 4:30 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 145
Thursday, July 28, 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 989

[AMS-FV-88-106; Docket No. AO-198-A14]

Raisins Produced From Grapes Grown in California; Recommended Decision and Opportunity To File Written Exceptions to Proposed Further Amendment of Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order for raisins produced from grapes grown in California. The proposed amendments would amend provisions of the order concerning the Raisin Diversion Program, expenses for alternate Raisin Administrative Committee (Committee) representatives, nomination procedures for independent producer representatives on the Committee, reserve pool procedures, producers' equity in reserve pools, handler compliance with the marketing order, limitations on Committee members' tenure, and add authority for continuance referenda. These changes would improve the operation of the raisin marketing order program.

DATE: Written exceptions must be filed by August 29, 1988.

ADDRESS: Written exceptions should be filed with the Hearing Clerk, Fruit and Vegetable Division, AMS USDA, Room 1077-S, P.O. Box 96456, Washington, DC 20090-6456. Four copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued July 16, 1987, and published in the July 21, 1987, issue of the **Federal Register** (52 FR 27369). This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

At the conclusion of the hearing the Administrative Law Judge fixed September 25, 1987, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. The following persons submitted documents: Jerald Rebensdorf (Rebensdorf), Bob F. Hansen, Jr. (Hansen), Barry Kriebel (Kriebel), Richard Garabedian (Garabedian), Bill Feaver (Feaver), and Kalem Barsarian (Barsarian). In addition, six copies of the same letter in opposition to three of the proposals were received.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of Marketing Agreement and Marketing Order No. 989, regulating the handling of raisins produced from grapes grown in California, and of the opportunity to file writtten exceptions thereto. In addition to Patricia A. Petrella, whose address is listed above, copies of this decision also may be obtained from Richard Van Diest, Fresno Marketing Field Office, AMS, USDA, 1755 N. Gateway, Suite B, Fresno, California 93727.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The proposed further amendment of Marketing Agreement and Order No. 989 is based on the record of a public hearing held in Fresno, California on August 5 and 6, 1987. Notice of this hearing was published in the **Federal Register** on July 21, 1987. The notice of hearing contained five proposals submitted by the Raisin Administrative Committee (Committee), which locally administers the order. Those proposals pertained to changing the Raisin Diversion Program (RDP), nomination procedures for independent producer representatives on the Committee, expenses for alternate Committee representatives, reserve pool procedures, and handler compliance with the marketing order. Mr. John D. Pakchoian, chairman of the Committee, submitted a proposal which would require that independent producer representatives not have an interest in handler operations. The notice also included three proposals by the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), which would limit Committee tenure, add authority for continuance referenda, and provide authority to make any necessary conforming changes.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which includes handlers under this proposed agreement and order, are defined as those with gross annual revenues of less than $3,500,000.

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. Interested persons were invited to present evidence at the hearing on the probable regulatory and informatioinal impact of the proposed rule on small businesses. The record indicates that most, if not all, handlers regulated under this program would meet the SBA definition of small agricultural service firms. Marketing orders and rules issued thereunder are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The Act requires the application of uniform rules to regulated handlers. Since handlers covered under M.O. 989 are predominantly small businesses, the order itself is tailored to the size and nature of these small busiensses. During the 1986–87 crop year, 23 handlers were regulated under M.O. 989. In addition, there are about 5,000 producers of raisins in the regulated area.

The proposed amendments to the marekting agreement and order include a provision pertaining to a production cap of 2.75 tons per acre for production units approved for participation in the Raisin Diversion Program (RDP). The RDP gives producers the means of voluntarily reducing the quantity of grapes grown for drying into raisins while receiving the equivalent quantity of raisins, represented on diversion certificates, to sell to handlers as though the raisins were produced in the current crop year. The producer receives raisins from the previous year's reserve pool in an amount equal to the acreage removed or diverted under the RDP multiplied by the producer's previous year's production in tons per acre. This amount is represented on a diversion certificate. The production cap is designed to prevent producers applying to participate in the RDP from reporting greater than actual raisin production. Since the RDP is a voluntary program, no producer is required to participate. If a producer historically produces above the production cap, such producer may choose to produce a crop rather than participate in the RDP.

The proposed changes to allow reconditioned raisins in the reserve pools and establish an average maturity quality level that raisins must meet to be put in the reserve pools are intended to improve the quality of reserve pool raisins and also improve grower equity returns.

The proposed change that would require the Committee to reimburse alternate Committee members their necessary expenses for attending Committee meetings would have a positive effect on producers and handlers by increasing the level of expertise of Committee members. This additional expense would be offset by assessments on handlers. Program operations benefit all handlers and producers and it is thus appropriate to provide a minimum level of compensation to alternate members, who serve in the industry's general interest.

The proposed amendment to add a late payment and interest charge for handlers who default on reserve pool sales would encourage prompt payment by handlers. Handlers would be required to pay such charges only if they are late in paying the Committee for raisins released to them from the reserve pool. In addition, prompt payment by handlers will ensure more timely payments to producers who have equity in the reserve pools.

The proposed amendments pertaining to operations of the Committee (tenure and periodic referenda) would provide more frequent opportunity for producer voting and an opportunity for broader based representation on the Committee. The change proposing that nominations for independent producer positions on the Committee be held by mail would have a positive impact on small entities by increasing independent producer participation in the nomination process.

All these changes are designed to enhance the administration and functioning of the marketing agreement and order and would have negligible, if any, economic impact on small businesses. Accordingly, it is determined that the proposed provisions of the order would not have a significant economic impact on handlers or producers.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the reporting and recordkeeping provisions that are included in the proposed order will be submitted to the Office of Management and Budget (OMB). They would not become effective prior to OMB approval.

Material Issues

The material issues of record addressed in this decision are: (1) Whether a mail balloting procedure to fill independent producer member positions on the Committee should be implemented; (2) whether a provision should be added for alternate Committee members to be reimbursed for their necessary expenses; (3) whether a production cap of 2.75 tons per acre for production units approved for participation in the RDP should be established; (4) whether to allow reconditioned raisins to be placed in the reserve pools and establish an average maturity quality level that raisins must meet to be put in the reserve pools; (5) whether to deny reserve pool sales to handlers who are not incompliance with the order and whether to establish an interest and late payment charge for handlers who default on reserve pool sales; (6) whether to provide that independent producer members of the Committee cannot be associated with a handler of raisins; (7) whether to add Committee tenure requirements to the order; (8) whether to provide for producer continuance referenda to be held every six years; and (9) whether any minor administrative and conforming changes should be made to the order if any of these proposals were to become effective.

Findings and Conclusions

The finding and conclusions on the material issues, all of which are based on evidence adduced at the hearing and the record thereof are: (1) The California raisin marketing order should be amended to establish a mail balloting procedure to fill independent producer member positions on the Committee. The Committee currently consists of 47 members of which 35 represent producers, 10 represent handlers, one represents the cooperative bargaining association and one represents the public. To provide equitable representation throughout the production area, representation is apportioned among three districts. They are: District 1, all counties north of Fresno County; District 2, all counties south of Fresno County and; District 3, all of Fresno County. Independent producers currently have eight representatives on the Committee. One represents District 1, one represents District 2, and six represent District 3.

The order currently specifies a nomination procedure for independent producer members which entails holding nomination meetings in each district with nominations and voting for such members at such meetings. This proposal would establish the procedures for Committee independent producer members to be nominated by mail balloting. To effectuate such a change, § 989.29 of the order, "Initial members and nomination of successor members," would be revised.

Record evidence shows that independent producer nomination meetings, currently held as required by the order in the three districts, are poorly attended by independent producers. Thus, this mail balloting proposal was recommended to increase the opportunity for independent producers to participate in the nomination process. As proposed, the process would begin with the Committee notifying all independent producers of record of meetings to be held in each district. Producers present at those meetings would offer in nomination candidates who they wish to represent them on the Committee. Those producers whose names are offered would be requested to prepare a brief statement as to their qualifications and reasons why they wish to represent independent producers on the Committee. According to the evidence presented, these brief statements should

include the nominees' qualifications to represent independent producers and the nominees' own abilities and affiliations, rather than a comparison of their own qualifications to that of their competitors. These brief statements, along with a ballot, would be mailed to all independent producers on record with the Committee. Independent producers would vote only for representatives in their own districts, and return the ballots to the Committee office for tabulation. The vote count should be verified by an impartial person such as a field representative of the Department. Evidence presented at the hearing indicated that write-in candidates should also be acceptable.

Members and alternate members for each district would be determined by the numbers of votes received. The nominees receiving the highest number of votes would be designated as the member nominee, the second highest would be designated as the second member or alternate member nominee depending on the number of nominees needed to fill the vacant positions, as the case may be, until all positions are filled. These nominees would then be submitted to the Secretary for selection.

Currently, the order specifies that independent producers and producers affiliated with cooperative marketing association handling less than 10 percent of the total raisin acquisitions during the preceding crop year be nominated in the same manner. It is therefore appropriate for producers who are affiliated with such cooperative marketing organizations to be nominated by the same mail balloting procedure as proposed for independent producers. Accordingly, such a procedure for this category of producers should also be adopted.

In addition, evidence further indicates that the Committee should be permitted to recommend, and the Secretary to establish, implementing administrative rules for the conduct of such nominations. For example, the Committee may want to establish such rules and regulations in regard to specifying the dates when mail balloting would be held and to specify the items independent producer nominees should include in their brief statements.

(2) Section 989.39, "Compensation and expenses," should be amended to provide for reimbursement for alternate members for their actual expenses when attending Committee meetings. Currently, the provisions of the order provide for reimbursement of alternate members' expenses only when such alternates are acting as members or when attending not more than three Committee meetings per crop year at which the member that they serve as an alternate is in attendence.

Evidence at the hearing indicated that it is beneficial to the Committee and the industry it represents for alternate members to be well informed of all matters applicable to the operation of the marketing order. By attending more meetings, alternate members would become more knowledgeable, be better prepared to act in the absence of their members, and be better able to function as members in the future if selected to serve as such. Evidence indicated that the added costs for the payment of alternate members' expenses would be more than offset by the knowledge gained by alternate members and the resultant benefit to Committee deliberations.

(3) Section 989.56 (a) and (c) should be amended to add a production cap of 2.75 tons per acre for those producers who apply participation in the RDP. Also, authority should be included for the Committee to recommend and the Secretary to approve further changes in the production cap, subject to the 2.75 ton per acre limitation.

The RDP was established in 1985 to help the industry bring raisin supplies more in line with demand. The RDP gives producers the means of voluntarily reducing the quantity of grapes grown for drying into raisins while receiving the equivalent quantity of raisins, represented on diversion certificates, to sell to handlers as though the raisins were produced in the current crop year. Producers wishing to participate in the RDP divert their grape crop from production. In return, producers receive raisins from the previous year's reserve pool in an amount equal to the acreage removed under the RDP multiplied by the producers' previous year's production in tons per acre. This amount is represented on a diversion certificate. Producers are paid, by handlers, the established field price minus the harvest costs determined for that year. The handlers redeem the certificates with the Committee and receive the quantity of reserve pool raisins represented by the certificate.

Record evidence shows that the Committee has had concerns in the past about program participants inflating their production units in the RDP. Inflating may occur when program participants report statistics allegedly showing higher than actual raisin production. Since diversion certificate tonnage is based on the tons delivered per acre during the prior year, producers could inflate their acreage by acquiring raisins from another source and adding them to deliveries from their production units, thereby receiving credit for a higher amount of raisins than actually produced on the acreage. By inflating yield figures, producers could receive diversion certificates equal to more raisins from the reserve pool than such producers actually produced from those production units in the previous year.

The record indicates that a production cap of 2.75 tons per acre would help prevent any alleged inflating of yields experienced by the Committee in the past. Program participants would receive 2.75 tons per acre if their records indicated that they produced that amount or more during the previous year. Those producers whose records indicated that they produced less than the 2.75 tons per acre level would receive raisins equivalent to their actual reported production as a basis for payment on their RDP certificates.

Raisin industry experts consider raisin production of 3 tons or more per acre to be very unusual. Production statistics released by the California Crop and Livestock Reporting Service revealed that the average production of raisins per acre for the 10-year period 1975 through 1985 was 2.01 tons. Those producers that may produce more than 2.75 tons per acre do not have to participate in the RDP, since the RDP is a voluntary program, and no producer is required to participate. Thus, producers who produce more than 2.75 tons per acre may choose to produce and deliver a crop rather than accept a lower tonnage figure. Thus a production cap of 2.75 tons per acre should be established for any production unit approved for participation in a diversion program.

Messrs. Rebensdorf and Hansen filed briefs in opposition to this proposal, along with several other producers who submitted form letters in opposition. These briefs asserted that producers should not be "penalized" by the Committee for increasing their yields per acre. Also, the briefs indicated that they were of the view that the proposed production cap would not solve the problem of inflating crop yields under the RDP. As indicated above the RDP is a voluntary program, and no producer is required to participate. If producers have developed methods to increase their yields per acre, those producers can choose to produce that crop rather than participate in the RDP.

The Committee also requested the authority to decrease the production cap below the 2.75 ton per acre level. In years when damaging frosts or rains occur, average production levels could be reduced. Such damage would occur in the year prior to the year in which producers apply for an RDP. The Committee believes that the production

cap should also reflect such a decrease, in recognition of the prior year's crop damage. The Department considers that changes in the tonnage level, reductions below the established 2.75 ton level or other adjustments, should be subject to approval by the Secretary. Therefore, the Committee should be authorized to recommend reductions in the 2.75 ton per acre cap, subject to informal rulemaking procedures and the approval of the Secretary. It is intended that the Committee would recommend any such reduction at the same time that the diversion tonnage for that season is announced. If there is not a recommendation for a reduction in the 2.75 ton per acre cap, the cap would remain at 2.75 tons for any diversion program that may be recommended by the Committee.

(4) Section 989.66 (b)(1), (b)(4) and (d) should be amended to permit handlers to set aside reconditioned raisins to satisfy their reserve pool obligations and also to require handlers to set aside raisins in the reserve pool that meet the average incoming maturity level of raisins acquired by each handler during the applicable crop year.

Raisins with certain defects are reconditioned by the handler to bring the raisins within acceptable quality standards. For example, raisins embedded with sand could be run through a hot water bath and then through a high pressure wash to remove the sand. The reconditioning process usually removes the "bloom" from the raisins. Bloom is a widely accepted term within the industry which describes the natural waxy coating on the surface of raisins which would generally be removed by washing, processing or reconditioning. The record indicates that experience has shown that raisins with bloom will store for longer periods without significant deterioration than raisins with the bloom removed. Non-reconditioned raisins with the bloom still visible are referred to as natural condition raisins.

Currently, the marketing order does not permit reconditioned raisins in the reserve pool. However, the order does authorize the reconditioning of raisins, if necessary, to bring them up to acceptable quality standards to be acquired by handlers. Evidence presented at the hearing showed that not allowing reconditioned raisins in the reserve pool may cause a burden on handlers. During certain times of the year, handlers may not have enough natural condition raisins on hand to satisfy their reserve obligations and may have to purchase natural condition raisins from other handlers in order to meet such obligations. Also, handlers could refuse to buy reconditioned raisins from producers if they cannot be set aside for reserve pool purposes. Evidence indicated that this proposal may benefit producers by providing additional markets (i.e., reserve pool outlets) for reconditioned raisins. Since reconditioned raisins may not have the same storage characteristics as natural condition raisins, handlers would be expected to process these raisins for reserve pool sales for their own use first by blending them with better quality raisins in order to bring the level of quality up to consumer standards. Generally, reconditioned raisins are darker than the desired color and are usually sold at a discounted price for this reason. Therefore, blending is usually done to ensure a better quality lot of raisins.

Pursuant to the raisin marketing order, the Committee could request handlers to deliver non-reconditioned reserve pool raisins (natural condition) to other handlers. The Committee would like this provision to remain unchanged in the marketing order to ensure the Committee and other handlers of the quality of the raisins they would be receiving and released for likely reserve pool sales. The Committee may request such delivery from handler to satisfy reserve pool sales to other handlers that have insufficient raisins on their premises for such sales. These sales could include school lunch, export incentive sales and other reserve pool sales.

In the event that handlers have only reconditioned raisins on their premises in the reserve pool, they could deliver packed raisins to the Committee. In addition, handlers could substitute free tonnage supply natural condition raisins for reconditioned raisins that are in the reserve pool, in order to satisfy a request from the Committee.

The record also indicated that there will be no additional reserve pool costs to producers by allowing reconditioned raisins in the reserve pools, since producers who deliver raisins in need of reconditioning usually pay for all reconditioning costs required on such producer's lot of raisins.

Evidence showed that the proposal to allow reconditioned raisins in the reserve pool would work in conjunction with the proposed requirement for reserve pool raisins to meet an aggregate maturity level. Maturity refers to the amount of well-matured raisins in a particular lot. To meet acceptable standards, a lot of raisins must contain at least 50 percent well-matured raisins. It was testified that a handler's overall average maturity level is usually between 58 and 62 percent. The proposed requirement would prevent handlers from setting aside the lowest quality raisins on their premises that meet acceptable grade standards to satisfy their reserve pool obligations. The record indicated that lower maturity raisins are difficult to recondition and heavy processing losses are often experienced. In addition, the resultant product is generally below average quality levels.

The record indicated that some handlers have experienced problems in the past when they have insufficient reserve pool raisins stored on their own premises to satisfy a Committee release of reserve pool raisins to their own ownership for their own sales. Such handlers then have to purchase additional reserve raisins from other handlers. Raisins purchased from other handlers have often been of low maturity. In some cases, the condition of the low maturity raisins has deteriorated and the acquiring handler has had to further process or blend the raisins to bring them up to acceptable standards before a reserve pool sale could be made.

Thus, the record indicates that each handler's reserve pool obligation raisins should meet such handler's own average for maturity for that crop year, with a 2 percent allowance (subject to the minimum 50 percent maturity level). This proposal would improve the overall quality of the reserve pools, since handlers would no longer be allowed to set aside their lower quality raisins for the reserve pool.

(5) The Notice of Hearing contained proposed amendments of § 989.67(g) which would authorize the Committee to: Charge handlers interest and late payment charges if handlers fail to pay for reserve pool raisins purchased from the Committee; refuse to sell to handlers reserve pool raisins for export, non-competitive uses, and free tonnage raisins pursuant to sales under § 989.54(g) and § 989.67(j), for not complying with provisions of the marketing order; and provide for handler appeals of these Committee actions pursuant to § 989.67(g).

The marketing order currently authorizes the Committee to refuse to sell reserve tonnage raisins for export purposes only to any handler who: (a) Is in default on any previous purchase of reserve tonnage raisins from the Committee; (b) is not in compliance with the provisions of a sales agreement covering reserve tonnage raisins; or (c) signifies an intention to sell reserve tonnage to or through any person who

has previously failed to complete a sale of reserve tonnage raisins to a foreign buyer in an eligible export market. All of these reasons directly relate to failures in dealings with reserve tonnage raisins.

The Committee proposed to deny reserve pool sales to handlers when they are allegedly not complying with various provisions of the marketing order. This is not authorized under the provisions of the Act. The Act specifically provides remedies under Section 608 (a) and (c)(14) for handlers not complying with marketing order provisions. Accordingly, the Committee should handle such compliance actions by submitting them to the Department to be resolved under appropriate remedies specified in the Act. Therefore, this proposal is denied and not included in this recommended decision. The redesignated paragraph (g)(1) under § 989.67 would remain unchanged and the appeal procedure to review actions taken by the Committee under this section would be retained as paragraph (g)(3). The procedure would include notification to the handler, an informal hearing before an appeals subcommittee, and an appeal to the full Committee. The appeals subcommittee would consist of three to five members of the full Committee. The appeal to the full Committee would be a final action that would exhaust the informal appeals procedure.

Evidence adduced at the hearing did support an interest and late payment charge to be imposed on handlers who fail to pay for reserve pool raisins purchased from the Committee. For example, all handlers may purchase reserve pool raisins for free tonnage use each November under § 989.54(g) of the order. The purchase agreement between the Committee (the Committee administers the reserve pool for the producer/equity holders) and the handler specifies the terms and conditions of the specific sale which includes the date that payment is due for the raisins. Evidence showed that if the handler is late in making the required payment, the handler should be subject to late payment and interest charges. Equity holders in the reserve pools are paid according to the proceeds from reserve pool sales to handlers, thus, handlers who are late in paying for reserve pool raisins cause delays in payments to the equity holders of the pool. Funds received from interest and late payment charges should be distributed to the equity holders.

The hearing record showed that the interest rate to be incurred by handlers in default on reserve pool sales should be the prime rate at the bank where the Committee's funds are deposited, plus 2 percent. The provision in the Notice of Hearing reflected several different interest rates. The hearing record reflects that it was the Committee's intent, and record evidence supports, that the interest rate should be the prime rate at the bank where the majority of the Committee's administrative funds are deposited, plus 2 percent. The interest rate, as proposed, would accrue only on the principal amount owed and would be added to the handler's monthly bill until the handler's delinquent amount owed plus applicable interest charges have been paid.

The record indicated that the Committee should have the authority to recommend an increase in the interest rate from the prime rate plus 2 percent, to the prime rate plus a different percentage. The Committee requested that this alternate interest rate would apply on an individual handler basis depending on how severely the handler violated the purchase agreement. However, the Act requires that all handlers be treated equitably under marketing orders. Therefore, such a change in the rate of interest to be applied individually to handlers by the Committee is not authorized by the Act. The Committee, however, should be authorized to recommend changes in the interest rate applied uniformly to all handlers, subject to approval by the Secretary through informal rulemaking procedures.

(6) The proposed amendment to § 989.27 would have required that no owner, partner, or employee of a handler could be selected to represent independent producer members on the Committee, regardless of whether or not such individuals are also producers. A proponent of this proposed amendment testified that producers with an interest in handler operations cannot act as "true" Committee producer members because of an alleged conflict of interest.

Opponents, however, testified that producers who are also handlers are articulate and have developed good communication skills while conducting business within the raisin industry. Persons who fit this category believe that their experience as handlers can only benefit them in representing independent producers who are also on the Committee. Opponents to the proposal testified that producers who are also handlers are able to view both sides of issues that are raised at Committee meetings and are able to make sound decisions. Opponents testified that a possible solution would be to have independent growers actively solicit other independent growers to attend the nomination meetings and nominate only non-handler producers as representatives if independent producers are dissatisfied with producer/handler representatives.

Messrs. Hansen (Committee producer member) and Barsarian (representing Madera Packing Co.) filed briefs concerning this proposal. Both opposed the proposal on the basis that producers who are also handlers have more knowledge of the raisin industry and understand the operations of the marketing order. Therefore, it is beneficial to have producers who are also handlers on the Committee to represent independent producer interests.

Accordingly, the record evidence does not support the amendment to require Committee independent producer members to be solely producers and have no interest in handler operations. In addition, the proposal to authorize mail balloting procedures for the nomination of independent producer members will provide all independent producers additional opportunity to select those individuals they feel will best represent their interests. Therefore, this proposed amendment is not adopted.

(7) Section 989.28, "Term of Office," should be amended to provide for a six-year limit on Committee member's tenure.

It is the Department's view that a limit on tenure for Committee members improves representation on marketing order committees by allowing for different and more contemporary ideas, and that such a limit will be beneficial to the Committee's operations. The Department's goal is to encourage and foster to the maximum extent possible, broad-based participation by all members of the regulated community in the administration of the marketing order. This objective is best met by such a limitation. Proponents testified that the tenure limitation would improve representation and would be beneficial to the operation of the Committee.

This change is consistent with the Secretary's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders," which provides for limiting committee tenure of members and alternates. The Department's policy pursuant to the guidelines is that a committee member's consecutive service be limited to a total of six years.

Therefore, it is proposed that the order should be amended to limit the tenure of members to three full consecutive terms. Any member would become ineligible to serve on the

committee after having served three full consecutive terms. Such individuals could again become eligible to serve on the Committee by not serving on the Committee for one full term as either a member or alternate member.

Because of the large size of the Committee (47 members and an alternate member for each), the tenure limitation should apply only to Committee members. Alternate Committee members serve in the place of members in the event of the member's absence at a particular meeting. Generally, it takes several years for alternate members to become knowledgeable about the operations of the marketing order. Often, alternate members are nominated and selected to serve as members on the Committee only after they have gained experience in marketing order matters by serving first as alternates.

It is unlikely that the tenure requirements would cause all members, or even a majority of the members, to leave the Committee at any one time because of the natural turnover between members and alternate members. Therefore, it would serve no useful purpose to limit the tenure of alternate members. This change in tenure requirements should become effective beginning with the 1990 term of office. Members who have served on the Committee for six consecutive years would not be eligible for reelection for the term of office which begins May 1, 1990.

Briefs were filed by Messrs. Hansen and Kriebel, and numerous producers who filed the same letter, opposing this proposal. The briefs stated that Committee members need more time to become familiar with the operations of the order and the Committee would lose needed experience and continuity in members by imposing such a limitation. Opponents to the proposal at the hearing also testified that the Committee experiences a natural turnover of member representatives, and imposing an artificial turnover would cause the Committee to lose experience, continuity and expertise among its members. One opponent testified that it takes five to six years for a Committee member to really understand Committee operations. However, as discussed above, such expertise can be developed by serving as an alternate member. Also, it is unlikely that Committee members would be nominated to serve on the Committee by the industry unless such members had demonstrated to their constituents that they had the necessary qualifications, experience, and like, to adequately represent them on the Committee.

It is the Department's view that a limit on tenure for Committee members will improve representation on marketing order committees and will be beneficial to the Committee's operations. Thus, in conformance with this policy, such tenure limitations should be adopted.

(8) The order should be amended, as hereinafter set forth, to require referenda to be held every six years relative to the continuance of the order.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether producers favor continuation of marketing order programs. Currently, the order and the Act provide that the Secretary shall terminate the marketing order program whenever, through the conduct of a referendum, it is indicated that a majority of all producers favor termination and such majority produced more than 50 percent of the commodity for market during a representative period. Since less than 50 percent of all producers usually participate in a referendum, it is difficult to determine producer support or opposition for termination of an order. Thus, to provide a basis for determining whether producers favor continuance of the order, a new paragraph (d) should be added to § 989.91 to provide for continuance referenda. Current paragraph (d) should be redesignated as paragraph (e). Also, proponents at the hearing testified that consideration regarding continuance of the order should be based on two-thirds of the producers voting in the referendum or producers of two-thirds of the volume of raisins represented in the referendum.

Opponents to the proposal also favored the concept for the conduct of continuance referenda. However, they opposed the two-thirds vote requirement. They testified that a simple majority of the producers voting, who represent a simple majority of the tonnage voting, should be adequate to indicate producer sentiment. They also terminated that one-third of the industry should not be allowed to control decades of program planning and experience. They claimed that majority rule should determine its continuance. Also, one opponent suggested that continuance referenda be scheduled and completed not later than January 1 of any crop year in order to plan accordingly. The Committee plans many programs months in advance and will need to know the results of any such referendum as soon as possible after it is conducted.

The results of continuance referenda should be based upon the same percentage of support required in section 8c(8) of the Act with respect to producer approval of the issuance of a marketing order. This requirement is considered adequate to measure producer support to continue the marketing order. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of raisins represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary should not only consider the results of the referendum but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, in the event of an adverse vote by producers in a continuance referendum, the Secretary may solicit input from the public through meetings, press releases, or other means.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate the order whenever the Secretary finds that the majority of all producers favor termination, and that such majority produced more than 50 percent of the commodity for market. To be effective, termination of the order, resulting from any referendum, should be announced on or before the last day of the then current crop year. The crop year ends July 31. This date precedes the beginning of the Committee's operation for a new crop year and is considered to be an appropriate time to gradually terminate the operations of the order.

As stated, the Secretary's "Guidelines For Fruit, Vegetable, and Specialty Crop Marketing Orders" provide for periodic referenda to allow producers the opportunity to indicate their support for or rejection of a marketing order. It is the position of the Department that periodic referenda ensure that marketing order programs continue to be accountable to their producers, obligate producers to evaluate their programs periodically, and involve them more closely in their operation. The record evidence supports these goals.

Section 989.91(d) has been revised in this recommended decision for clarity and to reflect language more common to marketing order provisions in other orders that provide for continuance referenda.

Rulings on Briefs of Interested Persons

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

Upon the basis of the record it is found that:

(1) The findings hereinafter set forth are supplementary to the previous findings and determination which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determination may be in conflict with the findings and determinations set forth herein, all of the said prior findings and determination are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of raisins grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(5) All handling of raisins grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Raisins, Grapes, California.

Recommended Further Amendment of the Marketing Agreement and Order

The following amendment of the marketing agreement and order, both as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

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

2. Section 989.28 is revised as follows:

§ 989.28 Term of office.

The term of office of all representatives serving on the committee shall be two years and shall end on April 30 of even numbered calendar years, but each such member and alternate member shall continue to serve until their successor is selected and has qualified. Beginning with the 1990 term of office, no member shall serve more than three full consecutive terms: *Provided,* That members serving three consecutive terms could again become eligible to serve on the committee by not serving for one full term as either a member or alternate member.

3. Section 989.29 is amended by revising paragraph (b)(2) and paragraph (b)(4) as follows:

§ 989.29 Initial members and nomination of successor members.

* * * * *

(b) * * *

* * * * *

(2)(i) Any producer representing independent producers and producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year must have produced grapes which were made into raisins in the particular district for which they are nominated, to represent said district as a producer member or alternate producer member on the committee. In the event any such nominees are engaged as producers in more than one district they may be a nominee for only one district. One or more producers may be nominated for each such producer member or alternate member position.

(ii) Each such producer whose name is offered in nomination shall be given the opportunity to provide the committee a short statement outlining their qualifications and desire to represent on the committee independent producers or producers who are affiliated with cooperative marketing associations handling less than 10 percent of the total raisin acquisitions during the preceding crop year. These brief statements, together with a ballot and voting instructions, shall be mailed to all independent producers and producers who are affiliated with cooperative marketing associations handling less than 10 percent of the total raisin acquisitions during the preceding crop year of record with the committee in each district. The producer receiving the highest number of votes shall be designated as the first member nominee, the second highest shall be designated as the second member nominee or alternate member nominee, as the case may be, until nominees for all member and alternate member positions have been filled.

(iii) Each independent producer and producers affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. Write-in candidates shall be accepted. The person receiving the most votes with respect to each position to be filled, in accordance with paragraph (b)(2)(ii) of this section, shall be the person to be certified to the Secretary as the nominee. The committee may, subject to the approval of the Secretary, establish rules and regulations to effectuate this section.

* * * * *

(4) Each vote cast shall be on behalf of the person voting, the person's agent, subsidiaries, affiliates, and representatives. Voting at each handler meeting shall be in person. The results of each ballot at each handler meeting shall be announced at that meeting.

* * * * *

4. Section 989.39 is revised as follows:

§ 989.39 Compensation and expenses.

The members and alternate members of the committee shall serve without compensation, but shall be allowed their necessary expenses as approved by the committee.

5. Section 989.56 is amended by revising paragraphs (a) and (c) as follows:

§ 989.56 Raisin diversion program.

(a) *Announcement of program.* On or before November 30 of each crop year, the committee shall hold a meeting to review production data, supply data, demand data, including anticipated demand to all potential market outlets, desirable carryout inventory and other

matters relating to the quantity of raisins of all varietal types. When the committee determines that raisins exist in the reserve pool in excess of projected market needs for any varietal type, it may announce the amount of such tonnage eligible for diversion during the subsequent crop year. As the same time, the committee shall determine and announce to producers, handlers, and the cooperative bargaining association(s) the allowable harvest cost to be applicable to such diversion tonnage. A production cap of 2.75 tons of raisins per acre shall be established for any production unit approved for participation in a diversion program. The committee, with the approval of the Secretary, may recommend at the same time that the diversion tonnage for that season is announced, a change in the production cap for that season's diversion program of less than 2.75 tons per acre for any production unit approved for the diversion program.

* * * * *

(c) *Issuance of diversion certificates.* After the committee announces a raisin diversion program, any producer may divert grapes of their own production and receive from the committee a diversion certificate in accordance with the applicable rules and regulations. Such certificates may only be submitted by producers to handlers in accordance with applicable rules and regulations. Diversion certificates issued by the committee shall apply to a specific production unit and shall be equal to the creditable fruit weight, not to exceed the production cap established pursuant to paragraph (a) of this section, of such raisins produced on such unit during the prior crop year or the last prior crop year eligible for such diversion: *Provided,* That in the case of a production unit, or partial production unit, removed from production through vine removal or other means established by the committee, it may issue a diversion certificate in an amount greater than the creditable fruit weight of the raisins produced therein or the production cap applicable.

* * * * *

6. Section 989.66 is amended by revising paragraphs (b)(1), (b)(4), and (d) as follows:

§ 989.66 reserve tonnage generally.

* * * * *

(b)(1) Each handler shall hold in storage all reserve tonnage raisins acquired by such handler and all reserve tonnage transferred to such handler by the committee until such handler has been relieved of such responsibility by the committee, either by delivery to the committee or otherwise. Such handler shall store such reserve tonnage raisins in such manner as will maintain the raisins in the same condition as when such handler acquired them, except for normal and natural deterioration and shrinkage, and except for loss through fire, acts of God or other conditions beyond the handler's control.

* * * * *

(4) The committee may, after giving reasonable notice, require a handler to deliver to it, or to anyone designated by it, at such handler's warehouse or at such other place as the raisins may be stored, part or all of the reserve tonnage raisins held by such handler. Reserve tonnage raisins delivered by any handler to the committee, or to any person designated by it, in the form of natural condition raisins shall in the aggregate be not more than 2 percent less than the average maturity quality of all raisins such handler acquired during the applicable crop year. The committee may require that such delivery consist of natural condition raisins with the bloom still visible, or it may arrange for such delivery to consist of packed raisins.

* * * * *

(d) Reserve tonnage raisins delivered by any handler to the committee, or to any person designated by it, whether in the form of natural condition raisins with the bloom still visible or packed raisins shall meet the applicable minimum grade and condition standards, except for normal and natural deterioration. The committee shall have the authority to require, in its discretion and at its expense, such reinspection and certification of reserve pool tonnage raisins as it may deem necessary.

* * * * *

7. Section 989.67 is amended by revising paragraph (g) as follows:

§ 989.67 Disposal of reserve raisins.

* * * * *

(g)(1) The committee may, subject to review by the Secretary, refuse to sell reserve tonnage raisins for export:

(i) To any handler who is in default on any previous purchase of reserve tonnage raisins from the committee; (ii) to any handler currently not in compliance with the provisions of a sales agreement covering reserve tonnage raisins, executed by such handler with the committee; or

(iii) To any handler who signifies an intention to sell reserve tonnage to or through any person who has previously failed to complete a sale of reserve tonnage raisins to a foreign buyer and such raisins remain to be exported and remain unsold to any foreign buyer in an eligible export market.

(2) Handlers who are in default of timely payment under any purchase agreement are subject to an interest and late payment charge(s) recommended by the committee and approved by the Secretary on the delinquent amount that is owed the committee. The interest charge shall be the current prime rate plus 2 percent established by the bank in which the committee has its administrative assessment funds deposited, on the day the amount owed becomes delinquent; and further, that such rate of interest be added to the bill monthly until the handler's delinquent amount owed plus applicable interest has been paid: *Provided,* That the committee, with the approval of the Secretary, may recommend changes in the rate of interest to another rate of interest. When the committee determines to change the rate of interest or a late payment charge is needed, and such change is approved by the Secretary, the committee shall announce the change in the rate of interest or the rate of late payment charge through a mailing by the committee to handlers.

(3) *Appeals.* If a determination is made by the committee that a handler has not complied with the provisions of this section and any actions allowed under this section are taken against the handler, such handler may request a hearing before an appeals subcommittee established by the committee. If the handler disagrees with the subcommittee's decisions, the handler may request the committee to review the subcommittee's decision. The committee may, subject to the approval of the Secretary, establish additional procedures concerning appeals procedures.

* * * * *

8. Section 989.91 is amended by redesignating and revising paragraph (d) as paragraph (e), and adding a new paragraph (d) as follows:

§ 989.91 Suspension or termination.

* * * * *

(d) The Secretary shall conduct a referendum in crop year 1993–94 and every six years thereafter to ascertain whether continuance of this amended subpart is favored by raisin producers. The Secretary may terminate the provisions of this amend subpart at the end of any crop year in which the Secretary has found that continuance of this subpart is not favored by producers, who during a representative period determined by the Secretary, have been engaged in the production for market of grapes used in the production of raisins

in the State of California. Such termination shall be effective only if announced before July 31 of the then current crop year.

(e) The provisions of the amended subpart shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

Dated: July 21, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-16997 Filed 7-27-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 111

Proposed Customs Regulations Amendment Regarding Requirements for Maintaining Customs Brokers Licenses

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by requiring that all Customs brokers licenses issued after September 30, 1988, will be subject to a condition that the licensee must become qualified for the operational use of the Automated Broker Interface (ABI) portion of the Customs Automated Commercial System (ACS) within a reasonable time after receiving the license and that the licensee maintain such qualification. The document provides methods by which a licensee can demonstrate such ABI qualification. It also provides that all Customs brokers licensed after September 30, 1988, will be required to transmit the entry data elements on imported merchandise to Customs through the use of the Automated Broker Interface (ABI) portion of the Customs Automated Commercial System (ACS) prior to filing an entry/entry summary. The failure to meet these requirements would serve as a basis for revocation of such license. Conversion to this system would remain voluntary for brokers licensed before October 1, 1988, and all non-Customs broker entry filers. This change is necessary in order to better utilize ACS and to permit Customs to handle the anticipated increase in entry workload. It will allow entries to be processed quicker and merchandise released earlier. Customs will be able to more effectively and efficienctly process cargo, deploy staff and discharge other functions than is possible with the current manual system.

DATE: Comments must be received on or befors September 26, 1988.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations & Disclosure Law Branch, Room 2324, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Robert Stenstrom, Office of Automated Commercial Systems Operations (202-343-0780).

SUPPLEMENTARY INFORMATION:

Background

The Automated Commercial System (ACS), inaugurated on February 1, 1984, is an integrated commercial system designed to handle a variety of needs for the importing community and Customs. It is a comprehensive tracking system which covers the various aspects of Customs commercial cargo activities. It permits a more efficient and effective processing of cargo, deployment of staff and the discharge of Customs functions than is possible with the current manual system. The selectivity part of ACS permits the targeting of high risk shipments and the examination of a lower percentage of freight with the resultant quicker release of cargo. The ACS line release system currently being deployed on both the northern and southern borders of the U.S. accelerates the release of low-risk repetitive shipments. ACS will also replace the current paper and labor intensive systems of tracking manifests with an Automated Manifest System (AMS). When fully integrated with the other modules of ACS, the AMS will eliminate the transmittal of paper manifests and it will automatically perform many of the clerical functions performed by Customs personnel.

The Automated Broker Interface (ABI) feature of ACS allows anyone who moves or releases cargo, makes entries, files protests, incurs penalties or has merchandise seized, pays or obtains refunds or duties, or conducts any other international business, to interface with ACS. Import trade processing requirements can be facilitated by using the interface to transmit entry data which can be pre-processed and returned to the entry filer.

There has been extensive participation in ABI by the trade. The number of Customs brokers qualified for operational use of the interface has significantly increased in the last two years. There are currently over 700 participants in the ABI program which are operationally qualified or are in the process of becoming operationally qualified.

In order to better utilize the system and to permit Customs to handle the anticipated significant increased volume of entries, it will be desirable for Customs to receive at least 90 percent of the entry volume data for pre-processing. The interface between the trade community and Customs will become even more critical with specialized situations, *e.g.*, quota processing, on-line tariff classification updating. We have thus concluded that the use of the ACS/ABI is very desirable to both the trade community and Customs.

Proposed Action

For the above reasons it is proposed to make the use of the ABI portion of the ACS mandatory for those brokers licensed after September 30, 1988. Customs brokers so licensed will be required to become qualified for the operational use of ABI within a reasonable time after the license is issued and to maintain such qualification. These brokers will be required to transmit the entry data elements on imported merchandise to Customs through the use of the Automated Broker Interface portion of the Automated Commercial System. The failure to meet these requirements would serve as a basis for revocation of the subject brokers licenses. Since Customs believes that commercial necessity will eventually dictate adoption of the ACS/ABI data handling procedures throughout the trade, brokers licensed before October 1, 1988, and all non-Customs broker entry filers would be permitted to voluntarily adopt the procedures as soon as they are prepared to do so.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2324, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that, if adopted, the proposed amendment will not have a

significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact anlaysis has been prepared.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations & Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 111

Administrative practice and procedures, Brokers, Customs duties and inspection, Imports.

Proposed Amendment

PART 111—CUSTOMS BROKERS

1. The authority citation for Part 111, Customs Regulations (19 CFR Part 111), would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Headnote 11), 1624, 1641.

2. It is proposed to amend Part 111 by adding a new § 111.20 to read as follows:

§ 111.20 ABI qualification requirements

Each Broker licensed after September 30, 1988, must establish, within a reasonable time after receiving a license, as determined by the district director, that he is qualified for the operational use of the Automated Broker Interface (ABI) portion of the Automated Commercial System (ACS) and he maintains that qualification. Being qualified means transmitting the entry data elements on imported merchandise to Customs through the interface in accord with ABI performance requirements and implementation procedures following Customs prescribed data element standards, data communications specifications and requisite hardware/software capabilities. However, brokers licensed after September 30, 1988, who work for another broker licensee or who file acceptable entries with Customs by utilizing a private service center, need not be individually ABI qualified.

3. It is proposed to amend § 111.53 by revising the introductory paragraph and adding a new paragraph (g) to read as follows:

§ 111.53 Grounds for suspension or revocation of license or permit or monetary penalty in lieu thereof.

The appropriate Customs official may suspend for a specific period of time, or revoke the license or permit of any broker or assess a montary penalty in lieu of suspension or revocation, for the following reasons:

* * * * *

(g) The broker was licensed after September 30, 1988, and fails either to-

(1) Become qualified for the operational use of the Automated Broker Interface (ABI) portion of the Customs Automated Commercial System (ACS) within a reasonable time after receiving his license, as determined by the district director, or

(2) Fails to maintain that qualification (see § 111.20).

William von Raab

Commissioner of Customs.

Approved: June 24, 1988.

John P. Simpson,

Acting Assistant Secretary, (Enforcement).

[FR Doc. 88-17001 Filed 7-27-88; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3420-8]

Presque Isle Superfund Site; National Priorities List Deletion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete a site from the national priorities list (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete a site from the National Priorities List (NPL) and requests public comments. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

DATE: Comments concerning the site may be submitted on or before August 29, 1988.

ADDRESSES: Comments may be mailed to the Regional Docket. Comprehensive information on the site is maintained and availble through the EPA Regional Docket clerk.

The Regional Docket is located at the U.S. EPA Region III Office and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. Requests for copies of the information from the Regional public docket should be directed to the EPA headquarters Docket Office. A local docket is located at the Erie County Library—Presque Isle Branch.

Addresses for the Regional and Local Docket Offices are:

U.S. EPA Region III, 841 Chestnut Street, Philadelphia, PA 19107;

Erie County Library, Presque Isle Branch, 902 W. Erie Place, Erie, PA 16505.

FOR FURTHER INFORMATION CONTACT: Patricia Tan, SARA Special Site Section, 3HW17, Region III, Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107.

SUPPLEMENTARY INFORMATION: .

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete The Presque Isle Superfund Site from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that future conditions at the site warrant such action.

EPA intends to delete The Presque Isle Site from the NPL. The EPA will accept comments on this site for thirty days after publication of this notice in the **"Federal Register."**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL, as published in the **"Federal Register"** on November 20, 1985 (50 FR 47912). Section 300.66(c)(7) of the NCP provides that sites

* * * may be deleted from or recategorized in the NPL where no further response is appropriate.

In making this determination EPA will consider whether any of the following criteria has been met:

(I) EPA in consultation with the State has determined that responsible or other parties have implemented all appropriate response actions required.

(II) All appropriate Fund-financed response under CERCLA has been implemented and EPA in consultation with the State has determined that no further cleanup by responsible parties is appropriate; or

(III) Based on a remedial investigation, EPA in consultation with the State has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedical measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary is protective of public health, welfare, and the environment considering environmental requirements that are applicable or relevant and appropriate at the time of the deletion.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in Section II of this notice, § 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA will solicit public comment on the proposed deletion of The Presque Isle Site for thirty days. The comments received during the notice and comment period will be evaluated before the final decision to delete is made.

A decision will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **"Federal Register."** The NPL will reflect any deletion in the next update. Public notices and copies of the responsiveness summary will be made available to the local residents by the Regional Office.

IV. Basis for Intended Site Deletion

The Presque Isle Site is located on the Presque Isle State Park peninsula and within the City of Erie, Erie County, Pennsylvania. In the early 1970s, the Erie County Health Department noted a seep at the site discharging a noxious, hydrogen sulfide-bearing, black liquid. This discharge resulted in air, soil, and shallow groundwater contamination. The site was proposed for inclusion on the NPL on December 30, 1982, and appeared on the final NPL on September 8, 1983.

Investigation by the Pennsylvania Department of Environmental Resources (PADER) from 1979 to 1982 revealed that the source of the discharge was an unplugged, abandoned natural gas well that interecepted a geologic formation known as the Bass Island Formation. This gas well was buried at the time the discharge was first noticed and was orginally described as a "seep". A central issue of the investigations to date has been whether the fluid discharging from the Bass Island Formation is a natural brine or is related to the deep-well injection of wastes by the nearby Hammermill Paper Company.

Hammermil Paper Company operated three underground injection wells betwen 1964 and 1971 and injected 1.1 billion gallons of neutral sulfite pulping liquor waste into the Bass Island Formation. Based on initial information, PADER felt that there was a reasonable cause-and-effect relationship between Hammermill's injection program and the discharge at the Presque Isle Site.

PADER contacted the U.S. Environmental Protection Agency (EPA) Region III in 1982 for sampling assistance while the plugging of the Beach No. 7 well took place. The site was placed on the NPL in September 1983 because of the potential for similar releases from other improperly plugged oil and gas wells in the surrounding area.

EPA, with the concurrence of the Commonwealth of Pennsylvania, has determined that the discharge at the Presque Isle abandoned natural gas well was an unusual event and that the threat to public health was eliminated when the well was permanently plugged in 1982. Based on current information, no significant contamination is present at the site and, therefore, a no-action alternative has been selected. A no-action selected alternative is considered a completion of the remedial process.

Date: July 21, 1988

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 88-17028 Filed 7-27-1988; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6930]

Proposed Flood Elevation Determinations; Georgia et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (10-year) flood elevations listed below for selected locations in the Nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the Nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new

buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as folows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Georgia	Unincorporated areas of Fulton County.	Foe Killer Creek	Just downstream Old Roswell Road	None	*967
			About 0.9 mile upstream of Old Roswell Road	None	*997
Maps available for inspection at the Department of Public Works, 300 Administration Building, 165 Central Avenue, SW., Atlanta, Georgia. Send comments to The Honorable Sam Brownlee, County Manager, Fulton County, 207 Administration Building, 165 Central Avenue, SW., Atlanta, Georgia 30335.					
Georgia	City of Statesboro, Bulloch County.	Little Lotts Creek	About 2,800 feet downstream of the confluence of Little Lotts Creek Tributary A.	*187	*187
			About 600 feet downstream of Gentilly Road	*198	*195
			Just downstream of West Parrish Street	*235	*235
		Little Lotts Creek	At mouth	*191	*189
		Tributary A	About 800 feet upstream of Windsor Way	*191	*191
		Little Lotts Creek	At mouth	*193	*190
		Tributary B	About 1,500 feet upstream of mouth	*193	*193
		Little Lotts Creek	At mouth	*216	*213
		Tributary G	About 350 feet upstream of mouth	*219	*219
Maps available for inspection at the City Hall, Statesboro, Georgia. Send comments to The Honorable J. Thurman Lanier, Mayor, City of Statesboro, City Hall, P.O. Box 348, Statesboro, Georgia 30458.					
Kansas	City of Winfield, Cowley County.	Black Crook Creek	About 950 feet downstream of Nineteenth Avenue.	None	*1,123
			Just upstream of Union Pacific Railroad	*1,132	*1,132
			About 1,400 feet upstream of Simpson Avenue	*1,159	*1,159
			About 1,900 feet upstream of Simpson Avenue	None	*1,162
		Walnut River	About 0.91 mile downstream of Main Street	None	*1,121
			About 3,900 feet downstream of Main Street	*1,121	*1,121
Maps available for inspection at the Planning and Engineering Department, 200 East Ninth, Winfield, Kansas. Send comments to The Honorable Don Drennan, Mayor, City of Winfield, P.O. Box 646, Winfield, Kansas 67156.					
Louisiana	Patterson, town, St. Mary Parish.	Wax Lake East	Intersection of Lucia Drive and David Street	None	*3
			Intersection of Pietro Drive and Bernard Drive	None	*3
Maps available for inspection at the Town Hall, 203 Park Street, Patterson, Louisiana. Send comments to The Honorable Fred Allen Mensman, Mayor of the Town of Patterson, St. Mary Parish, Town Hall, 203 Park Street, Patterson, Louisiana 70392.					
Minnesota	City of Proctor, St. Louis County.	Kingsbury Creek	Just upstream of Boundary Avenue	*1,190	*1,191
			Just upstream of Second Street	*1,235	*1,231
			Just downstream of Ugstad Road	*1,242	*1,244
Maps available for inspection at the City Hall, 200 Second Street, Proctor, Minnesota. Send comments to The Honorable Jake Benson, Mayor, City of Proctor, City Hall, 200 Second Street, Proctor, Minnesota 55810.					
Minnesota	City of Windom, Cottonwood County.	Perkins Creek	Just downstream of Sixth Avenue	*1,354	*1,354
			Just downstream of U.S. Highway 71	*1,359	*1,359
			Just upstream of U.S. Highway 71	*1,360	*1,364
			About 2,100 feet upstream of U.S. Highway 71	None	*1,367
Maps available for inspection at the City Hall, 444 Ninth Street, Windom, Minnesota. Send comments to The Honorable John L. Galle, Sr., Mayor, City of Windom, City Hall, 444 Ninth Street, P.O. Box 38, Windom, Minnesota 56101.					
New York	Clay, town, Onondago County.	Mud Creek	At upstream side of Verplank Road	*372	*370

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			At downstream side of downstream crossing of State Route 481.	*374	*370
			At corporate limits	None	*375

Maps available for inspection at the Town Hall, 4483, Route 31, Clay, New York.

Send comments to The Honorable Patrick DiDomenico, Supervisor of the Town of Clay, Onondago County, 4483, Route 31, Clay, New York 13041.

North Carolina	Town of Farmville, Pitt County.	Little Contentnea Creek	About 2,200 feet downstream of SR 1221	None	*58
			About 4,200 feet upstream of U.S. Route 258	*67	*69

Maps available for inspection at the Town Planners Office, 121 North Main Street, Farmville, North Carolina.

Send comments to The Honorable Edna E. Baker, Mayor, Town of Farmville, 124 North Main Street, P.O. Box 86, Farmville, North Carolina 27828.

Oregon	City of Albany, Linn and Benton Counties.	Cox Creek	Approximately 300 feet downstream of Southern Pacific Railroad.	**None	*199
			Approximately 50 Feet downstream of Salem Avenue.	**None	*199
			Approximately 100 feet upstream of Salem Avenue.	**None	*203
			Approximately 100 feet upstream of Pacific Boulevard.	**None	*204
			Approximately 400 feet upstream of Pacific Boulevard.	**None	*211
			Approximately 50 feet downstream of Bain Street.	**None	*212
			Approximately 50 feet upstream of Bain Street	**None	*214
			Just upstream of Highway 5	**None	*216

**Approximate Zone A.

Maps are available for review at City Hall, Planning Department, 127 Broadalbin, S.W., Albany, Oregon.

Send comments to The Honorable Thomas Holman, City of Albany, City Hall, P.O. Box 490, Albany, Oregon 97321.

Pennsylvania	Upper St. Clair, township, Allegheny County.	Chartiers Creek	Approximately 5,200 feet upstream of corporate limits.	*836	*837
			Approximately 6,400 feet upstream of corporate limits.	*837	*838

Maps available for inspection at the Municipal Building, 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania.

Send comments to The Honorable Douglas A. Watkins, Manager of the Township of Upper St. Clair, Allegheny County, 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania 15241.

Texas	Bexar County, unincorporated areas.	Balcones Creek	At confluence with Cibolo Creek	None	*1,271
			Approximately 1.6 miles upstream of confluence with Cibolo Creek.	None	*1,290
		Cibolo Creek	At Interstate Route 10/U.S. Route 90	None	*621
			Approximately 1.5 miles upstream of Schaeffer Road.	None	*690
			Approximately 2,000 feet downstream of Missouri-Kansas-Texas Railroad.	None	*760
			Approximately 3.4 miles upstream of Missouri Pacific Railroad.	None	*830
			Approximately 8.8 miles upstream of Missouri Pacific Railroad.	None	*900
			Approximately 4,150 feet upstream of FM 1863	None	*970
			Approximately 1.9 miles downstream of U.S. Route 281.	None	*1,040
			Approximately 450 feet downstream of confluence of Kelley Creek.	None	*1,110
			Approximately 1.0 mile upstream of confluence of Kelley Creek.	None	*1,127
			Approximately 1.15 miles downstream of Ralph Fair Road.	None	*1,232
			Approximately 1,200 feet upstream of confluence of Balcones Creek.	None	*1,272
		Huebner Creek	Approximately 200 feet upstream of corporate limits and Ingram Road.	*765	*763
		Leon Creek	Approximately 850 feet upstream of Ingram Road.	*766	*765
			Approximately 1,275 feet upstream of Ingram Road.	*767	*766
			Approximately 5,500 feet downstream of Bandera Road.	*814	*813
			Approximately 75 feet upstream of Bandera Road.	*839	*838
			Approximately 700 feet upstream of West Prue Road.	*895	*892

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 50 feet downstream of Babcock Road.	*918	*917
		Medio Creek	Upstream face of U.S. Highway 90 (Limit of Detailed Study).	*696	*703
			Approximately 3.07 miles upstream of U.S. Highway 90.	*744	*743
		Slick Ranch Creek	Approximately 6,500 feet downstream of Potranco Road (FM 1957).	*760	*758
			Approximately 1,000 feet downstream of Potranco Road (FM 1957).	*778	*766
			Approximately 3,000 feet upstream of Potranco Road (FM 1957).	*794	*793
		Salado Creek	At the upstream corporate limits	*853	*850
			Approximately 1.8 miles (9,400 feet) downstream of Blanco Road.	*803	*802
		West Fork Olmos Creek	Approximately 325 feet downstream of Red Maple Wood Lane.	*937	*938
			Approximately 2,330 feet upstream of Red Maple Wood Lane.	*963	*962
Maps available for inspection at the Bexar County Courthouse, Commissioners Court, Suite 101, San Antonio, Texas.					
Send comments to The Honorable Tom Vickers, Bexar County Judge, Bexar County Courthouse, Commissioners Court, Suite 101, San Antonio, Texas 78205.					
Texas	Corpus Christi, city, Nueces and Kelberg Counties.	Oso Bay Tributary No. 2	Approximately 1,000 feet downstream of Rodd Field Road.	*10	*11
			Approximately 100 feet downstream of Wooldridge Road.	*14	*15
Maps available for inspection at the City Hall, 1201 Leopard Street, Corpus Christi, Texas 78469.					
Send comments to The Honorable Betty Turner, Mayor of the City of Corpus Christi, Neuces and Kleberg Counties, P.O. Box 9277, Corpus Christi, Texas.					
Texas	Raymondville, city, Willacy County.	Shallow flooding	Missouri-Pacific Railroad east to corporate limits.	*33	*1
Maps available for inspection at the City Hall, 142 South 7th Street, Raymondville, Texas.					
Send comments to The Honorable C. M. Crowell, Mayor of the City of Raymondville, Willacy County, 142 South 7th Street, Raymondville, Texas 78580-2591.					
Virginia	Marion, town, Smyth County.	Staley Creek	Approximately 190 feet upstream from Matson Drive.	*2,173	*2,172
			At corporate limits	*2,196	*2,198
Maps available for inspection at the Municipal Building, 138 West Main Street, Marion, Virginia.					
Send comments to The Honorable Wilson W. Scott, Jr., Mayor of the Town of Marion, Smyth County, P.O. Box 1005, Marion, Virginia 24354.					
Virginia	Norton, city, Independent City.	Powell River	At corporate limits	None	*2,015
			Approximately .76 mile upstream of State Route 610.	None	*2,037
Maps available for inspection at the Municipal Building, 618 Virginia Avenue, Norton, Virginia.					
Send comments to The Honorable Cliff Daniels, Mayor of the City of Norton, Municipal Building, P.O. Box 618, Norton, Virginia 24273-0618.					
Virginia	Smyth County	Staley Creek	At corporate limits	*2,196	*2,196
			Approximately 1,700 feet upstream from corporate limits.	*2,209	*2,210
Maps available for inspection at the Building Inspection Department, Smyth County Courthouse, Main Street, Marion, Virginia.					
Send comments to The Honorable Fred B. Frye, Chairman of the Smyth County Board of Supervisors, P.O. Box 188, Marion, Virginia 24354.					

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: July 20, 1988.

[FR Doc. 88-16988 Filed 7-27-88; 8:45 am]

BILLING CODE 6718-03-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-No. 19)]

Increasing the Offer of Financial Assistance Purchase Price To Compensate for Tax Liability Incurred on the Sale of Personal Property

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is seeking public comment on whether a carrier-vendor should be compensated for the tax liability it will incur upon the sale of personal property in a forced sale under the financial assistance procedures of 49 U.S.C. 10905 if in the absence of the forced sale, the carrier would have used the personal property attributable to the abandonment elsewhere on its system.

DATE: Comments are due by August 29, 1988.

ADDRESSES: Send an original and 10 copies of pleadings referring to Ex Parte No. 274 (Sub–No. 19) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: Under the financial assistance provisions of 49 U.S.C. 10905 and 49 CFR 1152.27, the Commission may be requested to establish the price and other conditions for the purchase of a railroad line that has been authorized by the Commission to be abandoned. In doing so, the Commission may not set a purchase price that is below the fair market value of the line. 49 CFR 1152.27(h)(6). In *Chicago and North Western Transp. Co.—Abandonment*, 363 I.C.C. 956 (1981) (*Lake Geneva Line*), *aff'd sub nom. Chicago & North Western Transp. Co.* v. *ICC*, 678 F.2d 665 (7th Cir. 1982), we first addressed the issue of what constitutes fair market value. We determined and have since adhered to the view that, in the absence of a higher going concern value for continued rail use, the proper valuation standard in proceedings under section 10905 is the net liquidation value (NLV) of the rail properties for their highest and best non-rail use. NLV is based on real estate value plus salvage value of track and materials less removal costs. *Lake Geneva Line*, *supra*.

In Docket No. AB–19 (Sub–No. 125X), *The Baltimore and O. R. Co.—Exemp.—Aband. in Harrison, Doddridge, Ritchie and Wood Counties, WV* (not printed), served February 5, 1988, CSX Transportation, Inc. (CSXT), the abandoning carrier, argued that, in a forced sale under the financial assistance procedures, a railroad should be compensated for the tax liability it would incur from the sale of personal property (*e.g.*, the tracks) that would not otherwise have been sold.[1] Specifically, CSXT argued that the purchase price, determined by NLV, should have included compensation for the extra income taxes it would incur as a result of selling track and material that it would have reused in its system. We did not resolve the issue because CSXT failed to submit the financial data necessary to permit the appropriate calculations.

We seek comment from interested persons on whether to initiate a rulemaking proceeding to consider including the tax consequences arising from a section 10905 sale in the purchase price of a rail line. Comments should include a discussion of the legal analysis appropriate to resolving the issues presented. Parties should address the relevance of general condemnation law precedent to this transaction. Relevant policy discussion is invited, and other approaches to resolving the issue may also be suggested. Parties may also wish to address whether it is possible to predict with reasonable accuracy the tax liability that would be incurred from a particular property sale, and if so how that might be done.

This action will not significantly affect either the quality of the human environment or energy conservation. However, comments regarding environmental and energy issues, if any, should be included in the statements filed with the Commission.

List of Subjects in 49 CFR Part 1152

Financial Assistance Procedures.

This notice is issued under the authority of 49 U.S.C. 10321, 10362, 10903, 10904, and 10905, and 5 U.S.C. 553.

Dated: July 21, 1988.

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

Noreta R. McGee,

Secretary.

[FR Doc. 88–16691 Filed 7–27–88; 8.45 am]

BILLING CODE 7035–01–M

[1] The issue was also raised in Docket No. AB–19 (Sub–No. 134X), *The Baltimore and Ohio Railroad Company—Abandonment in Ross County, OH (not printed), served November 6, 1986.*

Notices

Federal Register
Vol. 53, No. 145
Thursday, July 28, 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.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 22, 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 the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, ORIM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

- Farmers Home Administration
- 7 CFR 1946–A, Agriculture Loan Mediation Program
- On occasion; Annually
- State or local governments; 70 responses; 370 hours
- Jack Holston (202) 382–9736
- Rural Electrification Administration
- 7 CFR Part 1754, Advance and Disbursement of Funds—Telephone Loan Program
- REA Forms 481 and 675
- On occasion
- Small businesses or organizations; 1,570 responses; 2,154 hours
- John D. Soma (202) 382–8529
- National Agricultural Statistics Service
- Agriculture Labor Survey
- Quarterly
- Farms; Businesses or other for-profit; 55,960 responses; 16,828 hours
- Larry Gambrell (202) 447–7737

Reinstatement

- Farmers Home Administration
- Application for FmHA Services
- FmHA 410–1
- On occasion
- Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 80,000 responses; 80,000 hours
- Jack Holston (202) 382–9736

New Collection

- Farmers Home Administration
- 7 CFR Part 1942–G, Industrial Development Grants
- Recordkeeping; On occasion; Monthly; Quarterly
- State or local governments; Non-profit institutions; Small businesses or organizations; 1,130 responses; 2,410 hours
- Jack Holston (202) 382–9736
- Food and Nutrition Service
- Simplified Application/Standardized Benefit Projects
- On occasion; Annually
- Individuals or households; State or local governments; Federal agencies or employees; 20 responses; 980 hours
- Pat Hagen (703) 756–3387
- Forest Service
- Application for the Senior Community Service Employment Program
- FS–1300–21b
- On occasion; Annually
- Individuals or households; 6,500 responses, 1,083 hours
- Guanda Veney-Fitch (202) 447–8259
- Agricultural Marketing Service
- Decision and National Plan on Proposed Watermelon Research and Promotion Plan
- One-time Report
- Farms; Businesses or other for-profit; 7,000 responses; 1,750 hours
- Tom Tichenor (202) 475–3930

Extension

- Food and Nutrition Service
- Integrated Quality Control Review Schedule (Reporting and Recordkeeping)
- FNS 380–1
- Recordkeeping
- Individuals or households; State or local governments; 68,700 responses; 70,321 hours
- Thomas O'Connell (703) 756–3470
- Food and Nutrition Service
- Integrated Quality Control Review Worksheet (Reporting and Recordkeeping)
- FNS–380
- Recordkeeping; On occasion
- Individuals or households; State or local governments; 68,700 responses; 619,921 hours
- Thomas O'Connell (703) 756–3470
- National Agricultural Statistics Service
- Supplemental Qualification Statement
- With Application for Employment
- Individuals or households; 150 responses; 375 hours
- Larry Gambrell (202) 447–7737

Larry K. Roberson
Acting Departmental Clearance Officer.
[FR Doc. 88–16998 Filed 7–27–88; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Mono Basin National Forest Scenic Area; Minor Boundary Revision

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed boundary revisions.

SUMMARY: The Forest Service proposes two minor revisions in the boundary of the Mono Basin National Forest Scenic Area. To comply with direction contained in Sec. 301 of the California Wilderness Act of 1984 which established the Scenic Area, notice of proposed changes is being published in the **Federal Register.** In both proposed

revisions, additional land will be included in the Scenic Area. The effect is to add approximately 1457 acres of existing National Forest System land and approximately 60 acres of private land for a total addition of 1517 acres to the Scenic Area.

DATE: Comments must be received by August 29, 1988.

ADDRESS: Send written comments to John W. Ruopp (2370), Recreation Staff Officer, Inyo National Forest, 873 N. Main Street, Bishop, CA 93514. The public may inspect comments received on this proposed action in the office of the Recreation Planner, Recreation Staff at the above address, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nancy Upham, Scenic Area Manager, Lee Vining, CA (619) 647–6525, or John Ruopp, Recreation Staff Officer, Inyo National Forest, Bishop, CA (619) 873–5841.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the California Wilderness Act of 1984 (98 Stat. 1632) establishing the Mono Basin National Forest Scenic Area, the Forest Service proposes two minor revisions in the boundary of the Scenic Area as it was originally shown on a map dated June, 1983, and as it has been revised. These revisions will include parcels that were in private ownership at the time of the enabling legislation. Since then, one parcel has been purchased by a land exchange proponent and the other parcel is now National Forest System land. In both cases it is desirable to include the land within the Scenic Area. Maps showing the proposed revisions are available at the office of the Forest Supervisor, 873 N. Main, Bishop, CA and at the office of the District Ranger, Mono Lake Ranger District, Lee Vining, CA

Proposed Minor Boundary Revisions, Mono Basin National Forest Scenic Area

All Descriptions Are for the Mount Diablo Base Meridian

Revision 1

New Description

T1N R25E,
Sec. 1—All;
Sec. 2—E½NE¼.
T2N R25E,
Sec. 36—All.

Reason for Revision—This revision would include patented mining claims and an unpatented claim identified by Mineral Survey 6052 (10/22/1931), all of which were excluded from the Scenic Area by the enabling Act in 1984. Since that time, the property has been sold. The new owner has offered this parcel to the Forest Service in a land exchange proposal. The revision would add 177 acres of adjacent National Forest System Land and 60 acres of private land which will be added to the National Forest System by exchange. The parcel is of like character to the adjacent Scenic Area and is contained within the Scenic Area viewshed. Commercial mining has not taken place for many years. This inclusion would add approximately 237 acres to the Scenic Area.

Revision 2

New Description

T1N R27E,

Sec. 35—All;
Sec. 36—All.

Reason for Revision—Both sections are National Forest System lands. Section 36 was recently purchased and is added to the Scenic Area for protection and interpretation of portions of an old railroad grade which has cultural importance. Section 35 is added to provide a logical boundary between Section 36 and the original Scenic Area. The inclusion would add approximately 1280 acres of existing National Forest System land to the Scenic Area.

Dated: July 20, 1988.

Dennis W. Martin,

Forest Supervisor.

[FR Doc. 88–17049 Filed 7–27–88; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Commercial Space Advisory Committee; Partially Closed Meeting

AGENCY: Office of the Associate Deputy Secretary, Commerce.

SUMMARY: Pursuant to the **Federal Register** Notice of June 16, 1988, the Commercial Space Advisory Committee has been established to advise the Secretary of Commerce on matters of implementation and institutionalization of the National Space Policy and Commercial Space Initiative, as announced February 11, 1988, and to attempt to determine the most productive course to be taken by this country relating to its commercial space goals.

Time and place: August 12, 1988 from 9:00 a.m. to 4:00 p.m. The meeting will take place in the Secretary's Conference Room, U.S. Department of Commerce.

Agenda for open session: 9:00–11:30 a.m.

Members will receive and discuss briefing materials on the various sectors of the commercial space market and the President's National Space Policy and Commercial Space Initiative.

Closed session: 1:00–4:00 p.m.

SUPPLEMENTARY INFORMATION: The time and date of the Partially Closed Meeting for the Commercial Space Advisory Committee as announced in the **Federal Register** on July 20, 1988, is hereby changed to August 12, 1988 from 9:00–4:00, instead of July 29, 1988, from 9:30–4:00. There are no changes to the agenda or the meeting location.

FOR FURTHER INFORMATION CONTACT: Laura L. Boyle, Program Director, Office of Commercial Space Programs, U.S. Department of Commerce, Room 7064, Washington, DC 20230. Telephone: 202/377–8125.

Date: July 26, 1988.

Shellyn McCaffrey,

Associate Deputy Secretary

[FR Doc. 88–17174 Filed 7–27–88; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of Export Administration

Stefan L. Borbas, Individually and Doing Business as Austro Montan GmbH and Electronic Products GmbH; Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having determined to initiate an administrative proceeding against Stefan L. Borbas, individually and doing business as Austro Montan GmbH and Electronic Products GmbH (hereinafter collectively referred to as Borbas), pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app 2401–2420 (1982 and Supp. III 1985)) (the Act), and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1988)) (the Regulations);

The Department being prepared to allege that Borbas violated §§ 387.4, 387.5, and 387.6 of the Regulations, in that Borbas ordered a U.S.-origin semiconductor test system on or about October 31, 1979, indirectly filed a false statement of material fact with the Department in order to effect the system's export from the United States, and subsequently reexported the system from Austria to Rumania without obtaining from the Department the reexport authorization which Borbas knew or had reason to know was required by § 374.1 of the Regulations;

The Department and Borbas having entered into a Consent Agreement whereby the parties have agreed to settle this matter by the Department's denying Borbas' export privileges for a five-year period; and

The terms of the Consent Agreement having been approved by me;

It is therefore ordered,

First, Stefan L. Borbas, individually and doing business as Austro Montan GmbH and Electronic Products GmbH

(hereinafter collectively referred to as Borbas) shall be denied, for a period of five years following the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which Borbas appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all Borbas' privileges of participating, in any manner or capacity, in any special licensing procedure, including but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be applicable to any person, firm, corporation, or business organization with which Borbas is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Borbas or any related party, or whereby Borbas or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for Borbas or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

E. As authorized by § 388.16(c) of the Regulations, the denial period shall be suspended for a period of four years beginning one year from the date of this Order, and shall thereafter be waived provided that, during the period of suspension, Borbas has committed no violation of the Act or any regulation, order or license issued under the Act.

Second, by order of July 11, 1985 (50 FR 29244, July 18, 1985), Stefan L. Borbas, individually and doing business as Austro-Montan Warenhandelsgesellschaft, also known as Austro-Montan GmbH, was temporarily denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities and technical data. That temporary denial order was to remain in effect until the conclusion of the Department's investigation and final administrative disposition of the matter. This Order constitutes such final disposition relating to the matters which gave rise to the temporary denial order. Accordingly, the temporary denial order of July 11, 1985 will be superceded and revoked and the following entries shall be deleted from the Table of Denial Orders when this Order becomes effective:

Borbas, Stefan Ludwig, Individually and Doing Business as Austro-Montan Warenhandelsgesellchaft, Trattnerhoff 1, A–1010, Vienna, Austria

and

Austro-Montan Warenhandelsgesellchaft, Trattnerhoff 1, A–1010, Vienna, Austria

and

Electronic Products GmbH, Sankt Johangasse 1–5, A–1050, Vienna, Austria

From the effective date of this Order, this Order, and not the temporary denial order, will the basis for any entry concerning Stefan L. Borbas, Austro-Montan Warenhandelsgesellchaft, also known as Austro-Montan GmbH, and Electronic Products GmbH, on the Table of Denial Orders until modified (15 CFR Part 388 (Supp. No. 1, 1988).

This Order does not affect the status of the temporary denial order of July 11, 1985 (50 FR 29244, July 18, 1985) as it applies to and is effective against Sandor Ivady and Maria Ivady.

Third, that the proposed Charging Letter and the Consent Agreement shall be made available to the public, and this Order shall be published in the **Federal Register**.

This Order is effective immediately.

G. Philip Hughes,

Assistant Secretary, for Export Enforcement.

Entered this 21st day of July 1988.

[FR Doc. 88–17050 Filed 7–27–88; 8:45 am]

BILLING CODE 3510-DT-M

Friedrich Rodler, Individually and Doing Business as Austro Montan GmbH and Electronic Products GmbH; Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having determined to initiate an administrative proceeding against Friedrich Rodler, individaully and doing business as Austro Montan GmbH and Electronic Products GmbH (hereinafter collectively referred to as Rodler), pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (1982 and Supp. III 1985)) (the Act), and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1988)) (the Regulations);

The Department being prepared to allege that Rodler violated § 387.4, 387.5, and 387.6 of the Regulations, in that Rodler ordered a U.S.-origin semiconductor test system on or about October 31, 1979, indirectly filed a false statement of material fact with the Department in order to effect the system's export from the United States, and subsequently reexported the system from Austria to Rumania without

obtaining from the Department the reexport authorization which Rodler knew or had reason to know was required by § 374.1 of the Regulations;

The Department and Rodler having entered into a Consent Agreement whereby the parties have agreed to settle this matter by the Department's denying Rodler's export privileges for a five-year period; and

The terms of the Consent Agreement having been approved by me;

It is therefore ordered,

First, Friedrich Rodler, individually and doing business as Austro Montan GmbH and Electronic Products GmbH (hereinafter collectively referred to as Rodler) shall be denied, for a period of five years following the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which Rodler appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all Rodler's privileges of participating, in any manner or capacity, in any special licensing procedure, including but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be applicable to any person, firm, corporation, or business organization with which Rodler is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Rodler or any related party, or whereby Rodler or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for Rodler or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

E. As authorized by § 388.16(c) of the Regulations, the denial period shall be suspended for a period of four years beginning one year from the date of this Order, and shall thereafter be waived provided that, during the period of suspension, Rodler has committed no violation of the Act or any regulation, order or license issued under the Act.

Second, by order of July 11, 1985 (50 FR 29244, July 18, 1985), Friedrich Rodler, individually and doing business as Austro-Montan Warenhandelsgesellschaft, also known as Austro-Montan GmbH, was temporarily denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities and technical data. That temporary denial order awas to remain in effect until the conclusion of the Department's investigation and final administrative disposition of the matter. This order constitutes such final disposition relating to the matters which gave rise to the temporary denial order. Accordingly, the temporary denial order of July 11, 1985 will be superceded and revoked and the following entries shall be deleted from the Table of Denial Orders when this Order becomes effective:

Rodler, Friedrich, Individually and doing business as Austro-Montan Warenhandelsgesellchaft, Trattnerhoff 1, A–1010, Vienna, Austria

and

Austro-Montan Warenhandelsgesellchaft, Trattnerhoff 1, A–1010, Vienna, Austria

and

Electronic Products GmbH, Sankt Johangasse 1–5, A–1050, Vienna, Austria.

From the effective date of this Order, this Order, and not the temporary denial order, will be the basis for any entry concerning Friedrich Rodler, Austro-Montan Warenhandelsgesellchaft, also known as Austro-Montan GmbH, and Electronic Products GmbH, on the Table of Denial Orders until modified (15 CFR Part 388 (Supp. No. 1, 1988).

This Order does not affect the status of the temporary denial order of July 11, 1985 (50 FR 29244, July 18, 1985) as it applies to and is effective against Sandor Ivady and Maria Ivady.

Third, that the proposed Charging Letter and the Consent Agreement shall be made available to the public, and this Order shall be published in the **Federal Register.**

This Order is effective immediately.

G. Philip Hughes,

Assistant Secretary for Export Enforcement.

Entered this 21st day of July 1988.

[FR Doc. 88–17051 Filed 7–27–88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Initiation of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of initiation of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4733.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), and (a)(3) of the Commerce Regulations, for administrative reviews of various antidumping duty orders and findings.

Initiation of Reviews

In accordance with § 353.53a(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping duty orders and findings. We intend to issue the final results of these reviews no later than July 31, 1989.

Antidumping duty proceedings and firms	Periods to be reviewed
Canada: Oil Country Tubular Goods (A–122–506)	06/01/87–05/31/88
Christianson Pipe	
Frank Pipe	
Cappco	
Canada: Certain Red Raspberries (A–122–401)	06/01/87–05/31/88
B.C. Blueberry	
Jesse Processing	
Clearbrook Packers	
Valley Berries	
Mukhtiar & Sons	
Landgrow Fruit Packers	
Hungary: Tapered Roller Bearings and Parts (A–437–601)	02/06/87–05/31/88
MGM	
Japan: Fishnetting Of Man-Made Fibers (A–588–029)	06/01/87–05/31/88
Hakodate/Mitsui	
Benny Toyama	
Amikan	
PRC: Tapered Roller Bearings and Parts (A–570–601)	02/06/87–05/31/88
Premier Bearing	
Romania: Tapered Roller Bearings and Parts (A–485–602)	11/07/86–05/31/88
Technoimportexport	
Taiwan: Fireplace Mesh Panels (A–583–003)	06/01/87–05/31/88
Yeh Sheng	
Tahchung	
Taipoly	
Dalvey	

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c).

Dated: July 22, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–17019 Filed 7–27–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–021]

Cell-Site Transceivers and Related Subassemblies From Japan; Preliminary Results of Antidumping Duty Administrative Review and Tentative Revocation in Part

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and tentative revocation in part.

SUMMARY: In response to a request from one manufacturer/exporter the Department of Commerce has conducted an administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. The review covers one manufacturer/exporter of this merchandise to the U.S., Kokusai Electric Co., Ltd. ("Kokusai"), and the period January 1, 1987 through December 31, 1987. There were no known shipments of this merchandise to the United States by Kokusai during the period and there are no known unliquidated entries.

As a result of the review, the Department has tentatively determined to revoke the antidumping duty order in part.

Interested parties are invited to comment on these preliminary results and tentative revocation in part.

EFFECTIVE DATE: July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4195/3601.

SUPPLEMENTARY INFORMATION:

Background

On January 15, 1988 the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 1048) the final results of its last administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. Kokusai requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation on March 2, 1988 (53 FR 6681). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act.")

Scope of the Review

Imports covered by the review are cell-site transceivers and related subassemblies which are part of the radio frequency (RF) equipment in the base station of a cellular radio communications system. This single-package (RF) equipment functions as a locating receiver and provides simultaneous two-way voice and data communications between the base-

station and the subscriber's mobile telephone by using different frequencies to transmit and receive. Subassemblies are an assemblage of parts dedicated for use in cell-site transceivers as defined above. These products are currently classifiable under *Tariff Schedules of the United States Annotated* items 685.2810 and 685.2820 and Harmonized System item numbers 8525.20.15, 8525.20.20, and 8525.20.30. The Review covers one manufacturer/exporter of this merchandise to the U.S., Kokusai, and the period January 1, 1987 through December 31, 1987. There were no known shipments by Kokusai of this merchandise to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists:

Manufacturer/ exporter	Time period	Margin (percent)
Kokusai	1/1/87-12/31/87	[1] 0.08

[1] No shipments during the period; margin from last period in which there were shipments.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication.

Further, as provided for by section 751(a)(1) of the Tariff Act, since the margin for Kokusai is 0.08% and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for Kokusai. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1987 and who is unrelated to the reviewed firm, no cash deposit shall be required. These cash deposit requirements are effective for all shipments of Japanese cell-site transceivers and related subassemblies, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Kokusai requested partial revocation of the order and, as provided for in § 353.54(e) of the Commerce Regulations, has agreed in writing to an immediate suspension of liquidation and reinstatement in the order under circumstances specified in the written agreement. Kokusai has had *de minimis* antidumping duty margins for two years and had no shipments for one year. Therefore, we tentative determine to partially revoke the order on Japanese cell-site transceivers and related subassemblies with respect to Kokusai. If this revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review, tentatively determination to revoke in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)), and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: July 21, 1988.

[FR Doc. 88-17020 Filed 7-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-401]

Red Raspberries From Canada; Preliminary Results of Antidumping Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by respndents, the Department of Commerce has conducted an administrative review of the antidumping duty order on fresh and frozen red raspberries from Canada. The review covers four processors/exporters of this merchandise to the United States and the period June 1, 1986 through May 31, 1987. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Dolores C. Ricci or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 26019) the antidumping duty order on certain red raspberries from Canada. Clearbrook Packers, Inc. ("Clearbrook"), Jesse Processing, Ltd. ("Jesse"), Mukhtiar & Sons, Ltd. ("M&S"), and Marco Estates Ltd./Landgrow ("Marco") requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on July 17, 1987 (52 FR 27036).

Scope of the Review

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

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUS item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultations in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of fresh and frozen red raspberries packed in bulk containers and suitable for further processing. Fresh raspberries are currently classifiable under item nunmbers 146.5400 and 146.5600 of the Tariff Schedules of the United States

Annotated (TSUSA), and frozen raspberries under item 146.7400 of the TSUSA. These products are currently classifiable under HS item numbers 0810.20.90, 0810.20.10, 0811.20.20.

The review covers four procesors/exporters of fresh and frozen red raspberries to the United States: Jesse Processing, Ltd., Mukhtiar & Sons, Ltd., Clearbrook Packers, Inc., and Marco Estates Ltd./Landgrow for the period June 1, 1986 through May 31, 1987.

United States Price

As provided in section 772(b) of the Tariff Act of 1930 ("The Act"), we used purchase price for those sales where the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the c.i.f delivered to cold storage, packed price, except for purchase price sales made by M&S, which were sold ex-plant, unpacked. We made deductions, where applicable, for U.S. customs duties, brokerage and handling, and foreign inland freight.

As provided for in section 772(c) of the Act, we used the exporter's sales price for those sales where the merchandise was sold to unrelated purchasers after importation into the United States. We calculated the exporter's sales price based on the f.o.b. cold storage, packed price for all companies except Marco, whose ESP sales were c.i.f. delivered to cold storage. We made deductions, where applicable, for brokerage and handling, U.S. and foreign inland freight, credit expenses, commissions to unrelated agents, and indirect selling expenses.

Foreign Market Value

In accordance with section 773(b) of the Act, we examined Jesse's home market sales to determine whether they were at prices below the cost of production. Jesse's cost of production consisted of the processor's materials and fabrication costs, plus actual general, selling and administrative ("GS&A") expenses. We offset Jesse's cost of production by the amount of income earned from the Farm Insurance Income Program. Since Jesse purchased some unprocessed berries from related as well as unrelated growers, Jesse's cost of materials (berries) was the weighted average of the related growers' cost of growing berries and the prices charged by unrelated growers. Jesse claimed a water gain/dockage (berries furnished free of charge) adjustment to account for the difference in the pounds of raspberries purchased and the pounds of raspberries processed and sold. We deducted an amount for water gain and dockage from the weighted-average per pound price of red raspberries. We disallowed Jesse's claim for an adjustment to the cost of production for differing puchase prices of juice and jam grade raspberries because the data supplied do not distinguish the related growers' prices and quantities, which we would need to make the claimed adjustment, from the prices and quantities of the unrelated growers.

Based on our analysis, we found that all home market sales were made at prices above the cost of production. Therefore, we based the foreign market value ("FMV") on home market prices.

M&S, Clearbrook and Marco had insufficient home market or third country sales for comparison with United States sales. Therefore, we based the FMV on constructed value.

We calculated constructed value by adding the cost of materials, labor, factory overhead, GS&A expenses, profit and packing. The statutory minimums of 10 percent of the total of cost of manufacture and 8 percent of the total of cost of manufacture and GS&A expenses were used for GS&A costs and profit, respectively, when actual GS&A expenses and profit were less than the statutory minimums. We weight averaged the prices of the unprocessed berries supplied by both the related and unrelated growers in calculating the cost of materials in constructed value because the related growers' prices reflected market values. M&S and Clearbrook claimed a water gain/dockage adjustment to account for differences in the pounds of raspberries purchased and the pounds of raspberries processed and sold. We deducted an amount for water gain and dockage from the weighted average price of the raw berries. We denied M&S's claim for a deduction from its constructed value for income earned from the Farm Insurance Income program because the income was earned by the grower not the processor. We offset Clearbrook's constructed value by the amount of interest income related to operations.

We adjusted home market prices and constructed value for differences in freight, credit, commissions and packing. When comparing FMV to ESP, we deducted indirect selling expenses from the FMV, limited to the amount deducted for United States indirect selling expenses plus (when no commission was paid in the home market) United States commissions. We denied Jesse's and Clearbrook's claims for adjustments concerning differences in labor processing costs because the differences were based on estimates without any documentation. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period June 1, 1986 through May 31, 1987:

Processor-exporter	Margin (percent)
Jesse Processing, Ltd	7.83
Mukhtiar & Sons Packers, Ltd	4.45
Clearbrook Packers, Inc	8.33
Marco Estates, Ltd./Landgrow	9.92

Interested parties may request disclosure and/or an administrative protective order within 5 days of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. prices and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provied by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for those firms. For any shipments from the remaining known manufacturers and/or exporters not covered by this review, the cash deposit will continue to be at the rates published in the antidumping duty order (50 FR 26019, June 24, 1985) for each of those firms.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after May 31, 1987 and who is unrelated to any reviewed firm or previously reviewed firm, a cash deposit of 9.92 percent shall be required.

These deposit requirements are effective for all shipments of Canadian

fresh or frozen red raspberries entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: July 25, 1988.

[FR Doc. 88-17018 Filed 7-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-004]

Stainless Steel Wire Rod From Spain; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMAMRY: On March 25, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on stainless steel wire rod from Spain. We have now completed that review and determine the net subsidy to be 1.42 percent *ad valorem* during the period January 1, 1986 thorugh December 31, 1986.

EFFECTIVE DATE: July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Terri Ann Benny or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone (202) 377-3337.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 9789) the preliminary results of its administrative review of the countervailing duty order on stainless steel wire rod from Spain (48 FR 52, January 3, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Spanish stainless steel wire rod, which includes coiled, semi-finished, hot-rolled stainless steel products of approximately round solid cross-section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered or treated, not partly manufactured, and valued over 4 cents per pound. Such merchandise is currently classifiable under item number 607.2300 of the Tariff Schedules of the United States Annotated and under item numbers 7221.00.00.20 and 7221.00.00.40 of the Harmonized System.

The review covers the period January 1, 1986 through December 31, 1986 and six programs: (1) Long-term loans under the Concerted Action Program, (2) Privileged Circuit Exporter Credit ("PCEC") program operating capital loans, (3) PCEC prefinancing of exports, (4) a grant from the Solidarity Fund for Employment, (5) capital grants, and (6) regional incentives. Roldan, S.A., was the only known Spanish exporter of stainless steel wire to the United States during the period of review.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Roldan, S.A.

Comment 1: Roldan points out that, in calculating the benefit from operating capital loans, the Department made a clerical error and allocated the benefit over total wire rod exports when in fact total exports should have been used.

Department's Position: We agree. We have revised our calculation accordingly and determine the benefit from this program to be 0.07 percent *ad valorem.*

Comment 2: Roldan claims that the Department's use of a national average benchmark rate for measuring the benefit from official prefinancing credits under the PCEC program is unjustified. While the program set a maximum for the percent of the invoice value that could be used to meet the bank's lending requirements under this program, Roldan points out that the interest rate the bank charged for these PCEC credits was no lower than the interest rate it charged for financing the remaining portion of the export invoice value. Therefore, because there is no interest rate differential between the PCEC rate and the commercial rate, there is no subsidy. Further, because of Roldan's "substantial commercial solvency" and the fact that the bank collects a substantial fee for the conversion of the foreign exchange involved in the export transactions, it is logical to expect Roldan's commercial rate to be substantially lower than the national average benchmark rate used by the Department.

Department's Position: The Department's practice is to use a national-average interest rate as the benchmark for measuring the benefit from government-directed short-term loans. Roldan, in arguing against this practice and for a company-specific benchmark, presented the Department with information on the commercial rate of only three *export* loans, all from the same bank. Roldan also had 25 other PCEC loans, from four other banks, to finance exports of the subject merchandise to the United States. With the exception of PCEC loans and the commercial loans to finance the remaining portion of the export transactions, Roldan had no other short-term loans.

In choosing a benchmark for measuring the benefit from government-directed short-term loans, we attempt to determine the rate firms would have paid absent the government program. This benchmark "should reflect the predominant alternative sources of short-term financing available to an average firm." (See, *e.g., Oil Country Tubular Goods from Argentina; Final Results of Countervailing Duty Administrative Review* (52 FR 846, January 9, 1987).) The rate paid by a firm on some of its export loans is not a sufficient measure of these alternatives. In this case, especially, the existence of a government program that requires banks to set aside a specific percent of lendable funds for prefinancing exports may have a considerable impact on the rates charged for all export loans. Therefore, we have used as our benchmark published data from official government statistics on the average lending rate for all types of short-term loans, not just export loans.

While re-examining Roldan's claim, we discovered two errors in calculating the level of benefits under this program. The first was a translation error. In our preliminary results, we used as our benchmark for loans of up to three months a 13.61 percent interest rate published in the Boletin Estadistico. This rate is actually for mortgages from savings and loan institutions. The correct benchmark rate for this program is 14.31 percent, which is the general free rate for loans of one to ninety day duration published in the Boletin Estadistico.

The second error concerns the benefits from three loans that were erroneously excluded from our calculations in the preliminary results because the principal on the loans was repaid outside the review period. However, interest was paid on these loans during the review period. Since we consider benefits from preferential loans to occur when interest is paid, we have included these loans in our calculations.

By making these two corrections, we determine the benefit from this program to be 1.02 percent *ad valorem* during the period of review.

Final Results of Review

After considering all comments received, we determine the net subsidy to be 1.42 percent *ad valorem* for the period January 1, 1986 through December 31, 1986.

The Department will instruct the Customs Service to assess countervailing duties of 1.42 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1986 and on or before December 31, 1986.

The termination of two programs, operating capital loans and prefinancing of exports under the Privileged Circuit Exporter Credit program, reduces the estimated net subsidy to 0.33 percent *ad valorem*, a rate the Department considers *de minimis*. Therefore, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Date: July 25, 1988.

Jan W. Mares,

Assistant Secretary, Import Administration.

[FR Doc. 88-17017 Filed 7-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-601]

Steel Wire From New Zealand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on steel wire from New Zealand. We preliminarily determine the total bounty or grant to be 6.22 percent *ad valorem* for the period June 16, 1986 through June 30, 1986 and 3.60 percent *ad valorem* for the period July 1, 1986 through June 30, 1987. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 31156) a countervailing duty order on steel wire from New Zealand. On September 30, 1987, New Zealand Wire Industries Limited requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation on October 20, 1987 (52 FR 38952). The Department has now conducted that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

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

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

Imports covered by this review are shipments of New Zealand galvanized carbon steel wire, round carbon steel wire coated or plated with zinc, 0.06 inch or more in diameter. Such merchandise is currently classifiable under TSUSA item numbers 609.4135 and 609.4325. This product is currently classifiable under HS item numbers 7217.1250, 7217.2210 and 7217.3210. We invite comments from all interested parties on these HS classifications. The review covers the period June 16, 1986 through June 30, 1987 and 11 programs.

Analysis of Programs

(1) EPTI

Under the Export Performance Taxation Incentive ("EPTI"), exporters are entitled to receive a tax credit based on the f.o.b. value of qualifying goods exported under section 156A of the Income Tax Act of 1976. Credits are available as a deduction against income tax payable. If the tax credit exceeds the income tax payable, the taxpayer receives the difference in cash.

The rate of the tax credit depends on the predetermined value-added category into which the product falls. Steel wire falls under category B, for which the corresponding rate was 5.25 percent for the year ending June 30, 1986 and 2.625 percent for the year ending June 30, 1987. The amount of tax credit is calculated by multiplying that rate by the f.o.b. value of exports. Because this tax credit is limited to exporters, we preliminarily determine that it confers a bounty or grant. Two exporters claimed EPTI tax credits on steel wire exports to the United States in the review period.

EPTI tax benefits are earned on a sale-by-sale basis at uniform tax credit rates established for specific years. Because a firm can precisely calculate its EPTI benefit for each export sale at the moment the sale is made and because this credit is not subject to change depending on the firm's ultimate tax liability, we calculate the benefit from this program on a credit-as-earned basis. Using the EPTI rate applicable to galvanized steel wire exports made during the review period, we preliminarily determine the benefit from this program to be 5.25 percent *ad valorem* for the period June 16, 1986 through June 30, 1986, and 2.625 percent *ad valorem* for the period July 1, 1986 through June 30, 1987.

Because the Government of New Zealand reduced the EPTI tax credit rate to zero in the tax year ending March 31, 1988, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, the benefit to be zero.

(2) EMDTI

Under the Export Market Development Taxation Incentive ("EMDTI"), established in the 1979 Amendment to the Income Tax Act of

1976, exporters may receive tax credits for a certain percentage of their export market development expenditures. Qualifying expenditures include those incurred principally for seeking and developing new markets, retaining existing markets, and obtaining market information. An exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. Because this credit is limited to exporters, we preliminarily determine that it confers a bounty or grant. The tax credit rate for this merchandise was 69 percent during the review period.

One exporter reported a claim under this program for the review period but did not state the amount of the credit. To determine the exporter's tax credit we used the best information available, the proportion of travel and accommodation expenses reported in the firm's financial statement corresponding to the percentage of the firm's exports of this merchandise to the United States during the review period.

To calculate the benefit, we compared the difference in the tax liability between claiming 69 percent of the expenditures as a tax credit and deducting those expenditures as ordinary business expenses. The normal corporate tax rate in New Zealand in the review period was 48 percent. Since exporters may claim a tax credit of 69 percent but may not deduct the expenditures in calculating taxable income, the net benefit to the exporters is 21 percent of the qualifying expenditures. Therefore, we took 21 percent of the exporter's qualifying expenditures relating to exports of steel wire to the United States and allocated that amount over the f.o.b. value of exports of this merchandise to the United States during the review period. Because we do not have separate information for fiscal year 1986, we have applied, as the best information available, the same rate to both the 1986 and 1987 fiscal years. On this basis, we preliminarily determine the benefit from this program to be 0.97 percent *ad valorem* for the periods June 16, 1986 through June 30, 1986 and July 1, 1986 through June 30, 1987.

The New Zealand government reduced the EMDTI tax credit rate to 64 percent for the tax year ending March 31, 1988. We preliminarily determine, for purposes of cash deposits of estimated countervailing duties, the benefit to be 0.70 percent *ad valorem*.

(3) Other Programs

We also examined the following programs and preliminarily determine that exporters of steel wire did not use them during the review period:

a. Sales tax exemptions or refunds;
b. Export Suspensory Loan Scheme;
c. Export marketing assistance;
d. Export Programme Grants Scheme (EPGS)/Export Programme Suspensory Loan Scheme (EPSLS);
e. Preferential treatment to exporters in granting import licenses;
f. Research and development incentives;
g. Regional development investment incentives;
h. Special industrial development allowances;
i. Export and development financing from the Development Finance Corporation.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 6.22 percent *ad valorem* for the period June 16, 1986 through June 30, 1986 and 3.60 percent *ad valorem* for the period July 1, 1986 through June 30, 1987.

The Department intends to instruct the Customs Service to assess countervailing duties of 6.22 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 16, 1986 and exported on or before June 30, 1986, and 3.60 percent of the f.o.b. invoice price on all shipments exported on or after July 1, 1986 and on or before June 30, 1987.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 0.70 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Date: July 22, 1988.

Jan W. Mares,

Assistant Secretary, Import Administration.

[FR Doc 88-17021 Filed 7-27-88; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit and Sublimit for Certain Cotton Textile Products Produced or Manufactured in Peru

July 25, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit and sublimit.

EFFECTIVE DATE: August 1, 1988.

Authority: Ex. O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit and sublimit for Categories 338/339 and 338-S/339-S are being increased for special carryover.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 15724, published on May 3, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 25, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on April 27, 1988 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported during the period which began on May 1, 1988 and extends through April 30, 1989.

Effective on August 1, 1988, the directive of April 27, 1988 is hereby amended to increase the following limit and sublimit, as provided under the provisions of the current bilateral agreement between the Governments of the United States and Peru:

Category	Adjusted 12-Mo. limit [1] May 1, 1988—April 30, 1989
338/339	550,438 dozen of which not more than 361,048 dozen shall be in Categories 338-S/339-S [2]

[1] The limits have not been adjusted to account for any imports exported after April 30, 1988.

[2] In Categories 338-S/339-S, all TSUSA numbers except 381.0220, 381.0230, 381.4010, 381.4120, 384.0205, 384.0207, 384.0208, 384.0212, 384.0219, 384.0220, 384.0221, 384.2806, 384.2810, 384.2812, 384.2814, 384.2910, 384.2914 and 384.2915.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-17010 Filed 7-27-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Amendments to System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice of amendments to a system of records subject to the Privacy Act of 1974.

SUMMARY: The Department of the Army is amending one of its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice on August 29, 1988, unless comments are received which result in a contrary determination.

ADDRESS: Send any comments to the record system manager indentified in the record system notice set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. Cliff Jones, AS–OPS–MR, Fort Huachuca, AZ 85613–5000, telephone: 602–538–6568, autovon: 879–6568.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86–14667 (51 FR 23576) June 30, 1986
FR Doc. 86–19534 (51 FR 30900) August 29, 1986
FR Doc. 86–25274 (51 FR 40479) November 7, 1986
FR Doc. 86–27580 (51 FR 44361) December 9, 1986
FR Doc. 87–8140 (52 FR 11847) April 13, 1987
FR Doc. 87–11379 (52 FR 18798) May 19, 1987
FR Doc. 87–15611 (52 FR 25905) July 9, 1987
FR Doc. 87–19686 (52 FR 32329) August 27, 1987
FR Doc. 87–26438 (52 FR 43932) November 17, 1987
FR Doc. 88–8671 (53 FR 12971) April 20, 1988
FR Doc. 88–10355 (53 FR 16575) May 10, 1988
FR Doc. 88–12861 (53 FR 21509) June 8, 1988

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, published in its entirety.

The proposed amendments are not within the purview of the provision of 5 U.S.C. 552a(o), which require the submission of a new or altered system report.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 25, 1988.

AMENDMENT

A0314.09DACA

System Name: Nonappropriated Fund Accounts Receivable System (50 FR 22128, May 29, 1985).

Changes:

Categories of Individuals Covered by the System: Delete "past members of Officer or Noncommissioned Officer Club facilities". Add "former members of Nonappropriated Fund Instrumentalities (NAFI)".

Authority for Maintenance of the System: Delete "Pub. L. 216, section 401; Pub. L. 784, section 113". Add "E.O. 9397".

System Manager(s) and Address: Delete entire entry and add "Office of Deputy Finance and Accounting for Operations Management, ATTN: SAFM–FAP–N, Stop 66, Indianapolis, IN 46249–1056".

A0314.09DACA

SYSTEM NAME:

Nonappropriated Fund Accounts Receivable System.

SYSTEM LOCATION:

Nonappropriated fund activities at Army installations world-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members of Nonappropriated Fund Instrumentalities (NAFI) whose accounts show balances other than zero; persons using Post billeting facilities on a fee paid basis (bachelor officer quarters, visitor officer quarters and guesthouse facilities) and persons no longer using such facilities whose accounts have other than zero balances; any individual having a statement of account for the billing period, individuals occupying government housing at any military installation; individual class B telephone subscribers; members, customers or civilians having 30 day credit terms for "charge" sales and/or dues obligations to NAF activities; all persons whose accounts have been dishonored by banking institutions and their checks returned to NAF activities; individuals who have cash loans charged to their accounts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, SSN, rank, amount of charges, billings of items or services furnished, subsidiary ledgers containing detail of services billed and paid by individual; work order forms, invoice listings, monthly receipt vouchers, date and method of payment, file of billings associated with returned/dishonored checks, and relevant similar documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 66; 10 U.S.C. 2481 and 3012, 5 U.S.C. 5101; and E.O. 9397.

PURPOSE(S):

To maintain current rosters as subsidiary records for accounts receivable and cash accountability control; to provide monthly statements to customers; to provide ledger balances for activity financial statements; to prepare aged listing of accounts receivable, 30, 60, and 90 days; to answer inquiries of members on account status and specific transactions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

(1) See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

(2) Disclosure pursuant to 5 U.S.C. 552a(b) (12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes and/or discs by account in numerical and alphabetical order; computer hard copy printouts filed in binders; copies of statements filed in folders.

RETRIEVABILITY:

By customer name and SSN.

SAFEGUARDS:

Records are maintained in lock-type cabinets within storage areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed after 3 years following audit with no exceptions or irregularities disclosed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Deputy Finance and Accounting for Operations Management, ATTN: SAFM-FAP-N, Stop 66, Indianapolis, IN 46249-1056.

NOTIFICATION PROCEDURE:

Individuals may submit written request to the custodian of nonappropriated funds activities at the installation where record is believed to exist.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records pertaining to them in this system should write to appropriate nonappropriated fund activity custodian, furnishing full name, SSN, and account number.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR 505).

RECORD SOURCE CATEGORIES:

From daily transaction registers/ journals received from billeting officer, signal officer, and/or club officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-17036 Filed 7-27-88; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

[3710-KK]

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Pueblo de Cochiti Wetfields Project, Sandoval County, NM.

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: Foundation seepage form Cochiti Dam and Lake has contributed to the occurrence of high groundwater on downstream Cochiti Pueblo agricultural lands. This high groundwater has produced saturated soil and standing water on between 500 and 800 acres of farmland, which has rendered much of this acreage unproductive. The objective of this project is to restore the wetfield lands owned by the Cochiti Pueblo to original dry field conditions and allow these lands to be returned to their historical agricultural use. Structural alternatives are being considered to remove water form these fields.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. James A. White, Chief, Environmental Section, Albuquerque District, U.S. Army Corps of Engineers, P.O. Box 1580, Albuquerque, New Mexico 87103-1580, (505) 766-3577.

SUPPLEMENTARY INFORMATION: This DEIS will be prepared in response to Pub. L. 100-202, FY 1988 Energy and Water Resources Development Appropriation Act which directed the Corps of Engineers to "implement studies concerning the seepage from Cochiti Dam onto lands of the Cochiti Indian Pueblo with a view to specifically identify the problem and formulate an adequate solution". Further information about the project follows:

1. *Proposed Action.* A DEIS will be prepared to assess potential environmental impacts that may be associated with reducing the high groundwater table on Cochiti Pueblo farmlands that have been rendered unproductive from seepage from Cochiti Dam. Significant resources which occur in the project area include man-made wetlands, riparian woodland and wintering bald eagles. Although the potential to locate significant archeological sites on these farmlands is low given the extent of prior disturbance, the Corp will assess the potential impacts to the traditional cultural values ascribed to these historic fields in accordance with the American Indian Religious Freedom Act (AIRFA).

2. *Reasonable Alternatives.* Structural alternatives under consideration to restore dry field conditions include:

a. Installation of relief wells;

b. Installation of open drainage ditches;

c. Installation of buried collector system;

d. Installation of combination of buried collector system and open drainage ditches.

3. *Scoping Process.* A notice will be circulated to agencies, organizations and interested individuals inviting views and comments on the types of studies and depth of analyses which should be conducted to address the elimination of wetfields on Cochiti Pueblo farmlands. The Final scope of Studies for the DEIS will then be determined in consideration of the views submited by the public and agencies. Significant issues to be analyzed in the DEIS include: potential impacts of structural alternatives on endangered species (i.e., bald eagle, American peregrine falcon, whooping crane), nearby riparian woodland and man-created wetlands on Pueblo farmlands. Necessary coordination with all appropriate environmental agencies will be conducted under the Fish and Wildlife Coordination Act, Endangered Species Act, and National Historic Preservation Act.

4. *Scoping Meetings.* Scoping meetings will be held with environmental agencies and the Cochiti Pueblo.

5. *Estimated Availability Date of DEIS.* The DEIS is expected to be available to the public in Summer 1989.

Date: July 13, 1988.

Phillip L. Smith,

Major, Corps of Engineers, Deputy District Engineer.

[FR Doc. 88-17052 Filed 7-27-88; 8:45 am]

BILLING CODE 3710-KK-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant to Institute of Petroleum

AGENCY: Department of Energy.

ACTION: Notice of Restricted Eligibility for Grant.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for an award under Grant number DE–FG01–88FE61634 to the Institute of Petroleum in London, England, for the third International Conference on Stability and Handling of Liquid Fuels to be held on September 13 through 16, 1988, in London.

Scope: Since 1983, international cooperation and the exchange of technical and scientific data relevant to the stability and handling of liquid fuels have been enhanced by these conferences. The third conference will provide a forum for approximately 200 scientists and engineers from more than two dozen countries to exchange information and ideas on problems relating to the stability and handling of liquid fuels derived from petroleum, shale, and coal. The majority of the papers to be presented are on subjects directly related to the concerns of several Department of Energy program offices. The conference is considered critical to the effective maintenence of international cooperation on these issues.

Eligibility for the award is being limited to the Institute of Petroleum, a non-profit organization based in London. The U.K. Ministry of Defense, as co-sponsor and official host of the year's conference, selected the Institute based on its international reputation for sponsoring highly informative conferences.

The term of this grant shall be from September 13 through September 16, 1988.

The cost to the Department of Energy will be $7,500, which represents approximately 20 percent of the total estimated budget.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Lisa Jones, MA–452.1, 1000 Independence Avenue, SW., Washington, DC 20585.

Edward T. Lovett,

Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 88–17035 Filed 7–27–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP88–129–002 and CP88–163–000]

Columbia Gas Transmission Corp.; Intent To Prepare an Environmental Assessment on the Proposed New Jersey/Providence Project and Request for Comments on Environment Issues

July 22, 1988.

Proposed Action

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced dockets. A total of 58.9 miles of 16-inch-diameter natural gas pipeline would be constructed in Northampton County, Pennsylvania, and Warren, Hunterdon, and Morris Counties, New Jersey.

In the Commission's *Order Finding Additional Projects To Be Discrete And Dismissing Applications,* issued on June 29, 1988, concerning pipeline projects in the Northeast, this project was determined to be "discrete" and was referred to as the New Jersey/Providence Project.[1] [2] Since these facilities are located in a common geographic area within Pennsylvania and New Jersey and form a continuous pipeline that would be constructed simultaneously, if authorized, the staff of the FERC will study these facilities in one environmental document.

On December 15, 1987, Columbia Gas Tranmission Corporation (Columbia) filed an application (Docket No. CP88–129–000) under section 7(c) of the Natural Gas Act to construct and operate 37.9 miles of 12-inch-diameter pipeline in Northampton County, Pennsylvania, and Warren, Hunterdon, and Morris Counties, New Jersey. Columbia also proposes to construct two meter stations in Warren and Morris Counties for delivery of natural gas to Elizabethtown Gas Company (Elizabethtown) and one meter station in Morris County for delivery of gas to New Jersey Natural Gas Company (NJ Natural). Columbia would use these facilities to provide firm transportation service of up to 20,000 dekatherms (Dth) per day of gas and an interruptible transportation service of up to 2,200,000 Dth of gas on an annual basis to Elizabethtown. Columbia would also provide up to 10,000 Dth per day of firm sales to NJ Natural.

NJ Natural and Elizabethtown have requested that this service commence on July 1, 1988, and November 1, 1988, respectively, or as soon thereafter as the proposed facilities have been constructed. On January 14, 1988, Columbia filed an amendment (Docket No. CP88–129–001) that modified the pipeline route, increasing its length to 38.1 miles, and changed the pipeline's diameter to 16 inches. On April 26, 1988, Columbia filed an amendment (Docket No. CP88–129–002) that modified the route for the project and would require the construction of approximately 39.8 miles of pipeline. Maps A–1 through A–14 show the location of these proposed facilities.[3] NJ Natural would construct about 5.3 miles of nonjurisdictional pipeline in Morris County, New Jersey, in order to interconnect Columbia's facilities with NJ Natural's distribution system. Elizabethtown's nonjurisdictional facility requirements, if any, are not known at this time.

On January 14, 1988, Columbia filed an application (Docket No. CP88–163–000) under section 7(c) of the Natural Gas Act to construct and operate 19.1 miles of 16-inch-diameter pipeline in Morris County, New Jersey. Columbia would also construct a meter station on the east end of this pipeline to deliver gas to Algonquin Gas Transmission Company (Algonquin) for delivery to Providence Gas Company (Providence) in Rhode Island. Maps B–1 through B–7 show the location of these facilities.[4] Columbia would use these facilities to provide firm transportation service of up to 40,000 Dth per day and firm sales service of up to 10,000 Dth per day for Providence. Providence requested that this service commence on November 1, 1988, or as soon thereafter as the proposed facilities have been constructed. Providence would not require any new nonjurisdictional facilities to implement this proposal. Algonquin's facility requirements, if any, are not known at this time.

A total of 58.9 miles of 16-inch-diameter pipeline would be constructed by Columbia requiring a 75-foot-wide construction right-of-way with 50 feet to

[1] A discrete project is one which can be processed independently and, if authorized, will not adversely impact the other pending competitive projects.

[2] The Commission also found Columbia Gas Transmission Corporation's application in Docket No. CP88–164–000 to be discrete. This filing is designed to replace corroded mainline pipe in Pennsylvania and will be analyzed independently in a separate EA.

[3] Maps A–1 through A–14 have not been printed in the **Federal Register**, but are available from the FERC's Division of Program Management, Public Reference Section, telephone (202) 357–8118.

[4] Maps B–1 through B–7 have not been printed in the **Federal Register**, but are available from the FERC's Division of Program Management, Public Reference Section, telephone (202) 357–8118.

be maintained as permanent right-of-way. The pipeline route includes crossings of the Delaware River (about 0.1 mile wide), Musconetcong River, South Branch Raritan River (three crossings), and Lamington River. The pipeline would begin about 1.5 miles northeast of Hellertown, Pennsylvania, and head northeast for about 6.5 miles to the Pennsylvania-New Jersey state line. The Delaware River would be crossed about 0.4 mile south of Carpentersville, New Jersey. The pipeline would continue heading east across open country for about 3.4 miles until it joins a New Jersey Central Power and Light Compnay (NJCPLC) powerline right-of-way near Warren Glen, New Jersey, on Musconetcong Mountain. The pipeline then follows the NJCPLC powerline right-of-way northeast for about 14.2 miles until it intersects an abandoned railroad north of High Bridge, New Jersey. The pipeline continues northeast either immediately adjacent to or near the railroad right-of-way for about 15.7 miles and ends at a proposed meter station about 1 mile northeast of Bartley, New Jersey. The 39.8-mile pipeline proposed in Docket No. CP88–129–002 would end at this location.

The pipeline proposed in Docket No. CP88–163–000 would begin at an interconnection near milepost 38.8 at Bartley, New Jersey, and follow a powerline right-of-way for its entire length (19.1 miles) to the interconnection with Algonguin west of the boundary of the Troy Meadows Natural Area in Morris County. Approximately 540 acres would be disturbed by the construction of Columbia's facilities and about 360 acres would be retained as permanent right-of-way. NJ Natural's nonjurisdictional pipeline would follow roads within Morris County for its entire length. Maps B–1 and B–2 show the route of these facilities.

Environmental Issues

The EA will address the environmental concerns that have been identified by the staff and by individuals in their letters to the FERC. The following issues have been identified to date:

Water Resources
- Impact on streams.
- Effect on public and private water wells.

Pipeline Safety
- Safety considerations.
- Blasting.

Cultural Resources
- Effect on Califon and German Valley Historic Districts.
- Delaware Canal.
- Other historic properties.

Vegetation
- Impact on wetlands.
- Removal and disposal of trees.

Land Use
- Eminent domain.
- Use of existing rights-of-way (ROWS) for facility routing.
- Nearness of the proposed pipelines to existing ROWS which are followed.
- Impact on homes and future development.
- Impact on septic systems.
- Proposed New Jersey Master Development Plan.
- Musconetcong Gorge Nature Preserve.
- Tower Hill Park.
- Voorhees State Park.
- Ken Lockwood Gorge Fish and Wildlife Management Area.
- Impact on nursery operations.

Aesthetics
- Effect of appearance of right-of-way.
- Impact on stone walls.
- Impact on wild and scenic rivers.

Soils and Geology
- Restoration of the right-of-way including removal of surface rock.
- Impact on limestone formations.
- Erosion control and revegetation.
- Effect on crops and farmland.
- Proximity of bedrock.

Wildlife
- Impact on fisheries.
- Affects on threatened and endangered species and other species.

Alternatives, route modifications, and specific mitigating measures will also be considered in the staff's analysis. The EA will also address the environmental impact resulting from the construction and operation of the nonjurisdictional facilities and any jurisdictional facilities that are related to Columbia's proposal.

Comment Procedures

The EA will be based on the staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding. The EA will be sent to all parties in this proceeding, to those providing comments in response to this notice, to Federal and state agencies, to interested members of the public, and to those individuals that have sent letters to the Commission.

The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Comments from Federal, state, and local agencies and the public are requested to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. All comments on specific environmental issues should contain supporting documentation or rationale. Written comments should be submitted on or before August 29, 1988, reference *Docket No. CP87–129–002*, and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the comments should also be sent to Mr. Kenneth Frye, Project Manager, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation, Environmental Analysis Branch, Room 7312, 825 North Capitol Street NE., Washington, DC 20426.

Maps showing the location of the proposed pipeline facilities have been provided to those on the distribution list. Additional information on environmental matters concerning the proposal is available from Mr. Kenneth Frye, telephone (202) 357–8898.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–17041 Filed 7–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5833–001]

Pennsylvania Hydroelectric Development Corp.; Availability of Environmental Assessment

July 25, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the Easton/Raubsville Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices

at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc 88-17040 Filed 7-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-3894-033, et al.]

ARCO Oil and Gas Co., Division of Atlantic Richfield Co., et al.; Applications for Certificate, Abandonment of Service and Amendment of Certificates [1]

July 25, 1988.

Take notice that each of the applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or beforet August 15, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-3894-033, D, July 5, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	United Gas Pipe Line Company, Burnell and North Pettus Fields, Bee, Goliad and Karnes Counties, Texas.	(1)
G-4579-052, F, July 6, 1988	OXY USA Inc., P.O. Box 300, Tulsa, OK 74102	Colorado Interstate Gas Company, Greenwood Field, Morton County, Kansas.	(12)
G-8123-000, F, June 30, 1988	Shell Western E&P Inc., P.O. Box 4684, Houston, TX 77210-4684.	El Paso Natural Gas Company, South Fullerton Plant, Andrews County, Texas.	(2)
G-12365-000, D, June 30, 1988	Amoco Production Company, P.O. Box 50879, New Orleans, LA 70150.	Columbia Gas Transmission Corporation, Valentine Field, Lafourche Parish, Louisiana.	(3)
CI63-342-000, D, July 5, 1988	Mobil Exploration & Producing North America Inc., Nine Greenway Plaza—Suite 2700, Houston, TX 77046.	Trunkline Gas Company, Lakeside Field, Cameron Parish, Louisiana.	(4)
CI64-426-000, D, July 7, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	El Paso Natural Gas Company, Lancaster Hills Field, Crockett County, Texas.	(6)
CI64-516-000, B, Apr. 29, 1988	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77252.	Panhandle Eastern Pipe Line Company, N.E. Trail Field, Dewey County, Oklahoma.	(5, 11)
CI65-513-001, D, July 7, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Natural Gas Pipeline Company of America, Indian Basin Field, Eddy County, New Mexico.	(6)
CI80-240-001, D, July 5, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Natural Gas Pipeline Company of America, Burton Flat Area, Eddy County, New Mexico.	(6)
CI88-513-000, (CI70-736), B, June 29, 1988.	Tenneco Oil Company	Arkla Energy Resources, a division of Arkla, Inc. Hillsdale NE Field, Grant & Garfield Counties, Oklahoma.	(7)
CI88-515-000 (CI72-39), B, July 5, 1988.	Mobil Oil Exploration & Producing Southeast Inc.	Trunkline Gas Company, OCS-G-1043, Ship Shoal 293 Lease, Ship Shoal 274 Field, Offshore Louisiana.	(8)
CI88-516-000 (CI61-1766-000), B, July 1, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Panhandle Eastern Pipe Line Company, Camrick Gas Area, Texas County, Oklahoma.	(9)
CI88-517-000 (CI81-443-001), B, July 1, 1988.	do	Panhandle Eastern Pipe Line Company, Spooney (Lower Morrow) Field, Ochiltree County, Texas.	(10)

NOTES:

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[1] By Partial Assignment dated 2-10-86, ARCO assigned certain acreage to Kenneth B. Perkins.

[2] Effective 10-1-86, Union Texas Petroleum conveyed its interest in the South Fullerton Plant, Andrews County, Texas, to Shell Western E&P Inc.

[3] Effective 1-21-87, 5-6-87 and 9-23-87, Amoco Production Company assigned certain acreage to Presidio Energy, Inc., formerly known as Kaiser Energy, Inc.

[4] All wells under contract dated 7-21-48, have been plugged and abandoned since April, 1984.

[5] Additional information received 6-21-88.

[6] Effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company.

[7] Ashland Oil and Refining Company, the predecessor-in-interest to TEMA and Tenneco Oil Company sold the Pope #1 well before TEMA succeeded to the contract. Therefore, it is Tenneco's intent to seek complete cancellation of Docket No. CI70-736 and Rate Schedule No. 402 since there are no wells, or any acreage dedication, and the fact that Mesa, an interest owner in the Pope #1 well, sought and was granted complete abandonment in Docket No. CI86-402.

[8] By Assignment dated 10-5-87, MOEPSI assigned all its interest in certain acreage to Shell Offshore Inc.

[9] Effective 1-1-87, ARCO assigned all its interest subject to Rate Schedule No. 454 to Exxon Company USA.

[10] Effective 1-1-87, ARCO assigned all its interest subject to Rate Schedule No. 774 to Hondo Oil and Gas Company.

[11] The application was noticed in Docket No. CI88-432-000 on May 20, 1988 (53 FR 18128) as a complete abandonment. However on June 21, 1988, Applicant requested that the application be changed from a complete to a partial abandonment. Docket No. CI88-432-000 has been canceled. The A. L. Stephenson #1 well was plugged and abandoned. Effective 1-1-87, Tenneco assigned certain acreage to Unit Corporation.

[12] Effective 11-1-87, OXY acquired an additional 8.3% working interest in the Oberly "A" well, Greenwood Field, Morton County, Kansas, from CNG Producing Company. Effective 9-30-87, OXY acquired a 100% working interest in the Interstate A-1 Gas Unit (now called Interstate E-1), Greenwood Field, Morton County, Kansas, from Lee Banks and by U.S. Department of Interior leases.

[FR Doc. 88-17042 Filed 7-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-2-46-001]

Kentucky West Virginia Gas Co.; Filing

July 22, 1988.

Take notice that on July 15, 1988, Kentucky West Virginia Gas Company (Kentucky West) filed Substitute Fourth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective August 1, 1988.

Kentucky West states that the purpose of this filing is to replace Fourth Revised Sheet No. 41 which contained typographical errors.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 29, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc 88-17043 Filed 7-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-193-006]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

July 22, 1988.

Take notice that North Penn Gas Company (North Penn) on July 15, 1988 tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Third Substitute Eighty-Fifth Revised Sheet No. PGA-1
Second Substitute Eighty-Sixth Revised Sheet No. PGA-1
Substitute Eighty-Seventh Revised Sheet No. PGA-1
Second Substitute Eighty-Eighth Revised Sheet No. PGA-1

North Penn states that the tariff sheets are being filed in compliance with the Federal Energy Regulatory Commission's (Commission) June 30, 1988, Order in the above referenced docket. North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit these tariff sheets to become effective as proposed.

Copies of this filing are being mailed to each of North Penn's jurisdictional customers, including Corning Natural Gas Corporation, and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 29, 1988. Protests will be considered by the Commission in detemining 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. 88-17044 Filed 7-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-428-000]

NRM Operating Co. L.P., et al.; Petition for a Declaratory Order

July 25, 1988.

Take notice that on May 27, 1988, as supplemented on June 23, 1988, NRM Operating Company, L.P., *et al.* (Petitioners) [1] filed a petition requesting the Commission to issue a declaratory order stating that it has no jurisdiction over certain natural gas facilities and related activities located in the federal domain, offshore Texas. Petitioners contend that the facilities are gathering facilities under section 1(b) of the Natural Gas Act (NGA) and are therefore exempt from the certificate requirements of section 7(c) of the NGA.

Petitioners state that natural gas is produced and gathered from High Island East Addition Lease Blocks A-14, A-171, A-172, A-173, A-178 and A-183 and delivered into the High Island Offshore System (HIOS) at a subsea interconnection in West Cameron Block 342. Hall-Houston Oil Company is the operator of all production except Block A-183, which is entirely owned and operated by Union Pacific Resources Company. Block A-183 gas qualifies under section 102(d) of the Natural Gas Policy Act of 1978; all other production is price deregulated.

Petitioners state that the facilities consist of four 4½ to 6-inch diameter flow lines that are very short in length and an 18.73-mile long 12¾-inch diameter delivery line. The flow lines tie-in gas produced from satellite wells, and the delivery line carries gas from the flow lines to the HIOS line. The facilities operate at a pressure of approximately 1050 psi. Basic compression, separation and dehydration is performed to the extent needed to qualify the gas for transmission in HIOS. However, Petitioners state that they do not treat or process the gas. Petitioners contend that the facilities perform a gathering function under the "primary function" test set forth in *Farmland Industries, Inc.*, 23 FERC. ¶ 61,063 (1983).

Alternatively, in the event the Commission concludes that the facilities and transactions involved are jurisdictional, NRM Operating Company, L.P. and EnerMark, Inc. request a certificate of public convenience and necessity authorizing the construction and operation of the 18.73-mile delivery line.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, within 30 days after publication of this notice in the **Federal Register.** All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-17047 Filed 7-27-88; 8:45 am]

BILLING CODE 6717-01-M

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[1] NRM Operating Company, L.P., EnerMark, Inc., Hall-Houston Oil Company and Union Pacific Resources Company.

[Docket Nos. RP85-177-055 and RP85-176-012]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 22, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas

Eastern) on July 19, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

First Revised Sheet No. 102
First Revised Sheet No. 132
Second Revised Sheet No. 133
First Revised Sheet No. 134
Second Revised Sheet No. 137
First Revised Sheet No. 415
First Revised Sheet No. 416
First Revised Sheet No. 423

Texas Eastern states that these tariff sheets eliminate the minimum commodity bills from Rate Schedules DCQ, ACQ, and WS as required by the Commission's April 19, 1988 "Order Affirming Initial Decisions", rehearing of which was denied by order dated June 20, 1988. Texas Eastern states that by filing these tariff sheets, it does not waive its rights to seek judicial review of the Commission's April 19 Order.

The above listed tariff sheets are proposed to become effective as of August 1, 1988.

Copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all parties of record in Docket Nos. RP85–177 and RP85–176.

Any person desiring to heard or to be 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. All such motions or protests should be filed on or before July 29, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–17045 Filed 7–27–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE80–31–005]

Western Area Power Administration; Application for Exemption

July 25, 1988.

Take notice that Western Area Power Administration filed an application on July 14, 1988 for exemption from requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act, Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1990 information on the cost of providing electric service as specified in Subparts B, C, D, and E of Part 290.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. Stephen A. Fausett, Assistant Administrator for Power Management and O&M, Western Area Power Administration, P.O. Box 3402, Golden, CO 80411.

Lois A. Cashell,

Acting Secretary.

[FR Doc. 88–17046 Filed 7–27–88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3421–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Administration Resources Management

Title: Ecological Information Initiative. (EPA ICR #1474).

Abstract: Respondents will be asked to identify databases containing ecological information. Much of this data is being collected by States and private foundations. The main product of this effort will be a clearinghouse identifying existing data resources.

Burden Statement: Public reporting burden for this collection of information is estimated to average 0.5 hours per year per respondent. This estimate includes the time for reviewing instructions, and completing a worksheet.

Respondents: States, private organizations, and businesses.

Estimated No. of Respondents: 200.

Estimated Total Annual Burden on Respondents: 100 hours.

Frequency of Collection: Annually.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Carla Levesque
U.S. Environmental Protection Agency
Information Policy Branch (PM–223)
401 M St., SW.
Washington, DC 20460
and
Nicolas Garcia
Office of Management and Budget
Office of Information and Regulatory Affairs
726 Jackson Place, NW.
Washington, DC 20503
(Telephone (202) 395–3084)

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1447; Land Disposal Restrictions: Information Requirements; was disapproved on 07/12/88.

Dated: July 22, 1988

Odelia Funke,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88–17026 Filed 7–27–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection

package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New collection
Title: National Flood Insurance Program—Community Rating System
Abstract: A plan to establish a system that grades a community's floodplain management for use in determining flood insurance rates for the community. Communities exercising floodplain management activities that exceed Federal Minimum standards qualify for lower insurance rates.
Type of Respondents: State or local governments
Estimate of Total Annual Reporting and Recordkeeping Burden: 640
Number of Respondents: 40
Estimated Average Burden Hours Per Response: 15 hours
Frequency of Response: One time

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: July 20, 1988

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88–16984 Filed 7–27–88;8:45am]

BILLING CODE 6718–21–M

Privacy Act of 1974; Proposed New Routine Use of Existing System of Records

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of proposed new routine use to existing system of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Emergency Management Agency gives notice of a proposed new routine use to be added to anexisting system of records entitled, FEMA/FIA–2, National Flood Insurance Application and Related Documents Files.

EFFECTIVE DATE: The proposed routine use shall become effective August 29, 1988 without further notice, unless comments necessitate otherwise.

ADDRESS: Address comments to the Federal Emergency Management Agency, Attn: Docket Clerk, Office of General Counsel, Room 840, 500 C Street, SW., Washington, DC 20472. Comments received will be available for public inspection at the above address from 9 a.m. to 4 p.m., Monday through Friday (except for legal holidays).

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, at (202) 646–3840.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) last published its notice of systems of records on January 5, 1987 (52 FR 324); February 3, 1987 (52 FR 3344); and March 1987 (52 FR 6875).

The system identified as FEMA/FIA–2, National Flood Insurance Application and Related Documents Files was previously published on November 26, 1982, 47 FR 53492; amended on October 25, 1983, 48 FR 49376, February 17, 1984, 49 FR 6168; May 13, 1985, 50 FR 20007; and January 5, 1987, 52 FR 324. A new routine use is proposed to permit release of policy expiration information to insurance agents, brokers, adjusters, lending institutions and State and Federal agencies and financial instrumentalities which regulate the lending institutions, for carrying out the purposes of the National Flood Insurance Program. This use is compatible with the purpose for which the information is collected because section 102(b) of the Flood Disaster Protection Act of 1973 requires Federal instrumentalities to direct private lenders, who are subject to the regulatory authority of the Federal instrumentality, to require their borrowers to purchase flood insurance in an amount at least equal to the outstanding principal balance of the loan if the loan is scured by improved real property located in an area of special flood hazard in a community that is participating in the National Flood Insurance Program. A concern has been expressed that some lending institutions are allowing mortgagors of floodprone property to let their flood insurance lapse before the end of their mortgage. The proposed routine use would greatly enhance the enforcement of the mandatory flood insurance requirements for floodprone property if flood insurance policy expiration information could be available to the Federal regulatory agencies best equipped to monitor lending institutions.

For the convenience of the reader, the entire text of the system of records affected by this notice is being printed in its entirety.

Dated: July 22, 1988.

George W. Watson,

Acting General Counsel, Office of General Counsel, Federal Emergency Management Agency.

FEMA/FIA–2

SYSTEM NAME:

National Flood Insurance Application and Related Documents Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Various offices of a servicing agent under contract to the Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472. Copies of some of the files are also provided to the FEMA Regional offices when additional information is requested from their respective offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for individual flood insurance and individuals insured.

CATEGORIES OF RECORDS IN THE SYSTEM:

Flood insurance, policy issuances and administration records and claims adjustment records and claims adjustment records, including HUD Form1650 and FEMA Form 81–16, applications for emergency and regular flood insurances; FEMA Form 81–18, endorsements; FEMA Form 81–23, renewal applications; FEMA Form 81–17, cancellation notices; policy questionnaries; FEMA Forms 81–40, 81–41, 81–41a, 81–42, and 81–43, notice of loss; FEMA Form 81–42, proof of loss; FEMA Form 81–44, Statement as to full cost of repair or replacement under the replacement cost coverage, subject to the terms and conditions of the Standard Flood Insurance Policy; FEMA Form 81–45, Adjuster's Short Form Report; FEMA Form 81–57, National Flood Insurance Program Preliminary Report; and FEMA Form 81–58, National Flood Insurance Program Final Report. This system contains the taxpayer's identification number (which may be the social security number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4001, et seq.; 5 U.S.C. 301, Reorganization Plan No. 3 of 1978, and E.O. 12127.

PURPOSE(S):

For the purpose of carrying out the National Flood Insurance Program and verifying nonduplication of benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To property loss reporting bureaus, State insurance departments, and insurance companies investigating fraud or potential fraud in connection with claims, subject to the approval of the Office of Inspector General, FEMA; to insurance agents, brokers, adjusters, and lending institutions for carrying out the purposes of the National Flood Insurance Program; to Small Business Administration, the American Red Cross, the Farmers Home Administration, State and local government individual and family grant and assistance agencies, including but not limited to the State of Ohio Disaster Services Agency and the Johnstown, Pennsylvania Redevelopment Authority for determining eligibility for benefits and for verification of nonduplication of benefits following a flooding event or disaster; to Write-Your-Own companies as authorized in 44 CFR 62.63 to avoid duplication of benefits following a flooding event or disaster and for carrying out the purposes of the National Flood Insurance Program; to State and local government individual and family grant agencies so as to permit such agencies to assess the degree of financial burdens toward residents such as States and local government might reasonably expect to assume in the event of a flooding disaster, and to further the flood insurance marketing activities of the National Flood Insurance Program; to State and local government individual and family grant and assistance agencies which furnish to the Federal Insurance Administration the names and addresses of policyholders for purposes consistent with the relocation projects of the Federal Insurance Administration and acquisition projects under the National Flood Insurance Program carried out pursuant to section 1362 of the National Flood Insurance Act of 1968, as amended, and to State and local government agencies who provide the names and addresses of policyholders and a brief general description of their plan for acquiring and relocating their flood prone properties for review by the Federal Insurance Administrator to ensure that their State and/or local government agency is engaged in flood plain management improved real property acquisitions and relocation projects consistent with the National Flood Insurance Program; and, upon the approval by the Federal Insurance Administrator, that the use is in furtherance of the flood plain management and hazard mitigation goals of the Agency; to State and local government agencies and municipalities to review National Flood Insurance Program policy and claim files to assist them in hazard mitigation and flood plain management activities and in monitoring compliance with the flood plain management measures duly adopted by the community; *to State governments, federal agencies, and federal financial instrumentalities responsible for the supervision, approval, regulation or insuring of banks, savings and loan associations or similar institutions, all for carrying out the purpose of the National Flood Insurance Program.*

Routine uses may include Nos. 1, 5, 6, and 8 of Appendix A.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Magnetic Tape/disc/drum and paper files.

RETRIEVABILITY:

By name of the policyholders and policy number.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; paper records are maintained in locked containers and/or room. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Policy records are kept as long as insurance is desired and premiums paid, and for an appropriate time thereafter and claim records are kept for 6 years and 3 months after final action, unless litigation exists. Disposition of records shall be in accordance with FEMA Records Maintenance and Disposition System.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Insurance Administrator, Federal Emergency Management Agency, Washington, DC 20472.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individuals should be able to provide some acceptable identification, that is, driver's license, employing organization's identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR part 6.

RECORD SOURCE CATEGORIES:

Individuals who apply for flood insurance under the National Flood Insurance Program and individuals who are insured under the program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-16983 Filed 7-27-88; 8:45 am]
BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the

Commission regarding a pending agreement.

Agreement No.: 224–200147.

Title: Jacksonville Port Authority Terminal Agreement.

Parties:

Jacksonville Port Authority (JPA)
Sea-Land Service, Inc. (Sea-Land)

Synopsis: The proposed agreement provides for Sea-Land's lease of a 55 acre parcel of land and the buildings and structures located on that parcel in the Port of Jacksonville with an option to lease additional acreage upon written notice of not less than 30 days prior to occupancy. The Agreement also provides for Sea-Land's preferential use of 1700 linear feet of berth. The lease, which expires October 31, 1991, includes an option to extend the initial term of the agreement for up to three (3) consecutive five (5) year terms.

By order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: July 25, 1988.

[FR Doc. 88–17014 Filed 7–27–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

BNB Holding Co., Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 19, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *BNB Holding Company, Inc.*, New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Broadway National Bank, New York, New York.

B. Federal Reserve Bank of Richmond (Lloyd W., Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *1st Carolina Bancshares, Ltd.*, Charleston, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of 1st Carolina Bank, N.A. (in organization), Charleston, South Carolina.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers and Traders Bancshares, Inc.*, St. Louis, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Farmers and Traders Bank of California, Missouri, California, Missouri.

Board of Governors of the Federal Reserve System, July 22, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–16975 Filed 7–27–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N–0276]

Drug Export; VS101 Kit (For Loading With Indium IN–111 for Diagnostic Use)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Vestar, Inc., has filed an application requesting approval for the export of the human drug VS101 Kit (for Loading with Indium IN–111 for Diagnostic Use) to The Netherlands.

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 Amendment 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 Vestar, Inc., 650 Cliffside Dr., San Dimas, CA 91773, has filed an application requesting approval for the export of the human drug VS101 Kit (for Loading with Indium IN–111 for Diagnostic Use), to The Netherlands. This radiopharmaceutical is useful in diagnosis of various tumor types by intravenous injection followed by scanning of the patient, using suitable gamma camera equipment. The application was received and filed in the Center for Drug Evaluation and Research on July 12, 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 August 8, 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: July 20, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88–17015 Filed 7–27–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0275]

Drug Export; Omnipaque® (Iohexol) Injection

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sterling Drug, Inc., has filed an application requesting approval for the export of the human drug Omnipaque® (iohexol) Injection to Canada.

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 Sterling Drug, Inc., 90 Park Ave., New York, NY 10016, has filed an application requesting approval for the export of the human drug Omnipaque® (iohexol) Injection, to Canada. This product is to be used as a water soluble radiographic contrast medium. The application was received and filed in the Center for Drug Evaluation and Research on July 12, 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 August 8, 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: July 20, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88–17016 Filed 7–27–88; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Subcommittee of the Arthritis Advisory Committee scheduled for August 1, 1988. The meeting was announced by notice in the **Federal Register** of July 14, 1988 (53 FR 26672).

FOR FURTHER INFORMATION CONTACT: David F. Hersey, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695

Dated: July 25, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–17144 Filed 7–26–88; 3:45 pm]

BILLING CODE 4160–01–M

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "HCFA Medicare Heart Transplant Data File," HHS/HCFA/BDMS No. 09–70–0040. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on July 25, 1988. The new system of records, including routine uses, will become effective September 26, 1988, unless HCFA receives comments which would necessitate alteration to the system.

ADDRESS: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Management and Budget, Health Care Financing Administation, Room G–M–1, East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Barton McCann, M.D., Bureau of Eligibility, Reimbursement and Coverage, Health Care Financing Administration, Room 401, East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records and collect data for that system on heart transplants under the authority of section 1875 of the Social Security Act (42 U.S.C. 1395 ll), as amended, which authorizes studies "relating to health care of the aged and disabled." In

addition, section 1874(b) of the Social Security Act (42 U.S.C. 1395kk(b)) provides additional authority to obtain information needed to administer the Medicare program. HCFA has determined that in carefully selected patients, managed according to specific protocols by experienced medical teams at institutions with substantial commitment to and experience with the procedure, heart transplantation has resulted in major increments in life expectancy and quality of life. Data in the system will include clinical information, medical history, pre-tranplant laboratory data, and complications. These data will be used to evaluate the criteria for Medicare coverage of heart transplants, including patient selection, facility experience, and patient outcomes.

The Privacy Act permits us to disclose information without consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information. The proposed routine uses in the new system meet the compatibility critera, since the information is collected for the purpose of addressing the issues of assessing the adequacy of care and linking adverse outcomes with inadequate care. We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: July 20, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-0040

SYSTEM NAME:

HCFA Medicare Heart Transplant Data File HHS/HCFA/BDMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207. (Contact system manager for location of magnetic computerized records.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare and non-Medicare heart transplant recipients and donors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains individual's name, health insurance claim number or social security number (SSN), demographic and utilization information under the Medicare program, and clinical information such as the etiology of the heart disease, medical history and/or current findings, pre-transplant laboratory data, date of transplant, complications, immunosuppressive protocol, date and cause of death, and readmissions.

AUTHORITY OF MAINTENANCE OF THE SYSTEM:

Section 1875 of the Social Security Act (42 U.S.C. 1395 II), as amended.

PURPOSE OF THE SYSTEM:

To collect data on heart transplants of Medicare and non-Medicare recipients and donors in order to evaluate the Medicare criteria for facilities, on patient selection, heart transplant facility experience levels, and patient outcomes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosure may be made to:

1. The Organ Procurement and Transplantation Network (OPTN), established in accordance with section 372 of the Public Health Service Act (42 U.S.C. 274);

2. A contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying, and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system;

3. A Congressional office from the records of an individual in response to an inquiry from the Congressional office at the request of the individual;

4. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

a. HHS or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity (when the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee); or

d. The United States or any agency thereof (when HHS determines that the litigation is likely to affect HHS or any of its components),

Is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

5. Organizations deemed qualified by the Health Care Financing Administration to carry out quality assessment, medical audits, or utilization review;

6. To a recipient for a research project, if HCFA:

a. Determines that the use of disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the research purpose for which the disclosure is to be made: (1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Requires the recipient to: (1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and (3) makes no further use or disclosure of the record except: (a) In emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

d. Secure a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Paper and magnetic media.

RETRIEVABILITY:

Records are retrieved by the Health Insurance Claim Number or SSN

SAFEGUARDS:

a. Authorized Users: Agency employees and contractor personnel whose duties require the use of

information in the system. In addition, such agency employees and contractor personnel are advised that the information is confidential and of criminal sanctions for unauthorized disclosure information.

b. Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is in contracts related to this system.

d. Implementation Guidelines: Safeguards implemented in accordance with all guidelines required by the Department of Health and Human Services. Safeguards for automated records have been established in accordance with the Department of HHS' automated Data Processing Manual, Part 6, "ADP System Security."

RETENTION AND DISPOSAL:

Records are retained for 5 years after the last action on the record.

SYSTEM MANAGER(S) AND ADDRESS:

Director, BDMS, Health Care Financing Administration, 1–E–9 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

Inquires and requests for system records should be addressed to the system manager at the address above. The requestor must specify the health insurance claim number or SSN.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with HHS Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). (These procedures are in accordance with HHS Regulations (45 CFR 5b.7).)

RECORDS SOURCE CATEGORIES:

HCFA obtains the identifying information in this system from the hospital records or directly from the individuals. In addition to these hospital records, other information will be obtained from interviews with the patients and caregivers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88–16976 Filed 7–27–88; 8:45 am]

BILLING CODE 4120–03–M

Office of Human Development Services

[Program Announcement No. 13612–892]

Administration for Native Americans; Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Office of Human Development Services (OHDS), HHS.

ACTION: Announcement of availability of competitive financial assistance for Alaskan Native social and economic development projects.

SUMMARY: The Administration for Native Americans announces the availability of fiscal year 1989 funds for social and economic development projects. Financial assistance provided by ANA is designed to strengthen the self-sufficiency of Alaskan Natives through the support of both social and economic development projects and the strengthening of local governance capabilities.

DATES: The closing dates for receipt of applications are December 9, 1988 and May 5, 1989.

FOR FURTHER INFORMATION CONTACT: Ted George (206) 442–0992 or Robert Kreidler (206) 442–8113, Administration for Native Americans, Office of Human Development Services, Department of Health and Human Services, 2901 3rd Avenue, Mail Stop 411, Seattle, WA 98121.

SUPPLEMENTARY INFORMATION:

A. Introduction and Program Purpose

The purpose of this program announcement is to announce the availability of financial assistance to promote self-sufficiency for Alaskan Natives through support of local governance, as well as social and economic development projects. Funds will be awarded under section 803 of the native American Programs Act of 1974, as amended, Pub. L. 93–644, Stat. 2324, 42 U.S.C. 299lb.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement.

The purpose of the financial assistance provided by the Administration for Native Americans (ANA) under the Native American Programs Act (the Act) is to promote social and economic self-sufficiency for American Indians, Alaskan Natives, Native Hawaiians, and Native American Pacific Islanders (American Samoan Natives and indigenous peoples of Guam and the Commonwealth of the Northern Mariana Islands).

ANA believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and Alaskan Native villages and in the leadership of Native American groups. The development of self-sufficiency requires strengthening governmental responsibilities, economic progress, and improvement of social systems which project and enhance the health and well-being of individuals, families and communities.

Achievement of self-sufficiency is based on the community's ability to plan, organize, and direct resources in a comprehensive manner to achieve long-range community goals. ANA bases its program and policy initiatives on the following three program goals:

(1) *Governance:* To assist tribal and village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

(2) *Economic Development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services.

(3) *Social Development:* To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

To accomplish these goals, ANA supports tribal and village governments and other Native American organizations in the development and implementation of community-based, long-term governance and social and economic development strategies (SEDS) aimed at promoting the self-sufficiency of their own communities. This approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining their own goals, setting priorities, and planning and implementing programs aimed at

achieving those goals; the unique mix of socio-economic, political, and cultural factors involved in each community makes such self-determination necessary; the local community is in the best position to apply its own cultural, political, and socio-economic values in deciding on long-term strategies and programs.

(2) Economic and social development are interrelated, and development in one area should be balanced with development in the other in order to enhance self-sufficiency. Without a careful balance of the two, the community's development efforts may be jeopardized. Expansion of social services, without providing opportunities for employment and economic development, may lead to greater dependency. Conversely, inadequate social services can seriously impede productivity and economic development.

B. Proposed Projects to be Funded

The fundamental task which Native American communities face is developing enduring social and economic strategies in keeping with local goals, resources, and cultural values. ANA is interested in assisting local communities in the implementation of projects that are a part of long-range strategies to achieve social and economic self-sufficiency. ANA expects its applicants to have undertaken a long-range planning process that addresses the community's development and encourages social and economic growth for the community. Such long-range planning must consider the maximum use of available resources, directing those resources at opportunities and addressing issues that hinder progress.

ANA encourages applicants to consider innovative approaches to achieve the specific governance and social and economic goals of the community, and to use non-ANA resources including human, natural, and financial ones to strengthen and broaden the proposed project's impact in the community.

All projects funded by ANA must be complete, self-sustaining or supported with other than ANA funds at the end of the project period. ANA's funding of specific projects is not for those programs which operate indefinitely or have need for ANA funding on a recurring basis.

Goal 1: Governance. Effective governance is a necessary foundation and condition for social and economic development of Indian tribes, Alaskan Native villages and Native American groups. Efforts to achieve effective governance include: (1) Strengthening the effectiveness of tribal and village governments; (2) increasing the ability of tribes, villages and Native Americans groups and organizations to plan, develop, and administer a comprehensive program supportive of community social and ecomonic self-sufficiency; and (3) increasing awareness of the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, or as citizens of the United States.

Under the governance goal, ANA strongly encourages tribal and village councils and other governing bodies to strengthen and streamline their institutional management in order to develop and implement social and economic development strategies and to improve the day-to-day management of programs. By improving such capabilities, Indian Tribes, Alaskan Native villages and Native American groups can better define and achieve the goals of their people and promote greater efficiency and effectiveness in the use of available resources.

Goal 2: Economic Development. Effective economic development is the long-term mobilization and management of economic resources to achieve a diversified economy characterized by widespread distribution of economic resources, services, and benefits; participation of community members in the productive activities and economic investments of the community; and pursuit of economic interests in ways that balance economic gain with social development.

Goal 3: Social Development. Effective social development is the mobilization and management of resources for the social benefit of community members, and involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over the institutions that protect the health and welfare of individuals and families, and preserve the values, language, and culture of the community.

Building on the foundation of strong local governance, ANA expects tribal and village governments and other Native American organizations to move toward coordinated and balanced development and implementation of social and economic development strategies. These interrelated strategies should coordinate and direct all resources (Federal and non-Federal toward locally determined priorities, and affect the community and its members in ways that promote greater economic and social self-sufficiency. In addition, these strategies should provide an independent source of revenue to the community which will assist the applicant in decreasing dependency on public funds.

Alaska Initiative

Based on the three ANA goals, in Fiscal Year 1984, ANA implemented a special Alaska social and economic development initiative. The purpose of this special effort was to provide financial assistance at the village level or for village-specific projects aimed at improving a village's social and economic development. This program announcement continues to implement this initiative. ANA sees both the non-profit and for-profit corporations in Alaska as being able to play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which take advantage of the opportunities afforded to Alaskan Natives under the Alaska Native Claims Settlement Act (ANCSA), Pub. L. 92–202.

Examples of the types of projects that ANA is seeking to fund include, but are not limited to, projects that will:

Governance:

- Initiate a demonstration program at a regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base.
- Assist in developing land use capabilities and develop skills in the areas of land and natural resource management including resource assessment and development, as well as potential impacts upon the environment and the subsistence ecology.
- Assist village consortia in the development of tribal constitutions, codes, and court systems.
- Develop agreements between the State and villages that transfer programs, jurisdictions, and/or control to Native entities.
- Strengthen village government control of land management, including land protection.
- Develop tribal courts, adoption codes, and/or related comprehensive children's codes.
- Assist in status clarification for traditional councils.
- Initiate village level mergers between village council and village corporations.
- Develop Regional IRAs (Indian Reorganization Act of 1934) and village consortia, in order to maximize tribal government resources, i.e., to develop model codes, or tribal court systems.

Economic Development:

• Assist villages to develop businesses and industries which (1) use local materials, (2) create jobs for Alaskan Natives, (3) are capable of high productivity at a small scale of operation, and (4) complement traditional and necessary seasonal activities.

• Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system.

• Assist villages or consortia of villages in developing subsistence compatible industries that will retain local dollars invillages, reducing dependency on State and Federal subsidies.

• Assist in new or expanded Native businesses.

• Assist villages in labor export, i.e., people leaving the local communities for seasonal work and returning to their communities.

Social Development:

• Assist villages in developing the service sector.

• Assist in developing training and education programs for those jobs in education, government, and health usually found in local communities and also to work with the various agencies to encourage job replacement of non-Natives by Natives.

• Coordinate land use planning with village corporations and city government.

• Develop local control of planning and delivery of social services.

• Develop new service programs established with ANA funds and funded for continued operation by local communities or the private sector.

• Develop or coordinate activities with State-funded projects, in decreasing the incidences of child abuse and neglect, or fetal alcohol syndrome, or Native suicides.

• Assist in obtaining licenses to provide housing or related services for State or local governments.

• Assist in increasing the number of Native adoptions, or Native children returning home from foster care.

• Assist in respite care for family caretakers.

C. Eligible Applicants

The following are eligible to apply for a grant award under this program announcement:

• Alaskan Native villages as defined in the Alaska Native Claims Settlement Act and/or non-profit village consortia.

• Nonprofit Alaskan Native Regional Associations in Alaska with village specific projects.

• Nonprofit Native organizations in Alaska with village specific projects.

• Current ANA grantees in Alaska funded under section 803 of the Native American Program Act with a project period ending in Fiscal Year 1989.

• Alaskan Native Indian communities as recognized by the Bureau of Indian Affairs.

Although for-profit Regional Corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use the for-profit corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in the project.

D. Available Funds

Approximately $1.5 million of financial assistance is available under this program announcement.

Funding Guidance: ANA plans to award approximately 15–18 grants. For individual village projects, the funding level will be up to $100,000; for regional nonprofit and village consortia, the funding level is up to $150,000, commensurate with approved multi-village objectives. For multi-year projects, the funding range for Fiscal Years 1990 and 1991 will be the same.

Each applicant is eligible to receive no more than one grant award under this announcment.

E. Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project, one extending more than 12 months, affords grantees the opportunity to undertake more complex and in-depth projects than can be completed in one year. Applicants are encouraged to develop multi-year projects. However, applicants should note that a multi-year project is a project on a single theme that requires more than 12 months to complete. It is not a series of unrelated projects presented in chronological order over a three year period. It should also be noted that funding after the first budget period of a multi-year project will be non-competitive.

The budget period for each multi-year project grant will be 12 months. The non-competitive funding for the second and third year will depend upon the grantee's progress in achieving the objectives of the project according to the approved work plan, the availability of Federal funds, ANA's continued belief that the project is in the public interest, and compliance with applicable statutory, regulatory and grant requirements.

F. Grantee Share of Project

Grantees must provide at least 20 percent of the total approved cost of the project, which may be cash or in-kind contributions. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The method to compute the non-Federal share is shown in the Application Kit. An itemized budget detailing the applicant's non-Federal share and its source must be included in the application. A request for a waiver of the non-Federal share requirement may be submitted in acordance with Section 1336.50(b)(3) of the Native American Program Regulations.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application requirements are approved under OMB Control No. 0980–0016. The application kits containing the necessary forms may be obtained from:

Administration for Native Americans, Office of Human Development Services, DHHS, 2901 3rd Avenue, Mail Stop 411, Seattle, WA 98121

Attention: No. 13612–892, (206) 442–0992

Attention: 13612–892.

Application Submission

One signed original and two copies of the grant application, including all attachments, must be hand delivered or mailed to:

Department of Health and Human Services, Office of Human Development Services, Discretionary Grants Management Branch, 290 3rd Avenue, Mail Stop 414, Seattle, WA 98121.

Attention: ANA 13612–892.

Do Not Submit the Application to Washington, DC

The application shall be signed by an individual authorized to act for the applicant tribe or organization and to assume the applicant's obligations under the terms and conditions of the grant

award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel evaluates each application against the published criteria. The results of this review assist the Commissioner in making final funding decisions.
- The Commissioner's decision also takes into account the comments of the ANA staff, State and Federal agencies having performance related information, and other interested parties.
- The Commissioner makes grants awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this Program Announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within approximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA). The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share equipment.

I. Review Process and Criteria

Applications submitted in a timely manner under this program announcement will undergo a pre-review to determine:

- that the applicant is eligible in accordance with the Eligible Applicant Section of this announcement;
- that the application proposes project objectives which are responsive to the Program Announcement; and
- that the application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. All required materials and forms are listed in the Grant Application Checklist in the Application Kit.

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of five evaluation criteria. These criteria are used to evaluate the quality of a proposed project and to determine its likelihood of success. A proposed project should reflect the purposes of ANA's SEDS philosophy and program goals (as described under *Introduction and Program Purpose* of this announcement) and increase the probability of greater self-sufficiency for a specific tribe or Native American community. The five programmatic and management criteria are closely related to each other and are considered in judging the overall quality of an application. Points will be given only applications which are responsive to this announcement and these criteria. The five evaluation criteria are:

(1) *Long-Range Goals and Available Resources.* (15 points)

(a) The application presents long-range goals, within the context of the community's comprehensive social and economic development goals, which are the proposed project addresses. (Inclusion of the community's entire development plan is not necessary.)

(b) Available resources (other than ANA) which will assist and be coordinated with the project are described. These resources may be human, natural or financial in nature, including other Federal and non-Federal resources.

(2) *Capabilities and Qualifications.* (10 points)

Resumes or position descriptions of key personnel, including those of consultants, are included. Resumes indicate that the staff are qualified to carry out the project activities and that overall quality project management is assured.

(3) *Project Objectives and Activities.* (45 points)

The application proposes specific project objectives and activities and activities. The objective work plan is presented in annual increments for all project objectives and activities and demonstrates that these objectives and activities:

- Are measurable and quantifiable;
- Are based on a fully described and locally determined balanced strategy for governance and for social and economic development;
- clearly address the community's long range goals;
- can be accomplished with available or expected resources during the proposed project period;
- indicate when the objective and major activities under each objective will be accomplished; and
- specify who will accomplish the activities under each objective.

(4) *Results or Benefits Expected.* (20 points)

The proposed project will result in specific, measurable outcomes which will clearly contribute to the overall development of the community and its members. The specific information provided on expected outcomes is the basis upon which the outcomes can be evaluated at end of the project.

(5) *Budget.* (10 points)

The budget fully explains and justifies the line items in the budget categories in Part III, Section B of the Budget Information. Sufficient detail is included to facilitate determination of allowability, relevance to the project, and cost benefits for the entire length of the proposed project.

J. Guidance to Applicants

The following policies, pointers, and instructions are provided to assist applicants in developing a competitive application.

(1) *Program Guidance*

- Community Coordination: ANA supports the concept that the key to balanced socio-economic development is the local village. ANA encourages Native village governments to coordinate their local plans with other village entities, if any, and especially the city government and the village corporation. In addition, villages are encouraged to make maximum use of regional nonprofit resources, including village-to-regional corporation subcontracts.
- ANA reviewers of applications have indicated they are better able to judge the feasibility and practicality of a proposed economic development project when the applicant has utilized a business plan to discuss the project. ANA has included sample business plans in the application kit. It is strongly suggested that an applicant use these as a guide in the development of an application. The more information given a review panel on a proposed business project, the better able it is to evaluate the potential for success.
- ANA does not fund on the basis of need. ANA funds projects presenting the strongest prospects for fulfilling a community's governance, social or economic development.
- In discussing the problems or needs of the community being addressed in the application, sufficient background and/or history of the community should be included to ensure that the feasibility of

the proposed project will be understood by reviewers.

• The project proposal must clearly identify in measurable terms the expected results of the project and its positive and continuing impact on the community.

• In the Part IV, Section A of the application package, *Resources Available to the Proposed Project,* the applicant should address any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant and any restrictions to those settlements, and explain the specific reasons it is seeking ANA funds, particularly if the applicant apparently has other resources to support the proposed project and chooses not to use them.

• Supporting documentation or other testimonies from concerned interests other than the applicant may be used to provide support for the feasibility of the project.

(2) *Technical Guidance*

• The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• ANA suggests that the pages of the application be numbered sequentially from the first page. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.

• Two copies of the application plus the original are required.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria and score the application prior to its submission in order to gain a better sense of their application's quality and potential competitiveness.

• For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

• ANA will not fund essentially identical projects serving the same constituency.

• ANA will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

• An application from a Federally recognized tribe must be from the governing body.

• The Cover Page (included in the Kit) should be the first page of an application.

• The Approach page (Section B, Part IV) for each objective proposed should be of sufficient detail to become a daily or weekly staff guide of responsibilities should the applicant be funded.

• If a profit making venture is being proposed, revenue must be reinvensted in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income and used in accordance as general program income and used in accordance with the deduction alternative. (See 45 CFR Part 74.42(c).)

• Applicants proposing multi-year projects must fully describe annual project objectives and activities. Separate Objective Work Plans (OWP) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (i.e. why the project needs multiple years to complete) and describe the results to be achieved by the end of each budget period of the projected period.

• The applicant should specify the entire project period length on the cover page of the Form 424, Block 16, not the length of the first budget period. In cases where the applicant's contents propose one length of project period and the Form 424 cover page specifies a conflicting length of project peirod, ANA will consider the project period specified on the Form 424 as the governing one.

• Village governments without established accounting systems must arrange for qualified, acceptable accounting services prior to release of grant funds.

Note: Subpart H, 45 CFR Part 74 describes those elements of a generally acceptable accounting system for Federal grantees. The financial management standards in Subpart H require:

(1) Accurate, current and complete disclosure;

(2) Records which show source and application of funds;

(3) Effective control and accountability of funds and property;

(4) Comparison of actual and budgeted amounts;

(5) Procedures to minimize time lapsing between transfer and disbursement of funds;

(6) Procedures to determine allowability and allocating of funds;

(7) Accounting records with source documentation;

(8) Periodic audits; and

(9) A follow-up system.

(3) *Projects or Activities that generally will not meet the purposes of this Announcement.*

The following activities are inconsistent with the policies of ANA:

• Projects which support a grantee in providing training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA") are inconsistent with the policies of ANA. However, the purchase of T/TA by a grantee for its own use or use for its members (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.

• Proposed feasibility studies, business plans, marketing plans, or written materials such as manuals that are not an integral part of the applicant's long-range development plan would generally not be considered. ANA is not interested in funding "wish lists" of business possibilities. ANA expects evidence of solid investment of time and thought on the part of the applicant to any development of business or other plans.

• On-going social service delivery, expansion or continuation of existing social service delivery programs;

• Core administrative functions or other activities that essentially support the applicant's administrative functions;

• Project goals which are not responsive to one or more of the three ANA goals (Governance, Economic Development, Social Development);

• Project plans or strategies clearly not determined or developed at the local level;

• Proposals from consortia of tribes that are not specific in regard to support from and roles of member tribes;

• Projects which should be supported by other Federal funding sources appropriate and available for the proposed activity;

• Activities that will not be completed, not be self-sustaining or not be supported by other than ANA funds at the end of the project period;

• Lack of demonstrated coordination with non-ANA resources;

• Lack of a justification or explanation for requesting ANA funds, or a lack of discussion of other resources and revenues for use in the project;

• The purchase of real estate (see 45 CFR 1336.50(e)) or construction (see HDS Grants Administration Manual Ch. 3, Section E.);

• Use of ANA grant funds for a monetary share of capital investment for a business.

ANA will critically evaluate applications within which the acquistion

of major capital equipment (whether oil rigs or computers/word processing equipment), franchises or management fees are major components of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application.

ANA will also critically evaluate projects reflecting heavy reliance on use of outside consultants, especially where consultants have prepared the application and have provided themselves a major role in the proposed project.

K. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are December 9, 1988 and May 5, 1989.

L. Receipt of Applications

Applications must either be hand delivered or mailed.

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting the deadline if they are:

(1) Received on or before the deadline date at the address specified in the Application Submission Section, or

(2) Sent on or before the deadline date. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications. Applications which do not meet the criteria in the above paragraph of this section are considered late applications. ANA shall notify each late applicant that its application will not be considered in the current competition.

Extention of deadlines. ANA may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Date: July 11, 1988.

William Lynn Engles,

Commissioner, Administration for Native Americans.

Approved: July 21, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 88-16996 Filed 7-27-88; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-08-4212-24; N-45098]

Airport Leases; Nevada

ACTION: Notice of Airport Lease Application N-45098 Amendment No. 2 To Legal Description, Double Four Corp.

DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Hal Green, District Realty Specialist, Winnemucca District Office, Bureau of Land Management, 705 East Fourth Street, Winnemucca, NV 89445, (702) 623-3676.

SUMMARY: Notice is hereby given that the Notice that appeared in the **Federal Register**, Vol. 52, No. 10, Thursday, January 15, 1987, amended by notice dated September 15, 1987, is further amended to include the following described public lands.

Mount Diablo Meridian, Nevada

T. 47 N., R. 30 E., sec. 16, NW¼SE¼NW¼ NE¼, W½NE¼NW¼NE¼.

The area described, including original Notice and first amendment, contains 310.00 acres and is located in Humboldt County, Nevada.

SUPPLEMENTARY INFORMATION: Segregation of the Public Lands—The original application was filed on October 15, 1986, and on that date the above described public lands were segregated from all forms of appropriation under the public land laws.

Robert J. Neary,

District Manager, Winnemucca.

Dated: July 21, 1988.

[FR Doc. 88-16970 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-MC-M

[NV-930-08-4220-11; Nev-048392]

Classification Termination and Opening Order; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a March 3, 1960, classification, as amended, for disposal under the agricultural land laws other than the Pittman Underground Water Acts.

EFFECTIVE DATE: July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Ben Collins, District Manager, Las Vegas District Office, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126, 702-388-6403.

SUPPLEMENTARY INFORMATION: Under the authority of section 7 of the Taylor Grazing Act (48 Stat. 1272) and pursuant to 43 CFR 2462.4(c)(2), the Bureau of Land Management hereby terminates Penoyer Valley Area Classification No. Nev-048392 which involves the following described lands:

Mount Diablo Meridian

T. 4 S., R. 54 E.,
Sec. 1, E½NE¼, NE¼SE¼.
T. 3 S., R. 55 E.,
Sec. 29, SW¼SW¼;
Sec. 30, E½NE¼;
Sec. 32, all;
Sec. 36, NW¼NE¼.
T. 4 S., R. 55 E.,
Sec. 6, NW¼NE¼, NW¼, N½SW¼;
Sec. 8, N½NE¼,SE¼NE¼.

The area described aggregates 1,320 acres located in Lincoln County.

A total of 7,202.41 acres was classified for disposal under the agricultural land laws other than the Pittman Underground Water Acts (41 Stat. 293; 42 Stat. 1012; 43 U.S.C. 351-355, 357-360). the 1,320 acres described above are the remaining public lands in the classification.

The existing State of Nevada water supply report on Penoyer Valley indicates, "* * * additional withdrawals and consumption of underground water for irrigation would * * * conflict with existing rights and threaten to prove detrimental to the public welfare." The classification serves no useful purpose without the availability of water to irrigate the lands.

The classification did not provide for segretation of the lands against any of the public land laws, incuding the mining and mineral leasing laws, except the Pittman Underground Water Acts. These Acts were repealed by Pub. L. 88-417 of August 11, 1964 (78 Stat. 389) and Pub. L. 94-579 of October 21, 1976 (90 Stat. 2789).

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-16961 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-HC-M

[WY-920-08-4111-15; W-106741]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–106741 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–106741 effective December 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 88–16966 Filed 7–27–88; 8:45 am]

BILLING CODE 4310–22–M

[AZ-920-08-4212-12; A-22436]

Arizona; Order Providing for Opening of Land in Graham and Cochise Counties

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This notice will open 20,046.99 acres of reconveyed lands to surface entry. A total of 17,188.36 acres will be opened to mining and mineral leasing. The mineral estate in 2,858.63 acres was already in Federal ownership.

FOR FURTHER INFORMATION CONTACT: Angela Mogel, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241–5534.

SUPPLEMENTARY INFORMATION: On April 11, 1988, as authorized under section 206 of the Federal Land Policy and Management Act of October 21, 1976, the United States accepted title to the following land:

Gila and Salt River Meridian, Arizona

Parcel I

T. 4 S., R. 23 E.,
Sec. 32, lots 1 to 6 incl., N½, NE¼SW¼, N½SE¼, SE¼SE¼.
T. 5 S., R. 22 E.,
Sec. 2, lots 1 to 4 incl., (lying within the survey of the former Camp Goodwin Military Reservation);
Sec. 24, lot 4;
Sec. 25, lots 1, 2 and 3, W½NE¼, E½NW¼, SW¼NW¼, NW¼SE¼;
Sec. 26, lots 4, 5 and 8;
Sec. 35, lot 1;
Sec. 36, lots 1 to 4 incl., W½E½, W½.
T. 5 S., R. 23 E.,
Sec. 9, S½SW¼, SW¼SE¼;
Sec. 16, E½, N½NW¼, E½SE¼NW¼, E½E½SW¼;
Sec. 17, NE¼NE¼, SW¼SE¼;
Sec. 19, lot 4, SE¼SW¼, SE¼;
Sec. 20, E½E½, W½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 29, N½NW¼, SW¼NW¼;
Sec. 30, lots 1, 2 and 3, SE¼NE¼, NE¼SW¼;
Sec. 32, all;
Sec. 33, all;
Sec. 34, S½;
Sec. 35, E½, SW¼;
Sec. 36, all.
T. 5 S., R. 26 E.,
Sec. 10, lots 4 and 5, SE¼;
Sec. 15, E½E½;
Sec. 25, N½, N½SE¼, N½S½SE¼.
T. 5 S., R. 27 E.,
Sec. 16, all.
T. 6 S., R. 22 E.,
Sec. 16, all, excluding San Carlos Indian Reservation;
Sec. 20, NE¼, E½SE¼;
Sec. 21, W½, W½SE¼;
Sec. 28, all;
Sec. 29, NE¼, NE¼SE¼.
T. 6 S., R. 23 E.,
Sec. 1, lots 1 and 2, S½NE¼, E½SW¼, W½SE¼;
Sec. 2, lots 1 to 4 incl., S½N½, S½;
Sec. 3, lots 1 to 4 incl., S½N½;
Sec. 11, NE¼SE¼;
Sec. 12, NW¼, W½SW¼;
Sec. 29, S½NW¼, SW¼;
Sec. 32, lots 1 to 4 incl., N½S½, N½;
Sec. 35, lot 1.
T. 6 S., R. 24 E.,
Sec. 16, E½;
Sec. 32, W½E½, E½SE¼.
T. 6 S., R. 27 E.,
Sec. 2, lots 1 to 4 incl., S½N½, S½;
Sec. 36, NE¼, N½NW¼.
T. 7 S., R. 23 E.,
Sec. 2, lots 1 to 4 incl., S½N½, SW¼, W½SE¼;
Sec. 6, lots 1 to 6 incl., SW¼NE¼, SE¼NW¼.
T. 24 S., R. 32 E.,
Sec. 2, lots 1 to 4 incl., W½E½, W½;
Sec. 3, all;
Sec. 10, N½, SW¼, W½SE¼, SE¼SE¼;
Sec. 14, lots 1 to 4 incl., SW¼NE¼, S½NW¼, S½SW¼, W½SE¼;
Sec. 15, SE¼NE¼, SE¼SW¼, S½SE¼;
Sec. 16, all;
Sec. 22, lots 1 and 2;
Sec. 23, lots 1, 2, 3.

Parcel II

T. 5 S., R. 27 E.,
Sec. 35, all.
T. 6 S., R. 23 E.,
Sec. 31, lots 1 to 7 incl., NE¼, E½NW¼, NE¼SW¼, N½SE¼.
T. 6 S., R. 24 E.,
Sec. 17, SW¼SW¼;
Sec. 19, E½W½, E½SE¼;
Sec. 20, W½W½;
Sec. 29, W½W½;
Sec. 30, lots 3 and 4, S½NE¼, E½SW¼, SE¼;
Sec. 31, lot 1, N½NE¼, NE¼NW¼.
T. 7 S., R. 23 E.,
Sec. 2, E½SE¼.
T. 7 S., R. 24 E.,
Sec. 5, SE¼SW¼, SW¼SE¼.
T. 24 S., R. 32 E.,
Sec. 11, lots 1 to 4, incl., W½E½, NW¼NW¼.

At 9:00 a.m., on August 29, 1988, the lands described as Parcels I and II will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

At 9:00 a.m., on August 29, 1988, the land described as Parcel I will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 9:00 a.m., on August 29, 1988, the lands described as Parcel I will be open to applications and offers under the mineral leasing laws.

All valid applications received at or prior to 9:00 a.m. on August 29, 1988, shall be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2–3, if necessary. Applications and offers received thereafter shall be considered in the order of filing.

The mineral estate in Parcel II was already in Federal ownership and has been and presently remains open to the

operation of the mining and mineral leasing laws.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-16971 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-32-M

[UT-050-08-4212-13; U-56998]

Realty Actions; Sales, Leases, etc.: Utah; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice—notice of Realty Action; U-56998; Exchange of Public and Private Lands in Juab and Washington Counties, Utah.

SUMMARY: In FR Doc. 88-14777 (published in the issue of Thursday, June 30, 1988, page 24805, column one), the legal description on lines 7, 8, 9, and 10 in the first paragraph is corrected to read: "T. 43 S., R. 16 W., SLM, Sec. 1, Lots 14 and 15, containing 57.65 acres; and T. 42 S., R. 16 W., SLM, Sec. 35, W½NW¼SE¼NW¼, S½SE¼NW¼, containing 25 acres."

Dated: July 21, 1988.

Larry Oldroyd,

District Manager.

[FR Doc. 88-16960 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-DQ-M

[AK-965-4213-15]

Publication F-14880-A; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14 (a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Kikiktagruk Inupiat Corporation for approximately 26 acres. The lands involved are in vicinity of Kotzebue, Alaska.

A portion of Tract No. 1, U.S. Survey No. 2645, within Sec. 9, T. 17 N., R 18 W., Kateel River Meridian Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Times. Copies of the decision may be obtained by contracting the Alaska State Office of the Bureau of Land Magagement, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, and agency of the Federal Government or regional corporation, shall have until August 29, 1988, to file an appeal. However, parties receiving service by certified mail shall have 30 days for the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements of filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived the rights.

Elizabeth Bonnell

Acting Chief, Branch of Northwest Adjudication.

[FR Doc. 88.1704 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-JA-M

[NV-930-08-4212-14; N-28229]

Realty Action; Battle Mountain District; Shoshone-Eureka Resource Area; Eureka County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; competitive sale of Federal land in Eureka County, Nevada.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale through competitive bidding procedures under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719) at no less than the appraised fair market value:

MOUNT DIABLO MERIDIAN

	T. 19 N., R. 53 E., Sec. 11	Acreage
Parcel No.:		
1	NE¼NE¼	40
2	E½NE¼NW¼NE¼	5
3	E½SE¼NW¼NE¼	5
4	E½NE¼SW¼NE¼	5
5	W½NW¼SW¼NE¼	5
6	S½SW¼NE¼	20

Note.—Six parcels for a total of 80 acres.

The sale is consistent with the Shoshone-Eureka Resource Management Plan. The lands are being offered for sale for community expansion of the Town of Eureka. The land is not needed for support of any Bureau resource program and is not suitable for management by another Federal department or agency. The lands will not be offered for sale for at least 60 days after the publication of this Notice in the **Federal Register**.

The lands are within the Shannon Station and Ruby Hill Grazing Allotments. The lessees have been sent the required two-year notification.

The patents, when issued will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

The sale will be subject to valid existing rights, including:

Nev-04979, 400' R/W for U.S. 50
N-5638, 25' electric powerline
N-37190, 10' telephone line
N-46712, 15' water pipeline
N-19823, 50' pipeline
Nev-067106, 20' telephone and telegraph line
Nev-065179, 40' pipeline
N-47187, Oil & Gas Lease

road and public utilities easements in accordance with Eureka County's transportation plan

General Information

Publication of this Notice in the **Federal Register** segregates the public lands from all forms of appropriation under the public land laws and the mining laws. The segregative effect will end upon issuance of a patent to these lands, upon pulbication in the **Federal Register** of a termination of the segregation, or 270 days from the date of publication of this notice, whichever comes first.

Information relative to the sale and bidding procedures, as well as the appraised fair market value of the parcels, will be made available to the public at a later date, not less than 30 days before the sale.

The lands are proposed to be offered for sale by sealed bid, utilizing competitive bidding procedures. Conveyance of the available mineral interests will occur simultaneously with the sale of the lands. A successful bid for the lands will constitute an application for conveyance of those mineral interests; therefore, all bids must be accompanied by a $50.00 filing fee for conveyance of the available mineral interests.

Unsold parcels will be offered competitively on a continuing basis for a period of six months after date of sale.

BLM may reject any and all offers, or withdraw the lands from sale up to the point of receiving the balance of the bid amount, if the authorized officer determines that the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable law.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may

submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Any adverse comments will be evaluated by the State Director, and this notice upheld, modified or vacated. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Michael C. Mitchel,

Acting District Manager, Battle Mountain District.

[FR Doc. 88-17061 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-HC-M

[CO-010-08-4333-11]

Temporary Closure of Certain Public Lands in the Little Snake Resource Area to Public Access; Sand Wash Basin, Moffat County, CO

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: Certain public lands in the Sand Wash Basin, Moffat County, Colorado will be temporarily closed to public access from 4:00 a.m. to 10:00 p.m. September 10, 1988, on and adjacent to the Sand Wash Hare and Hound event ORV race course. These lands will be temporarily closed for reasons of public safety and resource protection. This temporary closure is made pursuant to 43 CFR 8364.

SUPPLEMENTARY INFORMATION: Access will be limited to race officials, entrants, support personnel, law enforcement personnel, BLM personnel and other authorized personnel as designated during the period of the closure. The lands to be temporarily closed are further described as encompassing all or portions of T. 8 N., R. 97 W.; T. 8 N., R. 98 W.; T. 8 N, R. 99 W.; T. 9 N., R. 97 W.; T. 9 N., R. 98 W.; T 9 N., R. 99 W.; T 9 N., R. 100 W.; T. 10., R. 97 W.; T. 10 N., R. 98 W.; T. 10 N., R. 99 W., T. 10 N., R. 100 W.; T. 11 N., R. 97 W.

A map describing the specific areas to be temporarily closed is available from the Little Snake Resource Area Office, 1280 Industrial Avenue, Craig, Colorado. 81625. (303) 824-4441. Any person who fails to comply with this closure order issued under 43 CFR 8364 may be subject to the penalties provided for in 43 CFR 8360.0-7.

Jerry L. Kidd,

Associate District Manager.

July 20, 1988.

[FR Doc. 88-17055 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-JB-M

[ID-010-08-4341-02]

Boise District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting—District Advisory Council.

SUMMARY: The Boise District Advisory Council will conduct a field tour of the Delamar Silver Mine and new recreation facilities in the district's Owyhee Resource Area. The next day, the Council will conduct a half-day business and briefing session in the district office.

DATES: The field tour will be held on Thursday, August 18, 1988 and the business and briefing session will be held Friday, August 19, 1988. A public comment opportunity will be held at 11:00 a.m., August 19.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Boise BLM District, 208-334-9303.

J. David Brunner,

District Manager.

Date: July 19, 1988.

[FR Doc. 88-17056 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-GG-M

Advisory Council Meeting Cancellation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting cancellation, Ukiah, California, District Advisory Council.

SUMMARY: The meeting of the Ukiah District Advisory Council scheduled for August 4 and 5, 1988, and announced in the Tuesday, June 30, 1988, **Federal Register** is cancelled.

The meeting is being rescheduled and an announcement will follow.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462-3873.

Date: July 19, 1988.

Edwin G. Katlas,

Acting District Manager.

[FR Doc. 88-17057 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-84-M

[Alaska AA-49660]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Kateel River, AK

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-49660 has been received covering the following lands:

Kateel River Meridian, Alaska

T. 16 S., R. 7 W.,
Sections 25, 26, 35, and 36.
(2,560 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16 ⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from July 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-49660 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1985, subject to the terms and conditions cited above.

Dated: July 20, 1988.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 88-17058 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-JA-M

[Alaska AA-48904-0]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Fairbanks, AK

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48904-0 has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 18 S., R. 10 E.,
Sec. 14, N½SW¼.
(80 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accuring from December 1,

1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48904–0 as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective December 1, 1986, subject to the terms and conditions cited above.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

Dated: July 20, 1988.

[FR Doc. 88–17059 Filed 7–27–88; 8:45 am]

BILLING CODE 4310–JA–M

[WY–920–08–4111–15; W–92051]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–92051 for lands in Weston County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and not less than 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–92051 effective July 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section

[FR Doc. 88–17060 Filed 7–27–88; 8:45 am]

BILLING CODE 4310–22–M

Minerals Management Service

Development Operations Coordination Document; TXO Production Corp.

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that TXO Production Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 7194, Block 487, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Port O'Connor, Texas.

DATE: The subject DOCD was deemed submitted on July 19, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 20, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc.88–17062 Filed 7–27–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Amerada Hess Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amerada Hess Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 5612, 5613, and 5224, Blocks 205, 206, and 225, respectively, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on July 20, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 21, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-16967 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Gulfstar Operating Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Gulfstar Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5411, Block 107, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATES: The subject DOCD was deemed submitted on July 20, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the ssubject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 22, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-16969 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Sandefer Offshore Operating Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Sandefer Offshore Operating Co. has submitted a DOCD describing the activities it proposed to conduct on Leases OCS-5557 and 5558, Blocks 201 and 202, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATES: The subject DOCD was deemed submitted on July 21, 1988. Comments must be recieved within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m. Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbst; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2533.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 22, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-16968 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

International Agreement for Mexican Participation in the Expansion of the International Wastewater Treatment Plant at Nogales, AZ; Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: Based on an environmental assessment, the U.S. Section finds that the proposed action for the United States Government to enter into an agreement with the Government of Mexico to provide for their participation in the expansion of the Nogales International Wastewater Treatment Plant now under consideration by the U.S. Section and the City of Nogales, Arizona is not a major Federal action that would cause a significant local, regional, or national adverse impact on the environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500-1508); and the U.S. Section's operational procedures for implementing section 102 of NEPA, published in the **Federal Register**, September 2, 1981 (46 FR 44083–44094); the U.S. Section hereby gives notice that an environmental impact statement is not being prepared.

FOR FURTHER INFORMATION CONTACT: Mr. M.R. Ybarra, U.S. Section Secretary, International Boundary and Water Commission, United States and Mexico, United States Section, 4171 North Mesa Street, C–310, El Paso, Texas 79902. Telephone: (915) 534–6698, FTS 570–6698.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is that the United States Government enter into an agreement with the Government of Mexico, through the International Boundary and Water Commission (Commission), to provide for Mexico's participation in the expansion of the Nogales International Wastewater Treatment Plant (NIWWTP) now under consideration by the U.S. Section of the Commission and the City of Nogales, Arizona. The agreement provides for the Mexican Government to participate in the construction cost of the expansion of the existing international plant with a contribution of $1 million payable over a 10–year period beginning with the start of expanded plant operation in 1990. The agreement also provides that Mexico construct within its territory adequate sewage collection facilities to enable efficient conveyance of Nogales, Sonora's sewage to the international plant. Assurances by Mexico are provided in the agreement to prevent the discharge of untreated sewage into the natural drains that flow from Mexico into the United States, and to prevent the discharge of untreated industrial wastewater into the international plant.

Alternatives Considered

Three alternatives were considered:

The Proposed Action Alternative provides for an agreement recommending that Mexico join in the expansion of the NIWWTP by purchasing a capacity of about 4.95 million gallons per day (mgd) over and above the existing capacity of 4.95 mgd now assigned to Mexico at the international plant. Mexico would pay a total of $1 million for the additional capacity in increments of $100,000 a year over a 10-year period beginning in 1990. The division of operations and maintenance costs of the additional capacity would be in accordance with the procedures established in Commission Minute No. 206 of January 13, 1958 and consistent with authorization of the Acts of Congress of August 19, 1935 and July 27, 1953. Further, the proposed agreement would request Mexico to undertake plans for rehabilitation and expansion of the sewage collection system of the City of Nogales, Sonora. The proposed agreement also provides a number of measures to assure reliability and maintenance of the Mexican collection lines designed to prevent the pollution problems resulting from untreated wastewaters and from sewer line breaks and unsewered areas in Nogales, Sonora discharging into natural drains and crossing the boundary. Also, it provides assurance against the discharge of untreated industrial wastewaters to the international plant. Finally, the agreement also provides a cooperative program through the Commission for early response to failures in the Mexican sewer system.

The No Action Alternative will result in no immediate provision by Mexico for treatment of its collected wastewater in excess of that treated at the international plant now operating at capacity. Since the terrain slopes from Mexico to the United States, there would be increased fugitive sewage discharges of untreated sewage crossing the boundary through the various drainages. The present risk of a serious public health hazard due to Mexican sewage crossing the boundary on the surface would be greatly increased. The would be no assurance that Mexico would undertake a program for rehabilitation and expansion of its sewage collection system thus contributing to the public health risk. There would be no prevention of untreated industrial wastewater discharges to the international plant.

The Disposal in Mexico Alternative requires pumping the excess sewage load southward for future treatment. This alternative carries the risk of serious breakdowns occurring in the several pumping stations necessary for this alternative. There is the possibility that Mexico would not provide treatment for the additional load for many years.

Environmental Assessment

The U.S. Section completed the Draft Environmental Assessment for the proposed agreement on July 18, 1988.

Finding of The Environmental Assessment

The Draft Environmental Assessment finds that the proposed action does not constitute a major Federal action which would cause a significant local, regional, or national adverse impact on the environment based on the following facts:

1. The agreement would assure, to the extent possible, the prevention of discharges of untreated sawage into the United States associated with an inadequate collection system in Nogales, Sonora. It would prevent the future problem of even larger amounts of untreated sewage crossing the boundary into the United States due to both inadequate collection facilities and little or no treatment applied to the increasing quantities of sewage generated by the Mexican city in the future. It would prevent introduction of untreated industrial wastewaters into the central collector in Mexico and thus prevent a loss in treatment efficiency in the international plant. The attendant health hazards and odors associated with the untreated seawage crossing the boundary would be eliminated.

2. Detrimental economic effects associated with drops in the tourism industry that could be associated with a health and public nuisance problems related to the sewage spills would be avoided.

3. The well-being of people living and traveling in the Nogales, Arizona-Nogales, Sonora area would be improved.

4. Adverse impacts as have occurred would be prevented so that the improved water quality would benefit all wildlife in the area.

5. The rehabilitation and expansion of the sewage collection system in Mexico would not affect archaeological or historical sites in United States territory now on, or proposed for nomination to, the National Register of Historic Places, nor would it affect the United States properties listed on the National Registry of Natural Landmarks.

On the basis of the Draft Environmental Assessment, the U.S.

Section determines that an environmental impact statement is not required for the United States Government to enter into an agreement with the Government of Mexico to provide for their participation in the expansion of the Nogales International Watewater Treatment Plant and hereby supplies notice of a finding of no significant impact.

An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30 days of the date of this Notice.

The Draft Finding of No Significant Impact (FONSI) and Draft Environmental Assessment (EA) have been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the Draft FONSI and Draft EA are available to fill single copy requests at the above address.

July 18, 1988.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 88-17053 Filed 7-27-88; 8:45 am]

BILLING CODE 4710-03-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31247]

CSX Corp. and American Commercial Lines, Inc., Control; SCNO Acquisition Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: The Commission is accepting for consideration the application filed June 28, 1988, for CSX Corporation and American Commercial Lines, Inc. to control SCNO Barge Lines, Inc.

DATES: Written comments must be filed by August 29, 1988. Written comments from the Secretary of Transportation and the Attorney General of the United States must be filed by September 12, 1988. Applicants' reply is due October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

ADDRESSES: Unless otherwise indicated, an original and 10 copies of all documents must be sent to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31247, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives:

G. Paul Moates, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006

Michael A. Khouri, American Commercial Lines, Inc., Box 610, Jeffersonville, IN 47130

Keith G. O'Brien, Wheeler & Wheeler, 1625 K. Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: CSX Corporation (CSX) is a non-carrier holding company that owns and controls several regulated carriers. These carriers include: CSX Transportation, Inc. (a rail carrier); CMX (a motor carrier); and through its wholly owned subsidiary, American Commercial Lines, Inc. (ACL), American Commercial Barge Line, Company (ACBL) (a water carrier).[1] SCNO Barge Lines, Inc. (SCNO) holds authority from the Commission to operate as a water common and contract carrier. CSX's rail operations are located east of the Mississippi River, ACBL has significant barge operations on the Ohio River, and SCNO originates and terminates the preponderance of its barge traffic on the Missouri River.[2] This proposal involves the consolidation of SCNO with ACBL.

Pursuant to an Asset Purchase Agreement, CSX/ACL acquired control of the assets of SCNO on June 23, 1988, through a newly created, whlly owned subsidiary of ACL, SCNO Acquisition Corp. (Acquisition). The sale of assets of a regulated water carrier to a company under common control with another regulated carrier requires approval under 49 U.S.C. 11343. In addition, since the proposal involves creation of a railroad "interest" in a competing water carrier, approval under 49 U.S.C. 11321 is required. In order to prevent any violation of these statutory provisions and to ensure SCNO's independence while the Commission considers the transaction, ACL deposited all of the outstanding common stock of Acquisition in an independent voting trust administered by American Security Bank, N.A. Also, Acquisition formally changed its name to SCNO Barge Lines, Inc.

By decision served May 25, 1988, we found that the railroad consolidation regulations, with modifications, are appropriate for use in considering an application under the circumstances presented here. We also determined that this proposal was a minor transaction under 49 CFR 1180.2(c) and granted applicants' requests for waiver and clarification of certain provisions of the Commission's railroad consolidation procedures. CSX, ACL and SCNO filed an application on June 28, 1988, containing the information required under 49 CFR 1180.6(a) and 1180.8(b) for minor transactions. Therefore, because the application complies with the applicable regulations and waivers, we are accepting it for consideration. The application and exhibit are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' represenatives named above.

Any interested persons, including government parties, may participate in this proceeding by submitting written comments regarding the application. Comments must be filed no later than August 29, 1988. The Secretary of Transportation and Attorney General of the United States must file their comments no later than September 12, 1988. Applicants' reply is due no later than October 3, 1988. An original and 10 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Written comments must be concurrently served by first-class mail on the United States Secretary of Transportation, the Attorney General of the United States, and the applicants' representatives. Written comments must also be served on all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list shortly after comments have been received. Any person who files timely written comments shall be considered a party of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed. Written comments shall include:

1. The docket number and title of the proceeding;

2. The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

3. The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

[1] CSX also owns and controls Sea-Land Corporation (Sea-Land). This firm operates an ocean container carrier (not subject to Commission regulation) as well as two motor carriers, Intermodal Systems, Inc. and Sea-Land Freight Service, Inc. Common control of these carriers was previously approved by the Commission. In addition, CSX also has a non-controlling interest (50 percent or less of the outstanding stock) in numerous other carriers. These carriers are operated independently, and maintain separate records, from CSX's wholly owned carriers.

[2] There is a small overlap in ACBL and SCNO operations on the Illinois River and the lower Mississippi River.

4. A statement on whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal; and

5. If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing.

Discovery should be undertaken immediately and the parties are encouraged and admonished to resolve these matters amicably.

The requirement that applicants present environmental and energy data was waived in the May 25, 1988 decision because the proceeding does not involve a change in carrier operations and the transaction does not fall within the classes of actions considered to be major regulatory actions under 49 CFR 1106.5.

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

It is ordered:

1. The application is Finance Docket No. 31247 is accepted for consideration.

2. The parties shall comply with all provisions as stated above.

3. This decision is effective on the date served.

Decided: July 25, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, and Lamboley. Commissioner Simmons concurred. Commissioner Sterrett did not participate in the disposition of this proceeding. Commissioner Lamboley was absent and did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 88–17120 Filed 7–27–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31081 [1]]

KKR Associates; Control Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: On reopening, pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission expands its retroactive exemption of KKR Associates from the requirements of prior approval under 49 U.S.C. 11343, *et seq.*, published September 24, 1987, to include its control of Fred Meyer, Inc., and through Fred Meyer, Inc., its control of Distribution Trucking, Inc. subject to the conditions for the protection of railroad employees in *New York Dock Ry.—Control Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

DATES: This exemption will be effective on August 27, 1988. Petitions to stay must be filed by August 8, 1988, and petitions for reconsideration must be filed by August 17, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31081 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Peter M. Shannon, Jr., 8300 Sears Tower, 233 South Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: July 20, 1988.

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

Noreta R. McGee,

Secretary.

[FR Doc. 88–16990 Filed 7–27–88; 8:45 am]

BILLING CODE 7035–01–M

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[1] This action is based on a petition formerly numbered Finance Docket No. 31263.

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

July 25, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96–511 applies.

Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395–7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible.

The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633–4312.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) National Prisoner Statistics—Summary of Sentenced Population Movement.

(2) NPS–1, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(3) Annually.

(4) State or local governments, Federal agencies or employees. This questionnaire provides annual summary measures on persons confined in the Nation's correctional institutions. The data forms the basis for historical trend analysis. Respondents are personnel in the State Departments of Correction, the District of Columbia, and the Federal Bureau of Prisons.

(5) 55 respondents at 6 hours each.

(6) 330 estimated annual public burden hours.

(7) Not applicable under 3504(h).

Reinstatement of a Previously Approved Collection for Which Approval has Expired

(1) Aircraft/Vessel Report.

(2) I–92, Immigration and Naturalization Service, Department of Justice.

(3) On occasion.

(4) Businesses or other for-profit, Federal agencies or employees. This form is part of the manifest requirements of sections 231 and 251 of the I&N Act and is used by other agencies for data collection and statistical analysis.

(5) 600,000 respondents at .18 hours each.

(6) 108,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Arrival and Departure Record.

(2) I–94, Immigration and Naturalization Service, Department of Justice.

(3) On occasion.

(4) Businesses or other for-profit. This form is part of the manifest requirements of sections 231 and 255 of the I&N Act and may be evidence when issued at alien registration required by section 264 of the Act.

(5) 13,720,000 respondents at .066 hours each.

(6) 905,520 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Freedom of Information/Privacy Act Request.

(2) G–639, Immigration and Naturalization Service, Department of Justice.

(3) On occasion.

(4) Individuals or households. Used by persons requesting a search of INS records under the Freedom of Information/Privacy Acts.

(5) 20,000 respondents at .25 hours each.

(6) 5,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

New Collection

(1) Data Sheet For Derivative Citizenship.

(2) N–642, Immigration and Naturalization Service.

(3) One time only.

(4) Individuals or households, Federal agencies or employees. Form is needed to fulfill statistical reporting requirements of the Immigration and Nationality Act and the Immigration Reform and Control Act, to determine the number and characteristics of aliens becoming US citizens annually. Form is filed by aliens naturalizing, having foreign born children under 18, and citizen parents requesting that adopted children derive US citizenship.

(5) 375,000 respondents at .18 hours each.

(6) 67,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Certificate of Satisfactory Pursuit.

(2) I–699, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations. The INS uses this form to verify that a certified course provider has supplied the required instruction to temporary resident aliens.

(5) 100,000 respondents, 9,000 responses at .166 hours each

(6) 149,400 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Application To Adjust Status From Temporary To Permanent Resident.

(2) I–698, Immigration and Naturalization Service.

(3) One-time only.

(4) Individuals or households. This form will collect the necessary information to adjudicate applications from temporary resident aliens to adjust their status to permenent residents and issue an Alien Registration Card (I–551).

(5) 1,800,000 respondents at 1 hour each.

(6) 1,800,000 estimated annual burden hours.

(7) An expedited clearance has been requested. This form will be published with the Notice of Proposed Rulemaking as specified.

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 88–16999 Filed 7–27–88; 8:45 am]

BILLING CODE 4410–10–M

Lodging of Consent Order Pursuant to the Clean Air Act; Adamo Wrecking Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 14, 1988 a proposed consent order in *United States v. Adamo Wrecking Company,* Civil Action No. 87 CV 73146, was lodged with the United States District Court for the Eastern District of Michigan. The proposed consent order concerns failure of the defendants to comply with regulations which require that timely, complete, adequate and accurate notice of asbestos demolition operations be given to the United States Environmental Protection Agency. The proposed consent order requires defendants to comply with the regulations and pay a civil penalty of $25,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Adamo Wrecking Company,* D.J. Ref. 90–5–2–1–1077.

The proposed consent order may be examined at the office of the United States Attorney, Federal Building, 231 West Lafayette, Detroit, Michigan 48226 and the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, Washington, DC 20530. A copy of the proposed consent order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–17064 Filed 7–27–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 15, 1988, a proposed consent decree in *United States v. CSX Transportation, Inc., et al.,* Civil Action No. 88–1308–CIV–Aronovitz, was lodged with the United States District Court for the Southern District of Florida. The complaint filed by the United States alleged that defendant CSX Transportation, Inc. is the owner of the Gold Coast Oil Corporation Site ("the facility") in Miami, Florida, and that twelve other named defendants generated and arranged for the transportation or disposal of hazardous substance at the facility; that there have been releases of hazardous substances into the environment from the facility, which releases have caused the United States to incur response costs; and that there is or may be an imminent and substantial endangerment to the public health, welfare, or the environment because of the actual or threatened releases. The complaint sought injunctive relief to require the defendant to abate and remedy the imminent and substantial endangerment and the effects of the actual or threatened releases from the facility. The complaint further sought the reimbursement of past costs which were incurred by the United States in responding to the actual or threatened releases.

The consent decree requires the defendants to implement fully the remedy selected by the Environmental Protection Agency as set forth in the Record of Decision, dated September 11, 1987.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States v. CSX Transportation, Inc., et al.* D.J. Ref. 90–11–2–262.

A copy of the proposed consent decree may be examined at the office of the United States Attorney, Southern District of Florida, 155 South Miami Avenue, Miami, Florida, 33130; at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the Department of Justice at the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. When requesting a copy, please refer to *United States v. CSX Transportation, Inc., et al.*, D.J. Ref. 90–11–2–262, and enclose a check in the amount of $13.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–17065 Filed 7–27–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act In United States v. City of Denison

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 15, 1988, a proposed Consent Decree in *United States v. City of Dension and State of Texas,* Civil Action No. S–88–191CA was lodged with the United States District Court for the Eastern District of Texas, Sherman Division.

The Complaint in this enforcement action was filed on July 15, 1988, against the City of Dension ("the City") under sections 309(b) and (d) of the Clean Water Act ("the Act"), 33 U.S.C. 1319(b) and (d), seeking civil penalties and injunctive relief for the discharge of pollutants into the navigable waters of the United States in violation of National Pollution Discharge Elimination System ("NPDES") permits issued to the City. The Complaint also seeks injunctive relief against the City to require it to construct a new wastewater treatment facility to replace the Duck Creek facility. The proposed Consent Decree ("Decree") requires the City to adhere to interim limits for the discharge of pollutants from its wastewater treatment facilities and comply with a schedule for the construction of a new wastewater treatment facility. It further provides for stipulated penalties for failure to comply with the Decree and for payment of a $51,000 civil penalty for past violations of the Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Denison,* D.J. No. 90–5–1–1–2768.

The proposed Consent Decree may be examined at the office of the United States Attorney, One Grand Centre, Suite 504, 1 Grand Ave., Sherman, Texas 75090 and at the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the proposed Consent Decree may be obtained in person or by mail from the Enviromental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue NW., Washington, DC 20530. In requesting a copy please enclose a check in the amount of $1.50 payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–17066 Filed 7–27–88; 8:45 am]

BILLING CODE 4410–01–M

Amendment To Final Judgment (On Consent) Under Clean Air Act To Enjoin The Discharge Of Air Pollutants

In accordance with Department Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that an Amendment to Final Judgment (On Consent) in *United States v. Virgin Islands Water and Power Authority,* Civil Action No. 83–85 (D.V.I.), was lodged with the United States District Court for the District of the Virgin Islands on July 18, 1988. The Amendment establishes compliance schedules for permit applications and fuel burning requirements to be imposed upon the Virgin Islands Water and Power Authority to bring the Authority's gas turbines into compliance with the Prevention of Significant Deterioration (PSD) regulations promulgated pursuant to Part C of the Clean Air Act, 42 U.S.C. 7470–7479.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Amendment. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. Virgins Islands Water and Power Authority,* D.J. Ref. No. 90–5–2–1–568A.

The Amendment may be examined at the office of the United States Attorney, District of the Virgin Islands, St. Thomas, United States Virgin Islands 00801; at the Region II office of the United States Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Environmental Enforcement Section, Land and Natural Resource Division, United States Department of Justice, Room 1651, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the Amendment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, at the above address.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–17067 Filed 7–27–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 19, 1988, a proposed consent decrees in *United States v. City of West Chicago,* Civil Action No. 88C–6158, was lodged with the United States District Court for the Northern District of Illinois. The proposed consent decree resolves a judicial enforcement action brought by the United States against the City of West Chicago for violations of the Clean Water Act.

The proposed consent decree requires the City of West Chicago to attain and, thereafter, maintain compliance with the

Clean Water Act and comply with its NPDES permit. To ensure compliance with the final effluent limits, the proposed consent decree requires West Chicago to complete construction of a chlorination facility and excess flow facilities by November 1, 1988. The proposed consent decree also requires West Chicago to take interim measures to ensure that the effluent for fecal coliform at its West Chicago Regional Wastewater Treatment Plant is as low as technically feasible until the completion of the chlorination facility. Finally, the consent decree requires West Chicago to pay a civil penalty of $50,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decreee. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States v. City of West Chicago*, D.J. Ref. 90-5-1-1-840A.

The proposed consent decree may be examined at the office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois and at the office of Regional Counsel, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-17068 Filed 7-27-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Controlled Substances; Establishment of 1988 Aggregate Production Quota for 2-amino-4-methyl-5-phenyl-2-oxazoline (4-methylaminorex)

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of an Established 1988 Aggregate Production Quota.

SUMMARY: This notice establishes the 1988 aggregate production quota for 4-methylaminorex, a Schedule I controlled substance.

DATE: July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S. Code 826), requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On March 3, 1988, a notice proposing to establish a 1988 aggregate production quota for 4-methylaminorex was published in the **Federal Register** (53 FR 6883). All interested persons were invited to comment on or object to the proposal on or before April 4, 1988. No comments or objections were received.

Pursuant to section (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, *et seq.* The establishment of annual production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code, Section 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1988 aggregate production quota for 4-methylaminorex, expressed in grams of anhydrous base, be established as follows:

Basic Class, 1988 Aggregate production Quota (grams), Schedule I, 4-Methylaminorex—5.

John C. Lawn,

Administrator, Drug Enforcement Administration.

Dated: June 27, 1988.

[FR Doc. 88-17011 Filed 7-27-88; 8:45 am]

BILLING CODE 4410-09-M

Controlled Substances; Proposed Revised 1988 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Proposed Revised 1988 Aggregate Production Quotas.

SUMMARY: This notice proposes revised 1988 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act. Since the establishment of the 1988 aggregate production quotas on October 22, 1987 (52 FR 39573), DEA has reviewed data submitted by the registered manufacturers concerning 1987 dispositions and year-end inventories and has determined that revisions of some of the previously established quotas are necessary.

DATE: Comments or objections should be received on or before August 29, 1988.

ADDRESS: Send comments or objections to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attn: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year.

This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On October 22, 1987, a notice of the 1988 aggregate production quotas was published in the **Federal Register** (52 FR 39573). The notice stipulated that the Administrator of the Drug Enforcement Administration would adjust the quotas in early 1988, as provided in Title 21,

Code of Federal Regulations, Part 1303.23(c). These aggregate production quotas represent those amounts of controlled subtances that may be produced in the United States in 1988 and do not include amounts which may be imported for use in industrial processes.

Based on a review of 1987 year-end inventories, 1987 disposition data submitted by quota applicants, estimates of the medical needs of the United States submitted to the Drug Enforcement Administration by the Food and Drug Administration and other information available to DEA, the Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby proposes the following changes in the 1988 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous acid or base:

	Previously established 1988 aggregate production quota	Proposed revised 1988 aggregate production quota
Schedule I		
Lysergic acid diethylamide	6	11
Schedule II		
Alfentanil	3,500	0
Amphetamine	371,000	264,000
Cocaine	700,000	793,000
Codeine (for sale)	58,277,000	54,249,000
Desoxyephedrine	1,418,000	1,423,000
Levodesoxyephedrine	1,400,000	1,400,000
Methamphetamine	18,000	23,000
Dextropropoxyphene	74,075,000	96,986,000
Dihydrocodeine	582,000	278,000
Fentanyl	6,100	5,000
Hydrocodone	2,360,000	2,791,000
Hydromorphone	198,000	183,000
Levorphanol	16,800	10,700
Methadone	1,591,000	1,645,000
Methadone Intermediate (4-cyano-2-dimethylamino-4,4-diphenylbutane)	1, 989,000	2,057,000
Methylphenidate	2,317,000	2,172,000
Mixed Alkaloids of Opium	7,000	8,000
Morphine (for sale)	3,148,000	3,268,000
Morphine (for conversion)	62,845,000	59,807,000
Oxycodone (for sale)	2,122,000	2,406,000
Pentobarbital	11,737,000	14,407,000
Phencyclidine	31	36
Phenylacetone	1,020,000	413,000
Secobarbital	1,573,000	971,000
Sufentanil	450	500

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrants a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by a notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to section 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon shall entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: June 27, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-17012 Filed 7-27-88; 8:45 am]

BILLING CODE 4410-09-M

Controlled Substances; Proposed 1988 Aggregate Production Quota for Ibogaine

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of a Proposed 1988 Aggregate production Quota.

SUMMARY: This notice proposes a 1988 aggregate production quota for ibogaine, a Schedule I controlled substance.

DATE: Comments or objections must be received on or before August 29, 1988.

ADDRESS: Send comments or objections to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attn: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires that the Attorney General Establish on an annual basis aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

Recently, the Drug Enforcement Administration received an application for a manufacturing quota for ibogaine, a Schedule I controlled substance. The ibogaine is to be used for research purposes.

The Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.Code 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby proposes the 1988 aggregate production quota for ibogaine expressed in grams of anhydrous base.

Basic Class	Proposed 1988 aggregate production quota (grams)
Ibogaine	575

All interested persons are invited to submit comments or objections in writing regarding this proposal. Comments or objections should be submitted to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative, and must be received by August 29, 1988. If a person raises one or more issues which that person believes would warrant a hearing, that individual should so state and summarize the reason for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by a notice in the **Federal Register**, summarizing the issues to be

heard and setting the time for the hearing.

Pursuant to sections (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, *et seq.* The establishment of annual production quotas for Schedule I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: June 27, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-17013 Filed 7-27-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-59]

Melvin Darryl Allen, D.D.S.; Revocation of Registration; Denial of Application

On June 19, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Melvin Darryl Allen, D.D.S. (Respondent) of 128 West Pine Street, Ponchatoula, Louisiana 70454, proposing to revoke Respondent's DEA Certificate of Registration AA7218488 and deny any pending applications for its renewal. The statutory predicate for the Order to Show Cause was Respondent's conviction on January 28, 1987, in the United States District Court for the Eastern District of Louisiana of distribution of hydromorphone (Dilaudid), in violation of 21 U.S.C. 841(a)(1).

By letter dated July 16, 1987, Respondent's counsel requested a hearing on the issues raised by the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young and the hearing was held in New Orleans, Louisiana on November 17, 1987.

On March 25, 1988, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed and on May 20, 1988, the Administrative Law Judge transmitted the record in this proceeding to the Administrator. The Administrator has considered this 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.

The Administrative Law Judge found that several individuals were obtaining prescriptions for Dilaudid from Respondent for no legitimate medical purpose. Between 1979 and 1982, one individual obtained "hundreds and hundreds" of prescriptions for 20 dosage units of 4 mg. Dilaudid from Respondent in exchange for either sexual favors or money. This individual often paid Respondent $450.00 for a prescription of Dilaudid. Additionally, in or prior to 1985, another individual exchanged sexual favors or money with Respondent for prescriptions of Dilaudid. On several occasions, this individual went to see Respondent with her husband and they each paid $400.00 for a prescription for 20 Dilaudid 4 mg. tablets. None of the prescriptions were issued for a legitimate medical purpose.

Further, the Administrative Law Judge found that in or about 1984 or 1985, a commercial fisherman employed by Respondent received prescriptions for Dilaudid from Respondent in lieu of salary for services rendered, not for any legitimate medical purpose.

The Administrative Law Judge also found that an individual had purchased over a hundred prescriptions for Dilaudid from Respondent as of September 1985. Initially, the individual paid Respondent $350.00 for a prescription of 20 dilaudid 4 mg. tablets. Respondent subsequently increased the price to $400.00 when the street value of Dilaudid went up. This individual met Respondent at his office or on the Interstate 55 service road. During one of their meetings on the service road, Respondent showed the individual a handgun and told him if he ever told anyone about their arrangement that he would have him shot.

The individual began to cooperate with the Louisiana Department of Public Safety in the Fall 1985. While working with the state police, he purchased prescriptions for Dilaudid and V-Cillin from from Respondent on October 15, 1985, November 14, 1985, and December 5, 1985. None of the prescriptions had been written for a legitimate medical purpose. As a result, Respondent was indicted in the United States District Court for the Eastern District of Louisiana and charged with three counts of illegal distribution of Dilaudid in violation of 21 U.S.C. 841(a)(1). On January 28, 1987, Respondent entered a plea of *nolo contendere*. He was sentenced to three years imprisonment, execution of which ws suspended, was placed on active probation for three years and fined $150.00. Additionally, as a special condition of probation, Respondent was ordered by the Court not to issue prescriptions for Schedule II narcotic drugs in the course of his dental practice.

On December 5, 1987, a committee of the Louisiana State Board of dentistry held an administrative hearing. The committee found that Respondent engaged in conduct giving cause for the suspension, revocation, or restricting of his dental license. In a Proposed Final Decision, the committee recommended that Respondent's license to practice dentistry should be suspended for a period of two years and his dental license should be permanently restricted to prohibit him from engaging in the administration, dispensation or prescription of any narcotic drug. Additionally, it proposed that after the expiration of his two year suspension, Respondent should be put on a ten year probationary period. The committee also proposed that a fine of $3000.00 be imposed and that Respondent reimburse the Board $8,550.99 for expenses incurred by the proceedings.

The Administrative Law Judge concluded that there is a lawful basis for revocation of Respondent's DEA registration and recommended that Respondent's DEA registration be revoked. The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety. Respondent has been convicted of felony offenses relating to controlled substances. There is, therefore, a lawful or statutory basis for the revocation of his DEA registration and for the denial of his application for renewal thereof. 21 U.S.C. 824(a)(2). In light of all of the facts and circumstances in this case, the Administrator concludes that the registration must be revoked and his pending application denied.

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 AA7218488, previously issued to Melvin Darryl Allen, D.D.S., be, and it hereby is, revoked. The Administrator further orders that Respondent's application for renewal of his DEA Certificate of Registration, executed on May 21, 1987, be, and it hereby is, denied.

This order is effective August 29, 1988.

Dated: July 20, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-16979 Filed 7-27-88; 8:45 am]

BILLING CODE 4410-09-M

John D. Vincent, D.D.S.; Revocation of Registration

This proceeding was initiated on April 15, 1988, when the Deputy Assistant Administrator for Diversion Control issued an Order to Show Cause (Order) to John D. Vincent, D.D.S. of Rapid City, South Dakota (Respondent). The Order sought to revoke DEA Certificate of Registration BV03035917 previously issued to Respondent and to deny any pending applications. The statutory basis for the proposed action was that Respondent'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 was sent via registered mail and was received on May 2, 1988. Title 21 of the Code of Federal Regulations § 1301.54(a) requires the respondent to file a request for a hearing within 30 days of the date of receipt of the Order. Section 1301.54(d) provides that failure to timely file a request for a hearing acts as a waiver of the hearing. It has been more than 30 days since the receipt of the Order and Respondent has not filed a request for a hearing. The Respondent is therefore deemed to have waived his opportunity for a hearing before an Administrative Law Judge. Pursuant to 21 CFR 1301.57, the Administrator now issues his Final Order in this matter, based on the information contained in the investigative file.

On July 16, 1982, Respondent was convicted of Theft of an Automobile, a felony under the Illinois Revised Statutes, and Unlawful Use of Weapons, a misdeameanor under the Illinois Revised Statutes. On November 9, 1983, the Dental Examining Committee of the Illinois State Department of Regulation and Education recommended that Respondent's dental license be revoked on the basis of Respondent's two convictions. The Director of the Illinois Department of Regulation and Education adopted the committee's recommendation and on January 9, 1984, revoked Respondent's license to practice dentistry in the State of Illinios.

Between March 1986 and January 1987, Respondent was practicing dentistry in South Dakota. Respondent did not, however, hold a South Dakota controlled substance license and was without authority to possess, dispense or prescribe controlled substances in that State. While practicing in South Dakota, Respondent issued numerous prescriptions for controlled substances. In a hearing held on May 7, 1987, the South Dakota State Board of Dentistry found that Respondent had engaged in fraud or material deception in the course of professional services or activities in that he prescribed and obtained controlled substances without a South Dakota controlled substance license. On that same date, the South Dakota Board of Dentistry entered a final order suspending Respondent's license indefinitely. Revocation of Respondent's license to practice constitutes statutory grounds to revoke his certificate of registration under 21 U.S.C. 824(a)(3).

On or about December 28, 1985, and June 3, 1987, Respondent tendered renewal applications to the DEA for a Certificate of Registration. On each occasion, Respondent represented that he was licensed to handle controlled substances in the State of South Dakota. In fact, Respondent had never been so authorized and therefore, the Administrator finds that the two applications were materially falsified within the meaning of 21 U.S.C. 824(a)(1).

Accordingly, having concluded that there are lawful bases for the revocation of the Respondent's registration and for the denial of any pending applications for renewal thereof, 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 BV0305917, previously issued to John D. Vincent D.D.S., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of that registration be, and they hereby are, denied.

The order is effective immediately.

July 20, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-16980 Filed 7-27-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-20,550; TA-W-20,551; TA-W-20,560]

Dalton Industries, Inc.; Corporate Headquarters and Warehouse, Willoughby, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on May 19, 1988, applicable to all workers of Dalton Industries at the corporate headquarters and warehouse, Willoughby, Ohio and factory outlet stores in several locations including Willoughby, Ohio and Canton, Ohio. The Notice of Certification was published in the **Federal Register** on June 1, 1988 (53 FR 20027-8).

Based on new information received from the administering state agency in Ohio the Department is amending the subject certification.

Workers at Dalton Industries corporate headquarters, warehouse and factory outlet store in Willoughby, Ohio and workers at the factory outlet store in Canton, Ohio were eligible for trade adjustment assistance under the following earlier certifications (TA-W-16,442 and 16,444) respectively. These certification expired on March 3, 1988. Therefore, the March 11, 1987 impact date in the subject certification notice for workers at the subject locations is being changed to make it applicable to those workers whose separations from employment occurred on or after March 4, 1988.

The amended notice applicable to TA-W-20,550, TA-W-20,551, and TA-W-20,560 is hereby issued as follows:

All workers of the locations listed below of Dalton Industries, Incorporated who became totally or partially separated from employment on or after the indicated impact date and before May 31, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

TA-W	Location	Impact date
20,550	Corporate Headquarters, Warehouse, Willoughby, OH.	Mar. 4, 1988.
	Factory Outlet Locations	
20,551	Willoughby, OH	Mar. 4, 1988.
20,552	Rochester, NY	Mar. 11, 1988.
20,553	Pittsburgh, PA	Do.
20,554	Pigeon Forge, TN	Do.
20,555	Mystic, CT	Do.
20,556	Lorain-Amherst, OH	Do.

TA-W	Location	Impact date
20,557	Hilton Head, SC	Do.
20,558	Erie, PA	Do.
20,559	Columbus, OH	Do.
20,560	Canton, OH	Mar. 4, 1988.
20,561	Buffalo, NY	Mar. 11, 1987.
20,562	Bedford, OH	Do.
20,563	Asheville, NC	Do.

Signed at Washington, DC, this 20th day of July, 1988.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-16981 Filed 7-27-88; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Agency Information Collection Activities Under OMB Review; Personal Protective Equipment, Survey

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: A survey to determine the effects of revising Subpart I—Personal Protective Equipment.

SUMMARY: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35; 5 CFR Part 1320 (53 FR 16618 to 16632, May 10, 1988)), is submitting this survey to the Office of Management and Budget (OMB) for that Agency's approval. OSHA's current PPE standards are outdated and design restrictive. The data collected in this survey will provide information on the interrelationships between process-related hazards, PPE use, safety training and programs, and injury experience for use in determining the technological and economic feasibility of proposed changes to the existing standards govening PPE. This will be a one time only telephone survey. OSHA estimates that there will be 3501 non-response or screening only respondents requiring 5 minutes per response and 5254 completed surveys from respondents requiring an average of 45 minutes per response for an average of 29 minutes per total responses.

DATE: OSHA has requested an expedited review of this submission under the Paperwork Reduction Act to be completed within 30 days of the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Comments and questions about this survey or the reporting burden should be directed to Paul E. Larson, Department Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210 (telephone (202)523-6331). Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 3208, Washington, DC 20503 (telephone (202)395-6880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

SUPPLEMENTARY INFORMATION: OSHA is submitting the following clearance package to OMB in a request for approval of the survey contained in Appendix III.

Signed at Washington, DC this 20th day of July, 1988.

Paul Larson,

Departmental Clearance Officer.

BILLING CODE 4510-26-M

Standard Form 83
(Rev September 1983)

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request

Department of Labor/OSHA
Office of Regulatory Analysis

2. Agency code

1 2 1 8

3. Name of person who can best answer questions regarding this request

Hugh Conway

Telephone number

(202) 523-9690

4. Title of information collection or rulemaking

A survey to determine the effects of revising the regulations governing PPE usage, welding, and pulp and paper and paperboard mills.

5. Legal authority for information collection or rule *(cite United States Code, Public Law, or Executive Order)*

29 USC 655 et seq. or PL 91-596

6. Affected public *(check all that apply)*

1 ☐ Individuals or households
2 ☐ State or local governments
3 ☐ Farms
4 ☒ Businesses or other for-profit
5 ☐ Federal agencies or employees
6 ☐ Non-profit institutions
7 ☒ Small businesses or organizations

PART II.—Complete This Part Only if the Request Is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)

___ ___ ___ ___ — ___ ___ ___ ___, or None assigned ☐

8. Type of submission *(check one in each category)*

Classification
1 ☐ Major
2 ☐ Nonmajor

Stage of development
1 ☐ Proposed or draft
2 ☐ Final or interim final, with prior proposal
3 ☐ Final or interim final, without prior proposal

Type of review requested
1 ☐ Standard
2 ☐ Pending
3 ☐ Emergency
4 ☐ Statutory or judicial deadline

9. CFR section affected

_____ CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? . . . . ☐ Yes ☐ No

11. If a major rule, is there a regulatory impact analysis attached? 1 ☐ Yes 2 ☐ No

If "No," did OMB waive the analysis? 3 ☐ Yes 4 ☐ No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official — Date

Signature of authorized regulatory contact — Date

12. ***(OMB use only)***

Previous editions obsolete
NSN 7540-00-634-4034

83-108

Standard Form 83 (Rev. 9-83)
Prescribed by OMB
5 CFR 1320 and E.O. 12291

PART III.—Complete This Part Only If the Request Is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less

The data collected in this survey will provide information on the interrelationships between process-related hazards, PPE use, safety training and programs, and injury experience for use in determining the technological and economic feasibility of proposed changes to the existing standards for PPE.

14. Type of information collection *(check only one)*

Information collections not contained in rules

1 [X] Regular submission
2 [ ] Emergency submission *(certification attached)*

Information collections contained in rules

3 [ ] Existing regulation *(no change proposed)*
4 [ ] Notice of proposed rulemaking (NPRM)
5 [ ] Final, NPRM was previously published
6 Final or interim final without prior NPRM
A [ ] Regular submission
B [ ] Emergency submission *(certification attached)*

7 Enter date of expected or actual Federal Register publication at this stage of rulemaking *(month, day, year)* _____

15. Type of review requested *(check only one)*

1 [X] New collection
2 [ ] Revision of a currently approved collection
3 [ ] Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
4 [ ] Reinstatement of a previously approved collection for which approval has expired
5 [ ] Existing collection in use without an OMB control number

16. Agency report form number(s) *(include standard/optional form number(s))*

None

17. Annual reporting or disclosure burden

1 Number of respondents	8755
2 Number of responses per respondent	1
3 Total annual responses *(line 1 times line 2)*	8755
4 Hours per response	.48
5 Total hours *(line 3 times line 4)*	4233

18. Annual recordkeeping burden

1 Number of recordkeepers	
2 Annual hours per recordkeeper	
3 Total recordkeeping hours *(line 1 times line 2)*	
4 Recordkeeping retention period	years

19. Total annual burden

1 Requested *(line 17-5 plus line 18-3)*	4233
2 In current OMB inventory	0
3 Difference *(line 1 less line 2)*	+ 4233
Explanation of difference	
4 Program change	+ 4233
5 Adjustment	

20. Current *(most recent)* OMB control number or comment number

None

21. Requested expiration date

3-31-89

22. Purpose of information collection *(check as many as apply)*

1 [ ] Application for benefits
2 [ ] Program evaluation
3 [ ] General purpose statistics
4 [X] Regulatory or compliance
5 [X] Program planning or management
6 [ ] Research
7 [ ] Audit

23. Frequency of recordkeeping or reporting *(check all that apply)*

1 [ ] Recordkeeping

Reporting

2 [ ] On occasion
3 [ ] Weekly
4 [ ] Monthly
5 [ ] Quarterly
6 [ ] Semi-annually
7 [ ] Annually
8 [ ] Biennially
9 [X] Other *(describe)* nonrecurring

24. Respondents obligation to comply *(check the strongest obligation that applies)*

1 [X] Voluntary
2 [ ] Required to obtain or retain a benefit
3 [ ] Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? [ ] Yes [X] No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? [X] Yes [ ] No

27. Regulatory authority for the information collection

29 CFR 655 et seq. ; or _____ FR _____ , or, Other *(specify)* PL 91-596

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official — Date: July 12, 1988

Signature of agency head, the senior official or an authorized representative — Date: 20 JUL 88

BILLING CODE 4510-26-C

GPO : 1984 O - 453-776

Supporting Statement for Survey and Related Data Gathering To Support OSHA Rulemaking on PPE—Justification

1. Necessity of Data Collection

The Office of Regulatory Analysis of the Occupational Safety and Health Administration (OSHA) is collecting data to support an assessment of the technological and economic feasibility of revising its standard on the use of personal protective equipment (PPE). OSHA has selected a telephone survey as the most effective means of generating the data needed to support this regulatory effort. The same data collection effort will also be used to assess the methods of compliance required by future revisions to OSHA standards covering welding operations, the pulp and paper industry, and respirator usage. Finally, OSHA will create a data base on the engineering control methods that are used in lieu of personal protective equipment. This information can be used to influence OSHA's consideration of the personal protective equipment standard and several other rulemakings as may be appropriate. Thus, OSHA is creating a survey-based data set for use in three scheduled regulatory analyses and in other future regulatory efforts.

The existing personal protective equipment standards apply to all of general industry (29 CFR Part 1910). Many of these standards are outdated or design restrictive and must be supplemented by administrative actions to permit the use of more recently developed PPE. Such PPE, while technically not in compliance with the existing standard, provides equivalent or better protection than PPE of the type mandated by the existing standard.

The proposed standard would revise the PPE requirements to make them clearer, more comprehensive, and more consistent with current technology. The revised standard will update all incorporations by reference to national consensus standards so as to reference the most current American National Standards (ANSI) for the design of eye, face, foot, and head protection. Requirements for the selection, care, and use of PPE, and for training in use of PPE are to be included in the proposed standard. The revised standard will also provide a redrafting of key elements of the standard to clarify the compliance requirements for employers and to make these requirements apply to all workers.

The OSHA standards for welding include numerous requirements for personal protective equipment. OSHA will use this survey to generate information relevant to the effort to revise these standards. The focus and coverage of the PPE and welding standards are so similar that much of the information collected will serve both efforts. OSHA has also added several questions to generate hard-to-obtain data about the types of welding operations occurring and about current practices in several areas covered by the existing and revised versions of the standards.

OSHA is also contemplating revisions to its standard for pulp and paper operations. In this area, OSHA will be seeking information on selected aspects of pulp, paper, and paperboard mills as well as on PPE use. This information will be sought solely from the pulp and paper industry in conjunction with the larger survey effort.

OSHA's Congressional mandate stipulates that the agency carefully design and study its regulatory proposals. Section 6(b)(5) of the OSHA Act 2d U.S.C. 655 (b)(5) mandates that regulations promulgated by the Agency shall most adequately assure worker safety and health "to the extent feasible on the basis of the best available evidence." They are to be based on "research and the latest available scientific data." Section 6(f) of the Act requires regulations to be justified by "substantial evidence in the record" and authorizes the Secretary of Labor "to enter into contracts, agreements or other arrangements with appropriate public agencies or private organizations for the purposes of conducting studies related to his responsibility under the Act." The courts have endorsed the view that technological and economic factors affect the feasibility of proposed regulations. Thus, OSHA is obligated to gather data on the technological feasibility, cost of compliance, and economic consequences of future standards.

Executive Order 12291 reiterates this obligation by requiring the preparation of preliminary and final Regulatory Impact Analyses for each major rule. The Agency must analyze the potential benefits and costs of the rule and alternative approaches. The Regulatory Impact Analysis may be combined with the analysis required by the Regulatory Flexibility Act. This Act specifically requires an analysis that describes the "impact of the proposed rule on small entities" and significant regulatory alternatives that "take into account the resources available to small entities."

In order to fulfill the Congressional and Presidential mandates and to evaluate the economic and technological feasibility of the proposed OSHA standards, OSHA requires a data base that describes current industry practices and identifies situations where potential hazards exist. As discussed below, none of the available data sources are adequate for this purpose.

For developing a data base relevant to the PPE standard, OSHA will require data on the use of PPE and on the work environments in which PPE use is essential to safety or health. Engineering controls, work practices, and the nature of the manufacturing process determine, to a large extent, hazard levels. Job hazards are also influenced by the efficacy of a firm's safety program, including its policy on use of PPE. A sound policy requires an accurate assessment of the hazards faced by workers, the provision of training to workers in hazard awareness, the institution of safe work practices, and the enforcement of proper PPE use.

In meeting this objective, OSHA has designed the survey so that it will form the initial component of a major data base describing employee work conditions and job hazards. Because the survey instrument is organized around industrial processes, findings on job hazards can be placed within the context of specific industries and specific locations in the plant. The data base is also designed to allow numerous cross tabulations between rates of PPE use, and data on safety programs, injuries, and process hazards. This capability will be unique for data bases on industrial safety.

This data collection effort is designed, therefore, to produce quantitative estimates of (1) the number of workers who are exposed to hazards that dictate the use of PPE, (2) the number of the workers who wear PPE, and (3) the effectiveness of PPE use. These hazards will be identified and classified according to the type of manufacturing process and in recognition of the nature of the engineering controls in place. Specific data on the hazards, the presence of engineering controls, and the associated PPE use will permit a complete examination on the context of industrial decision-making on PPE use. These data will also be used to identify areas where firms are not adequately providing (or requiring) PPE and areas where safety training may be incomplete or missing.

Injury and illness data are the final part of the necessary information on work environments. OSHA will complete this survey of the work environment by requesting firms to submit copies of OSHA Forms 101 and 200 which summarize the establishment's injury and illness incidents. This data will be correlated with survey results in order to determine

the relationships between safety practices, engineering controls and use of PPE with success in preventing injuries and illnesses. The information source will also provide statistical data on the measures being used by firms that are successful in maintaining low injury rates.

In order to take full advantage of this data collection opportunity, the survey will collect additional information on welding operations and on the pulp and paper industry. These data will address hazards, work practices, and safety policies unique to these operations. For welding operations, information will be collected regarding specific protective clothing for welders; respirator use, training, and maintenance; PPE use by welders' helpers; health monitoring; and other items. Data collected specifically from the pulp and paper industry will address work practices for the handling and storage of pulpwood and pulp chips; hazard training and the appropriate use of protective eyewear, lifelines, respirators and other types of PPE in chemical pulpmaking operations; and training and safety procedures for the operation and maintenance of chlorine dioxide systems used in bleaching operations. Process-specific information regarding the presence of ventilation systems and other types of engineering controls will be used to assess the extent to which firms in the pulp and paper industry to rely on PPE rather than on engineering controls for hazard protection.

The data on engineering controls collected from all respondents will also be used as part of a continuing analysis of the appropriate methods of compliance with standards for welding, pulp and paper, and respirator use and with standards for other types of personal protective equipment.

A timetable for the survey and the associated Regulatory Impact Analysis is presented on the next page. The timetable indicates that OSHA is attempting to complete this project and survey within a short period of time. The schedule currently calls for completion of the bulk of the survey effort within a 10-week period. Therefore, we request that an expedited review be performed by OMB.

SCHEDULE FOR SURVEY DESIGN AND COMPLETION

Complete design of survey instrument and submit information collection plan to OMB.	July 14, 1988.
Publish in Federal Register a notice of survey submission to OMB and the survey instrument.	July 14–21, 1988.
Obtain survey and mailing list from DOL, and other list suppliers.	July 15, 1988.
Receive OMB approval of survey and survey instrument.	Aug. 15, 1988.
Mail notification letters to survey targets.	Do.
Begin telephone interviewing.	Aug. 20, 1988.
Complete first half of telephone interviewing.	Sept. 20, 1988.
Submit Interim Report on secondary data base (covering industry data base, regulatory comparison, and preliminary benefit analysis).	Aug. 26, 1988.
Complete second half of telephone interviewing.	Oct. 21, 1988.
Perform any additional data tabulations and integrate survey results into report.	Nov. 4, 1988.
Submit draft final report	Nov. 15,1988.
Respond to comments and submit final report.	Dec. 16, 1988.

2. Use of the Information

The data collected through this effort will be used by OSHA (and its contractors) to perform technological and economic analyses related to the required Regulatory Impact Analyses and Regulatory Flexibility Analyses for proposed regulations modifying the Subpart I standards covering Personal Protective Equipment as well as for future revisions to the Welding and Pulp and Paper standards. The data will also be used in the study of compliance methods appropriate for meeting the requirements of the welding, pulp and paper, and respirator standards.

The OSHA Office of Regulatory Analysis will also be sharing data collected in its research efforts with the Office of Safety Standards, which is drafting the regulations. In this case, the data may be used to develop revisions to any of the three regulatory proposals under consideration.

For the standard governing personal protective equipment, the survey will provide information on current compliance rates by industry. In addition, a database will be created that will permit analyses of the interrelationships among process-related hazards, PPE use, and safety training and programs. The additional information on injury and illnesses, as provided by companies who submit their OSHA Form 101s and 200s, will add another dimension to the possible analyses of these data.

For the welding study, the survey will yield difficult-to-obtain data on welding work practices, safety procedures, and training. This data will support estimates of compliance with existing and proposed OSHA standards and provide the database necessary for estimation of compliance costs.

For the pulp and paper industry, the survey will facilitate the analysis of safety procedures and work practices in several industry-specific processes. This information is not available from other sources.

In the absence of the data generated by this survey, OSHA could not accurately measure the impacts of the existing and proposed PPE standards. In particular, OSHA could only speculate about the extent to which PPE is effectively used in different industrial settings.

The discussion below describes the data uses for responses to each set of questions in the survey instrument.

A. Introduction and Collection of Identification Data

The first elements of the survey instrument describe the telephone survey in general and determine whether the respondent is in the SIC code anticipated by the survey design. If the respondent is not in the SIC code expected (as based on Dun and Bradstreet industry lists), the correct SIC will be gathered. If the SIC is one that is to be covered in the survey, the interviewer will continue the questioning.

B. Data Collection on Types of Activities and Employment

The next questions specify the type of activities (e.g., manufacturing, administrative, services, etc.) performed in the facility. Several purposes are served. First, establishments that perform solely administrative services are to be excluded from the remainder of the questionnaire. Second, the number of employees in production and other categories will be determined. This information will be used in later segments of the questionnaire. Finally, the data on total employment will be used in consistency checks made in the final statistical analyses.

C. Questions on Welding Practices

The interviewer will ask respondents if they perform welding operations in their facilities. If so, a series of questions are asked about the means for protecting welders and welders' helpers against the hazards posed by welding operations. The questions review both the use of PPE by welders and the use of engineering controls, such as curtains and screens and ventilation systems, as

protection systems. Additional questions determine whether the welding is performed in the context of production or maintenance and repair work. This information will be useful for the regulatory impact analysis.

D. Questions on Pulp and Paper Mill Operations

A separate set of questions is asked only of respondents in the pulp and paper industry (SIC 26). These questions will examine the use of lifelines, personal flotation devices, and other types of PPE in specific pulp and paper operations. Additional questions cover training and safety procedures in chemical pulpmaking and bleaching operations. This information will supplement data obtained from questions about process-specific PPE use and engineering controls as described below. These data will be directly relevant to the determination of the extent of compliance with the existing and proposed pulp and paper standard.

E. Identification of Processes Employed

The next section will identify the processes employed in the facility. The interviewer will prompt the respondent with 2 or 3 processes that are believed to be performed in the facility. The respondent will then be asked for other processes used in the facility. The interviewer will code in these additional responses by referring to a master list of processes. If the process does not appear on the list, it will be coded in manually.

F. Identification of Engineering Controls Used

For each process, a set of questions will determine the types of engineering controls that may be employed at the facility. The interviewer will refer to a master list that associates processes with its associated hazards. This master list will be prepared in advance of the telephone interviewing through an extensive review of process safety and health information. The hazards are categorized into seven categories: eye and face (flying particles and chips), head, feet, hands, respiratory, noise, and skin (chemical absorption, splash). Thus, for example, for process X, the interviewer will refer to the list to determine if hazards to the eye and face are associated with the process. He will code this information into the computer. The computer-based questionnaire (see Section A.3) will then skip to the appropriate engineering controls that might be employed to reduce or eliminate worker hazards from the process. For eye and face hazards, for example, the possible engineering controls include various screens, barriers or enclosures to separate the worker from any flying chips or particles emanating from machinery used in the process.

G. Identification of Personal Protective Equipment Used

After the engineering controls are identified, questions are asked about the types of PPE used by workers engaged in that process. Proceeding with the example given above, the respondent will be asked if workers wear eye and/or face protection while working at the process being discussed. If suitable engineering controls are not in place and items of PPE are not being used, then the firm will be considered to have hazards requiring PPE use for purpose of determining current industry practice in the analysis. This will not be communicated in any way to OSHA field compliance staff as explained later in the confidentiality section.

H. Questions on Establishment-wide Training and Use of PPE

The next section will solicit information on the establishment's policies regarding training of workers in PPE use and hazard identification. The training requirements are explicit in the draft standard. An additional question asks whether the company has assessed the hazards evident in its facility. Again, this step is required by the draft standard. Finally, the interviewer will ask how many persons in the entire facility wear each type of PPE. (OSHA expects that not all production employees will be included in the totals associated with the processes, or that, some double-counting of employees is possible. This question is the only means of developing an overall estimate of the number of employees wearing PPE).

I. Final Questions on Specific Policies for use and Handling of PPE

Several elements in the draft standard require policies regarding the use of employee-provided PPE, reissuing and cleaning of PPE, and replacement of damaged PPE. In order to determine compliance with these items, these questions are included at the end of the interview.

J. Request for Mail Submission of the OSHA Forms 101 and 200

Those respondents reporting recordable occupational injuries in the last two years will be asked to supply copies of their Form 101s and 200s. OSHA will correlate the facility PPE use and PPE policies with facility accident histories.

3. Use of Technology to Reduce Burden

Information for this survey will be collected using a Computer Assisted Telephone Interviewing (CATI) system. Such a procedure will improve the quality and efficiency of the survey in a number of ways and will also reduce respondent burden. First, since the survey is done via telephone, there is no need for scheduling on-site visits to gather the information. This is expected to both increase the reponse rate and reduce the cost and time of completing interviews. Respondents are also not being asked to fill out a long questionnaire form on their operations.

Further, CATI system responses are entered directly into the computer, eliminating the need for separate recording and coding operations. Also, the computer ensures that the proper sequence of questions is followed automatically. For example, if the response to one question suggests that a follow-up question can be skipped, the computer will automatically move on. The interviewer simply reads the questions as they appear on the screen. This system produces a smoothly flowing interview and eliminates any pauses or delays by the interviewer to enter responses by hand or to find the next question.

4. Identification and Duplication of Information

Significant effort has been expended in collecting and examining existing sources of information relating to the patterns of use of personal protective equipment in various industries. This has been used to determine processes and hazards by industry to reduce the number of questions asked of each respondent. In addition to checking for possible information duplication, the assembled body of research was useful in helping to formulate and refine the actual survey instrument.

The following databases were reviewed in the course of designing the survey. Acronyms or abbreviations for these databses are indicated and are used in the remainder of this document. A brief description of this information and its relevance to the present effort is provided. A discussion of the shortcomings of these information sources for the analysis of PPE usage required for this study is presented in section 5 below.

A. OSHA'S Integrated Management Information System (IMIS) Database

OSHA's Integrated Management Information System (IMIS) contains data related to OSHA inspections for safety and health violations and in response to accidents involving serious injuries and fatalities. This data source can be used, on an industry basis, to obtain the frequency with which firms are cited for PPE-related violations. As explained in Section 5, however, this citation rate is likely to understate the actual level of noncompliance. The data also do not allow any analysis of the number of workers in a given facility who were not wearing suitable PPE. Thus, there is no indication of the degree to which a company may be out of compliance.

The IMIS accident data provides information on the nature and the cause of the injury. This data will be used in assessing the benefits of the proposed revisions to the standard. Specifically, the accident narratives that are available for fatal incidents are helpful in determining the preventability of relevant accidents. The IMIS data base includes the OSHA Fatality/Catastrophe reports that have been prepared over the past four years. The OSHA Fatality/Catastrophe reports are based on investigations of fata accidents and of incidents in which five or more workers are seriously injured. Many of the injuries relevant to PPE, however, are not investigated by OSHA and, therefore, would not be included in the IMIS data base.

B. Bureau of Labor Statistics (BLS) Supplementary Data System (SDS)

The SDS is a Federal-State cooperative program which complies information from State workers' compensation records. Information is available concerning the major characteristics of injuries and illnesses in various industries and occupational groups. This data is being used to pinpoint industries and occupations that generate injuries most likely to be preventable through PPE usage. It is also potentially helpful in estimating the total national baseline of injuries and illnesses that may be influenced by compliance with regulations for use of PPE. The SDS data itself, however, contains no information on protective equipment worn by injured workers or on the potentially hazardous conditions which might have contributed to the accident. Furthermore, it can do no more than outline the national baseline injury total because of the absence of any narratives or other means to describe more clearly the accidents covered in the data.

C. National Occupational Exposure Survey (NOES)

This two-year effort directed by the National Institute for Occupational Safety and Health (NIOSH) involved visits to some 4,500 businesses representative of the establishments covered by the 1970 Occupational Safety and Health Act. Company officials were interviewed regarding the types of health and safety programs in effect, and a plant walk-through was conducted in order to document the numbers of workers exposed to various substances, and the control methods in use.

The focus of the NOES survey is almost entirely on health as opposed to safety standards. The survey provides data on respirators, hearing protection, protective clothing and eye and face protection in the context of observed exposure to hazardous chemicals and materials. Data on the use of welding helmets were also collected. The use of safety glasses, face shields, hard hats, safety shoes, and protective clothing (e.g. fire retardant clothing) when used for safety-related reasons (protection against accidential or traumatic situations) were not recorded. Furthermore, an exposure to hazardous materials of greater than 30 minutes per week was required in order for the exposure and associated PPE control to be recorded. The NOES survey also includes data on the presence of ventilation systems as a control for hazardous exposures, as well as other means of control such as isolation, enclosure, and various work practice techniques to limit or avoid exposure.

D. OSHA Survey on Permissible Exposure Levels (PEL)

This telephone survey of 5,000 establishments will support OSHA's generic rulemaking on the control of occupational exposure to hazardous substances. The survey is designed to collect information on the chemical exposure patterns or workers involved in a wide range of industrial processes. Data on the wearing of PPE was collected for those processes which involved chemicals.

Because of the great variety of potential chemical exposures in industry, the PEL survey is necessarily limited to data collection on health as opposed to safety hazards. The PEL survey will provide data regarding employee exposure to specific hazardous chemicals and the associated use of respirators and protective clothing, gloves, and eye and face protection. Information on ventilation systems is also being collected. For the PEL survey, exposure is viewed in terms of inhalation or absorption and is measured in terms of atmospheric concentrations. Acute hazards such as chemical splash are, therefore, not directly addressed.

The PEL survey covers most of the manufacturing sector and a number of non-manufacturing industries. The data are collected in the context of a set of predetermined industry-specific processes or operations. These processes are general in nature and are not technology or equipment-based. No information is collected about safety-related PPE use, nor is any information about training, safety policies, or injury experience generated.

E. Department of Labor (DOL) Studies at the University of West Virginia

A series of investigations conducted by researchers at the University of West Virginia examined current practices in the use of personal protective equipment among workers in several occupations and industries. These studies cover injuries and PPE needs and practices for specific occupations in foundries, chemical manufacturing facilities, and petroleum refineries. In addition, injuries and associated PPE practices for welders and workers facing risks of episodic releases of toxic chemicals were investigated. Despite their limited scope, these studies provide important insights into PPE practices and requirements for specific occupational situations. The number of establishments surveyed, however, was small, and no statistical validity can be attached to the results. The data was useful, however, in refining the questions included in the survey instrument.

F. OSHA's Survey on Respirator Use

In a 1984 study, OSHA conducted a telephone survey of approximately 2000 manufacturing establishments to obtain information on the patterns of routine, occasional, and emergency respirator use. This information included data on the types of respirators in use, the numbers of employees included in respirator programs, and other information regarding training, monitoring, and inspection. Specific information on the types of airborne contaminants encountered in the respondent's facilities was not collected.

This survey was based on a two-stage sampling procedure. An initial sample of about 7000 establishments was administered a screening survey to identify those which used respirators. Those establishments with respirator programs were then eligible for the main

in-depth survey. Thus, only information on employment size (collected in the screening survey) is available as a control to analyze differences between establishments with and without respirator programs. The OSHA survey was also restricted to the manufacturing sector. Thus, no information on respirator use was collected for non-manufacturing industries.

G. Bureau of Labor Statistics' Work Injury Reports

The Bureau of Labor Statistics has conducted a number of surveys of injured workers. These surveys cover several categories applicable to use of PPE including head, eye, face, and foot injuries, chemical burns, welding-related injuries, and others. The studies provide information on the extent to which injured workers wear appropriate protective equipment, the PPE policies of their employers, and the nature of any safety training they might have received. These data provide important insights into the relationships between injuries and PPE usage. Additional analysis of this information is planned, particularly 3-way tabulations to control for safety training and policies in evaluating rates of PPE use among injured workers.

The data in the Work Injury Reports, however, cannot be used to develop compliance rates because only injured workers are surveyed. Estimates of PPE general usage, for example, would be biased downward since workers not wearing PPE are more likely to be injured and thus included in the survey.

H. Occupational Hazards Magazine Readership surveys

Occupational Hazards, a magazine for safety professionals, conducts periodic "electronic" surveys in which respondents voluntarily telephone in their responses. Recent surveys have generated 400–600 responses. Among the relevant topics which have been covered are: Types of equipment used by employees; hazards against which PPE is used; employer contributions towards PPE purchase; and per employee spending on PPE. The results of the survey are interesting, but their statistical validity is limited by the significant influence of self-selection in the responses, i.e., only companies with safety managers and established safety programs are likely to be participating in the survey.

I. Current Industrial Reports

The Bureau of the Census collects and periodically publishes data on the value and quantities of shipments for a variety of industrial products. Such data from Current Industrial Reports on shipments of PPE might be used to estimate overall rates of use. The level of aggregation of this data, however, precludes identification of shipments totals for specific PPE types.

J. NIOSH's National Traumatic Occupational Fatality Data Base

The National Traumatic Occupational Fatality (NTOF) data base is being developed by NIOSH to provide a national census of traumatic occupational fatalities. NIOSH is collecting death certificate records from all 50 states and from the District of Columbia. These records are being used to estimate the total occupational fatalities resulting from "injury at work", as entered on the death certificates. Information in the NTOF data base include the age, sex, occupation and industry of employment of the victim, as well as a description of the injury and immediate cause of death. NIOSH has collected death certificates for the period 1980 through 1985 and plans to continue the collection through 1990.

NTOF data provide a valuable base line for determining occupational fatality rates. For the purposes of this project, however, the accident casuality information contained in the death certificates will not be sufficiently detailed or consistent to permit determinations of the extent to which PPE practices would have been relevant in preventing fatalities. The extent of the narrative description is quite variable, and often will not provide more than a brief phrase describing the incident. Also, information is not generally available on whether the individual was wearing personal protective equipment. Further, the lack of consistency in reporting precludes accurate identification of the industry in which the victim was employed below the major division level of industry classification (e.g. construction, manufacturing, etc.). In summary, the uneven reporting of the circumstances of accidents would preclude this data source from providing the information needed in this study.

5. Inadequacy of Existing Data Sources

The above databases provide valuable information on various aspects of PPE-related questions and were utilized in design of this survey. None of them, individually or in combination, provide the comprehensive body of information about PPE required by OSHA. The inadequacies of these data sources are described below.

A. Statistical Surveys (NOES, PEL, and Respirator Surveys)

All of these studies provide statistical estimates of various types of PPE use. These studies, however, have limited their focus to PPE used in controlling health hazards. Specifically, none of these surveys provide statistically valid estimates of the number of workers who wear hard hats, safety glasses, face shields, safety shoes, and other types of PPE for safety reasons. Both the PEL and NOES surveys collected data on the use of respirators and other PPE, primarily in response to exposure to airborne hazardous substances. Neither of these studies, however, provide information about the relationships between PPE use, training, safety programs, and industrial injuries. Similarly, the OSHA respirator survey does not provide statistically-significant data for each industry. This survey also does not address factors that might influence establishment-level policies on PPE usage and did not collect data on the number of employees who use most types of PPE.

B. IMIS Data

OSHA data on violations contained in IMIS indicate the frequency with which inspected firms are cited for PPE violations. The format of the regulations makes it impossible in many cases to identify the exact nature of the violation. There are also biases in that very small firms are not likely to be inspected by OSHA personnel, the most hazardous industries are targeted for inspections, and enforcement priorities may influence the pattern of citations in an unmeasurable fashion. Also, the citation statistics do not report who many employees failed to wear appropriate PPE. As noted above, accident data contained in the IMIS are biased because only fatalities or accidents with 5 or more serious injuries are typically investigated.

C. Injury Data (SDS, Work Injury Reports

Information from worker compensation files contained in the BLS SDS data will be useful in analyzing the causes of injuries potentially preventable by PPE use. Data on PPE use by injured workers, however, is not collected. Thus neither compliance rates nor the benefits of increased PPE use can be derived from these data. Also, since the sample is not comprehensive, the SDS data can not be used directly to establish injury rates on an occupational or industry basis. Data from the Work Injury Reports are useful for analysis of the conditions and characteristics of

injured workers. Since only injuries (i.e., not fatalities) are included in the sample, limited insight is provided regarding overall patterns of PPE use.

D. Summary

In summary, the available data do not provide adequate quantitative evidence regarding the extent of PPE usage for safety-related reasons. Those studies which have compiled statistically-valid data on the use of PPE have limited their focus to the PPE used in controlling health hazards. The studies that do address the safety-related uses of PPE are not designed for creating statistical measurements, are limited in scope, and do not provide sufficient data to develop reliable estimates of the patterns of hazard exposure and associated PPE requirements. None of the data reviewed for this submission can be used to produce estimates of the population of workers and establishments impacted by the current and proposed PPE standard, the extent of compliance, or the costs of compliance. Similarly, these data do not reflect the current industry practice information that is needed for the regulatory impact analyses for the revised welding and pulp and paper standards.

Furthermore, none of the available information sources provide, on an industry-specific basis, a comprehensive linkage between patterns of PPE use for both safety and health reasons and the presence of engineering controls, the nature of the manufacturing process and technology, and associated work practices. Also, the interrelationship between accident experience, the use of PPE, and the nature of safety training and other safety programs is not addressed in these data sources. It is the lack of a comprehensive data base to evaluate the full range of regulatory options needed to perform the Regulatory Impact Analysis that necessitates a field survey. The survey results will also assist OSHA in determining the need for these standards.

6. Minimizing Burden on Small Businesses

This data collection effort involves the collection of information from large and small firms. Every effort has been made to minimize respondent burden. The survey instrument has been designed to allow the respondents to provide estimates and approximations rather than detailed information of the type which would lengthen response time. Respondent burden will be limited by: (1) Limiting the length of the telephone interview to approximately 45 minutes, (2) avoiding requests which require record of file review, and (3) accommodating respondents in arranging the most convenient time to conduct the interview.

In addition, the questionnaire is organized so that the response times of small firms will be lower. The questionaire focuses on the specific processes employed in a facility. Many small firms will have only 1 or 2 processes and will therefore require only 20 to 35 minutes to complete the questionaire.

7. Recurrent Survey Consequences

This effort is a one-time, non-recurring survey. The consequences associated with less frequent collection are not applicable.

8. Consistency with 5 CFR 1320.6

There are no special circumstances that require the collection of information in any manner inconsiste ...th the guidelines in 5 CFR 1320.6.

9. Expert Review of the Survey Questionnaire

The survey design team has had numerous discussion with industry experts, including safety engineers and safety program managers, in order to assess the substance of the survey questions. The clarity of instructions and other specific survey design elements have been reviewed by contractor survey experts. OSHA personnel (both in ORA and Standards), and by expert safety consultants in industry.

A. The survey instrument has been reviewed by:

Dr. Hugh Conway, Office of Regulatory Analysis, OSHA;
Mr. Larry Braslow, Office of Regulatory Analysis, OSHA;
Ms. Marilyn Schuster, Office of Regulatory Analysis, OSHA;
Mr. Chester G. Fenton, Eastern Research Group, Inc.;
Mr. John Eyraud, Eastern Research Group, Inc.;
Dr. Arnold Greenland, Washington Consulting Group, Inc.;
Dr. Robert Hiett, KCA Research Inc.

B. No major problems arose during this review.

C. Public comment will be solicited through the **Federal Register** notice for the study.

10. Confidentiality

Procedures have been developed to protect the confidentiality of the collected data. These measures are summarized below:

A. All contractor and subcontractor personnel will be given instructions regarding the importance of keeping all information they obtain from respondents confidential.

B. The data will be collected using a Computer Assisted Telephone Interviewing (CATI) system. This technology enables the survey responses to be automatically written to a computer data file. Neither the name of the company nor the respondent will appear in the data file. A listing of respondents will be kept separately in a locked file cabinet at the contractor's office, and will be destroyed when no longer needed. The respondent's names will be linked to the data base through a unique number assigned at the time of the interview.

C. OSHA Forms 101 and 200 will be assigned the respondent's record number when received and then coded and entered into the computer file and matched with the respondent's survey data record. The OSHA forms will then be destroyed. Strict confidentiality will be maintained during the coding procedure.

D. Diskettes containing completed survey data will be stored in locked file cabinets at the contractor's office.

E. Publication of study results will be of a statistical nature only. Respondents will never be identified in any publication or presentation, nor will their names be made available to other individuals or groups.

11. Sensitive Questions

The proposed survey instrument contains no questions of a sensitive nature.

12. Costs

The total one-time cost to the government of the proposed data collection is $485,000. This estimate includes costs incurred by contractors for administration and operation of the data collection, tabulation of survey results, and subsequent analyses (including benefit and cost estimates, small entity impacts, economic impacts, etc.). The total one-time cost to industry is estimated to be $86,565 based on an administrative wage rate of $20.45 per hour including fringe benefits.

13. Estimates of Burden

This survey was not included in the agency's ICB as the potential scope of the changes to the PPE standard as necessitated by newer technologies and changes in current industry practices only became apparent as the project progressed.

Every effort will be made to minimize respondent burden. All survey instruments have been designed to

allow the respondent to provide estimates and approximations, rather than specific information for a specific time period. The effort will focus on collecting information that respondents have already compiled or measured for their own purposes. Respondents are not expected to perform new data compilation activities.

The completion time for each telephone survey will vary, depending upon how much of the survey topic is applicable. It is estimated that a fully completed survey will require 45 minutes on average. Those declining to participate at the onset and those completing only the screening portion of the survey will require 5 minutes on average.

The total respondent burden for the telephone survey will be approximately 4,233 hours. The following table summarizes the burden for each group of respondents:

RESPONDENT BURDEN ESTIMATES

Type of respondent	Number of respondents	Average completion time (min.)	Total burden (hrs.)	Respondent cost [1]
Non-Response or screening only	3501	5	293	$5,992
Complete	5254	45	3940	80,573
Total	8755		4233	$86,565

[1] Based on an administrative wage rate of $20.45 per hour including fringes.

14. Changes in Anticipated Burden

This is a one-time data collection effort and thus it will not represent a recurring paperwork burden to respondents.

15. Plans for Tabulation of the Data

The survey data will be analyzed and used for the PPE, Welding, and Pulp and Paper standards to prepare Regulatory Impact Analyses (RIAs) and Regulatory Flexibility Analyses which will be published in the Federal Register. The data will also support efforts to draft the safety standards themselves, and efforts to develop more cost effective regulatory language. Tabulations of the primary data will be analyzed to develop estimates pertinent to the development of these RIAs. These will include estimates of the number of firms that will incur compliance costs, and the number of employees by firm and by industry who are wearing or should be wearing personal protective equipment. Additionally, estimates will be derived of the number of employees who are trained in the correct use of PPE and the number of companies who actively enforce the correct use of PPE. In addition to specific estimates of the levels of compliance with PPE requirements for welding and pulp and paper operations, tabulations of other data specific to welding or pulp and paper operations will be used to support compliance estimates for those standards.

The survey will also generate data on the use of PPE by process throughout manufacturing and in selected areas of non-manufacturing, and on the injuries and illnesses associated with these processes (through collection of respondents OSHA Form 101s and 200s). These data will help establish a data base on the distribution of worker hazards among industries, and within industrial facilities. The data will also be correlated with information gathered in the survey on the training and safety programs of respondents. OSHA expects to make numerous cross-tabulations to determine the relationships among these various components of worker safety conditions.

Statistical Methods Employed

1. Description of the Respondent Universe and Sample Allocation

The underlying universe for this survey design is all commercial establishments in the United States (excluding the construction industry) which are subject to OSHA regulations for the use of personal protective equipment (PPE). Since the need for PPE differs by industry sector, a careful review of Standard Industrial Classification (SIC) codes allowed OSHA to concentrate on only the SIC categories which are given in Table 1. Thus, the totality of all establishments defined in Table 1 is the Respondent Population for this survey. The subgroups shown in that exhibit are the key estimation cells for this study.

Estimates for the population establishment counts, which are shown in Table 2, were obtained from several sources. The population counts for the manufacturing sectors (SICs 20 through 39) were obtained from a Dun & Bradstreet listing of all such establishments. This file was purchased by OSHA in June of 1987. Population counts for some of the service sectors (SICs 40 and above) were derived from a Dun & Bradstreet listing dated December, 1987. This data base was purchased in support of the PEL survey recently done by the Office of Regulatory Analysis, and contained only those SIC sectors included in that survey. For any SIC which was not in this file, estimates in Table 2 were obtained from the Bureau of Labor Statistics (BLS) Bulletin 2297, dated December, 1987. Population statistics are tabulated by Estimation Cells and, within that, by size categories. Since the BLS Bulletin 2297 did not contain a breakdown by size, no estimates for size strata are shown for those cells in which D&B data was not available in Table 2.

It is OSHA's plan to obtain new versions of both the manufacturing and non-manufacturing sectors from Dun and Bradstreet just prior to commencement of the actual sample selection. At that time, the calculations done in this package will be modified to account for the most recent information. We do not expect substantial changes in estimates for popular counts in Table 2 or in sample size estimates which appear later in this document.

The size categories used are defined by the number of employees in establishments:

(i) 0–19 employees
(ii) 20–99 employees
(iii) 100–249 employees, and
(iv) 250 and above employees.

TABLE 1.—DEFINITION OF ESTIMATION CELLS

Cell No.	SIC codes included	Description
1	20	Food and Kindred Products.
	21	Tobacco Products.

TABLE 1.—DEFINITION OF ESTIMATION CELLS—Continued

Cell No.	SIC codes included	Description
2	22	Textile Mill Products.
3	23	Apparel and Other Textile Products.
	31	Leather and Leather Products.
4	26	Paper and Allied Products.
5	24	Lumber and Wood Products.
6	25	Furniture and Fixtures.
7	27	Printing and Publishing.
8	281	Industrial Inorganic Chemicals.
	282	Plastics Materials and Synthetics.
	286	Industrial Organic Chemicals.
	287	Agricultural Chemicals.
9	29	Petroleum and Coal Products.
10	283	Drugs.
	284	Soap, Cleaners, and Toilet Goods.
	285	Paints and Allied Products.
	289	Miscellaneous Chemical Products.
11	30	Rubber and Misc. Plastics Products.
12	32	Stone, Clay, and Glass Products.
13	33	Primary Metal Industries.
14	34	Fabricated Metal Products.
15	35	Industrial Machinery and Equipment.
16	36	Electronic and Other Electric Equipment.
17	37	Transportation Equipment.
18	38	Instruments and Related Products.
	39	Miscellaneous Manufacturing Industries.
19	40	Railroad Transportation.
20	41	Local and Interurban Passenger Transit.
	42	Trucking and Warehousing.
	44	Water Transportation.
	45	Transportation by Air.
21	481	Telephone Communications.
	482	Telegraph & Other Communications.
	484	Cable and Other Pay TV Services.
	489	Communications Services, NEC.
22	491	Electric Services.
	492	Gas Production and Distribution.
	493	Combination Utility Services.
23	494	Water Supply.
	495	Sanitary Services.
	496	Steam and Air-Conditioning Supply.
	497	Irrigation Systems.
	46	Pipelines, Except Natural Gas.
24	501	Motor Vehicles, Parts, and Supplies.
	55	Automotive Dealers & Service Stations.
	751	Automotive Rentals, No Drivers.
	753	Automotive Repair Shops.
25	503	Lumber and Construction Materials.
	521	Lumber and Other Building Materials.
	505	Metals and Minerals, Except Petroleum.
	5093	Scrap and Waste Materials.
	508	Machinery, Equipment, and Supplies.
	515	Farm-Product Raw Materials.
	516	Chemicals and Allied Products.
	517	Petroleum and Petroleum Products.
27	7692	Welding Repair.
28	13	Oil and Gas Extraction.

The employment size classes will give OSHA sufficient flexibility to tabulate separately the effects of the proposed rule on small businesses. For each of the cells defined above (estimation cell by size-class group) the total number of establishments, the total number of employees, the number of required responses and the number of establishments to be surveyed is shown in Appendix 1. Because of the complexity of the table given in Appendix 1, the sample allocation scheme aggregated to the Estimation Cell level is shown separately in Table 3.

2. Stratification and Sample Selection

Estimates will be produced for the 29 estimation cells defined in Table 1. For each estimation cell, a stratified systematic sample will be selected. Each cell will be stratified by four employment size classes. The size-class boundaries will be as follows: 0–19 employees, 20–99 employees. 100–249 employees, and 250 or more employees.

Within each estimation cell/size-class stratum, the establishments will be sorted by four digit SIC before selection.

A. Required Sample Size

Because of the complexity of the questionnaire for this survey and because of the requirement to produce estimates for many variables, no single survey item can be identified with which to set sample sizes. A common practice in such cases is to use two or more items from the survey which are different with respect to the form of the sample which would emerge if only that item was used to define the sample. Following this procedure, two variables were chosen: The mean employment and the fraction of establishments in compliance with respect to PPE regulations. In fact, these represent groups of estimates which will be produced. The first relates to variables which are proportional to employment, such as the number of employees exposed to a hazard requiring PPE. The latter relates to the class of estimates which are proportions of establishments that share some characteristic (for example, those that require hard hats be worn for a particular process).

In order to estimate sample sizes for the two types of variables defined in the previous paragraph, estimates of means and standard deviations for the variables of interest must be obtained. In the case of the employment variable, means and standard deviations were obtained from the Dun and Bradstreet frame. For the proportion variable, it was assumed that the proportion of interest is approximately 0.6. From this assumption, one can compute the required standard deviation for use in the sample size computation.

In each case, a separate estimate of the required sample was made and then allocated into the size-class strata using optimal allocation. Finally, the two estimates were averaged to produce the final estimate of sample size. This procedure will result in a sample which is concentrated in the smallest and the largest size strata. This is useful because of the need to adequately estimate the impact on small businesses and to also be efficient in the use of the sample.

Both sample size estimates shown in Appendix 1 (that for variables proportional to total employment and that for variables which are proportions of establishments having some characteristic) were produced assuming the following accuracy requirements: For manufacturing SICs (20–39), a target coefficient of variation of 5.5% was assumed and for the non-manufacturing SICs, a coefficient of variation of 7.5% was used. The coefficient of variation is the ratio of the standard error of the estimator to the mean of the estimator. Different accuracy requirements were set for the two groups because it was determined at the outset of the survey design that there was likely to be a greater degree of variability among processes and PPE use in the manufacturing sector.

a. Allocation to Size-Class Strata. For both of the variables used to set the sample sizes and for each estimation cell, the sample allocation to the employment size-class strata is based on the theory of optimal allocation (Neyman allocation). For the employment variable, this procedure will allocate the sample units based on the total number of population units in each stratum and the population standard deviation of total employment in each stratum. For the proportion of establishments having some characteristic, the sample is allocated in proportion to the number of establishments in each stratum within the estimation cell. This latter situation follows from the fact that the sample

size estimate for the proportion of interest (60%) and the associated standard deviation were used in all size classes.

b. Frame Development and Sample Selection. The sampling frame will be developed from the Dun and Bradstreet listing of establishments. This frame was used by the Office of Regulatory Analysis for prior surveys and has proved to useful for establishment surveys. There is some concern that the D&B listing overstates the non-manufacturing establishments in the universe. These and other possible problems with the frame can be remedied by using the results of the survey, for example to produce an estimate in total "in scope" establishments in the universe.

At the time of sample selection, the frame will be sorted by Estimation Cell by Size-class by four digit SIC by employment. Selection will be by systematic sampling from a random start within each cell and size stratum.

B. Estimation

Estimates will be produced for each estimation cell. All survey estimators will be self-weighting using weights attached to each respondent's record in the database. Estimates from the survey are expected to have a relative standard error in the range of .04 to .10 (see section B.2.3). Estimates of totals will take the following form:

$$\hat{Y} = \sum_{i,j,k} WGT_{ijk} * NRAF_{ijk} * y_{ijk},$$

where y_{ijk} is the response of the kth unit in the jth stratum of estimation cell i, WGT is the stratum sampling weight, and NRAF is the stratum's unit non-response adjustment factor for the parameter in question (defined below).

Estimates of means will take the following form:

$$\bar{Y} = \sum_{i,j,k} WGT_{ijk} * NRAF_{ijk} * y_{ijk} \Big/ \sum_{i,j,k} WGT_{ijk} * NRAF_{ijk}$$

The Non-Response Adjustment Factor (NRAF) for the kth usable unit in stratum j of estimation cell i is calculated as follows:

$$NRAF_{ijk} = \frac{\sum \text{viable employment}_{ijk}}{\sum \text{usable employment}_{ijk}}$$

The Non-Response Adjustment Factor is calculated for each size-class stratum j in estimation cell i by summing the pre-coded employments for all viable sample units (all sample units less out the scope and out of business units) divided by the employment sum of all usable sample units.

Note that the non-response adjustment procedure is a mean imputation.

a. Benchmarking Estimates. To most efficiently use the D&B sampling frame, estimates of key variables will be "benchmarked" to other data sources. For example, the estimate of "total cost of coming into compliance" will be computed as follows:

$$\hat{C}_i = \frac{\sum_{j,k} c_{ijk} * WGT_{ijk} * NFAF_{ijk}}{\sum_{j,k} emp_{ijk} * WGT_{ijk} * NFAF_{ijk}} * (BLS\ Emp)_i$$

where the emp_{ijk} is the number of employees obtained from the survey, c_{ijk} is the cost amount associated with case k within cell i and size stratum j, and $(BLS\ Emp)_i$ is the number of employees obtained from sources at the Bureau of Labor Statistics.

b. Item Nonresponse. It is expected that some respondents who do participate in the survey will either refuse to answer some questions or not know the answer. In such cases it is common to impute responses. Imputation is done by using information obtained from the respondent on other questions and/or information from other like respondents to fill in the missing datum. There are many methods in common use for imputing for missing data including mean imputation, hot deck procedures and regression-based imputation.

OSHA plans to use a mean imputation approach for missing items in this survey. First items which require imputation will be identified (for example, by virtue of their use in algorithms requiring multiple variables from each record). Second, specifications for how to impute will be made. In some cases one can infer the answer to missing questions based upon answers to other questions. Failing that, a mean imputation will be done within the cell and size class for the record with missing datum. In such a case, the missing value is replaced by the arithmetic mean for those cases in the cell/size stratum which have an answer for that value. The final step is to carefully document which values were imputed and to retain both the original and imputed values in the database.

c. *Variance Estimation.* Since a survey is contemplated rather than a

census of the establishments of interest, estimates produced from the survey database will have errors due to sampling alone. It is customary to produce estimates of such errors, usually called standard errors of the estimate.

OSHA plans to use a replication technique to produce standard errors such as half-sample replication. Such methods are preferred because of the complexity of determining exact formulas for survey data which include nonresponse adjustment factors as is the case with the proposed survey. Computation of such standard errors is routine with the use of computers.

C. Accuracy

The survey is desinged to produce estimates having relative standard errors ranging from .04 to .10 depending on the variable being estimated and the industry sector in which it falls. A detailed tabulation of estimated standard errors for the two types of estimates mentioned in section B.2.1 above is given in Appendix 2.

It is emphasized, however, that estimates at the national level will be quite accurate (relative variances less than 1 percent). The approach to sample size selection outlined in this submission package is designed to meet several goals. First, estimates of all variables at the national level will be very accurate. Second, as mentioned above, estimates at the estimation cell level will be moderately accurate (relvariances in the 4 percent to 10 percent range). Moreover, the estimates at the estimation cell level will be consistent in their accuracy between cells. Finally, the sample will be very useful for estimation in the smallest size category (1 to 19 employees). This is important because of the requirement to analyze the impact of the proposed regulations on small businesses.

D. Special Sampling Procedures

None.

E. Use of Periodic Sampling

Not applicable.

3. Response Rates

The survy is voluntary and is expected to yield a response rate in excess of 75 percent of in scope cases. Experience on prior surveys indicates that the Dun and Bradstreet frame has over 80 percent in scope cases (in business, having working telephone numbers, etc.). The expected response rate of 75 percent mentioned above relates to the total of in scope cases on the frame. The CATI collection process should help to improve the overall response rate by allowing for direct telephone contact with the respondent and by scheduling and maintaining a detailed record of all necessary call-backs.

Five attempts to reach a particular company will be required. Efforts will be made to distinguish between those units that do not respond because they are "out of business" or otherwise "out of scope", and those that are "refusals".

4. Tests of Procedures

OSHA proposes to condut up to 100 site visits (roughly 3 per estimation cell) to test the quality and reliability of the data being collected by the telephone interviewing. A random selection of 2 respondents and 1 non-respondent per estimation cell will be used for this purpose.

5. Expert Review

The statistical aspects of the survey design have been reviewed by:

Dr. Hugh Conway, Office of Regulatory Analysis, Occupational Safety and Health Administration, (202) 523–9690

Dr. Arnold Greenland, Mr. Richard Gruberg, The Washington Consulting Group, Inc., 1625 Eye Street NW., Suite 214, Washington, DC 20006

Appendix I: Detailed Sample and Population Tabulation

Appendix II: Representative Percent Standards Errors

Appendix III: Survey Instrument

APPENDIX 1.—Detailed Sample and Population Tabulation

(Number of Firms and Sample Size For Industries To Be Surveyed)

SIC group	Size [2]	Total plants [1]	Total employees	Sample size est. (employ-ment)	Sample size est. (propor.)	Target sample size	Total calls
20, 21	1	16,377	108,515	10	131	71	118
	2	7,110	304,882	20	57	39	64
	3	2,310	339,708	13	19	16	26
	4	1,469	892,853	124	12	68	113
	Total	27,266	1,645,958	167	219	194	321
22	1	5,816	34,049	6	123	65	108
	2	2,513	109,412	13	53	33	55
	3	1,009	153,886	10	21	16	26
	4	821	483,978	92	17	54	91
	Total	10,159	781,325	121	216	168	280
23, 31	1	19,643	110,519	8	139	74	123
	2	7,753	334,950	15	55	35	58
	3	2,252	334,084	9	16	12	21
	4	1,182	530,483	15	8	12	19
	Total	30,830	1,310,036	47	219	133	221
261, 262, 263	1	871	6,559	3	85	44	73
	2	708	32,295	11	69	40	67
	3	327	47,390	9	32	21	34
	4	144	100,073	92	14	53	89
	Total	2,050	186,317	116	199	158	263
264, 265, 266, 267	1	2,614	19,678	5	90	48	79
	2	2,123	96,884	17	73	45	75
	3	980	142,169	14	34	24	40

APPENDIX 1.—Detailed Sample and Population Tabulation—Continued

(Number of Firms and Sample Size For Industries To Be Surveyed)

SIC group	Size [2]	Total plants [1]	Total employees	Sample size est. (employ-ment)	Sample size est. (propor.)	Target sample size	Total calls
	4	432	300,219	141	15	78	130
	Total	6,149	558,950	177	213	195	324
24	1	27,972	151,443	28	174	101	168
	2	5,845	234,561	26	36	31	52
	3	1,070	152,667	10	7	8	14
	4	329	157,178	15	2	8	14
	Total	35,216	695,849	79	219	148	248
25	1	11,505	65,542	13	156	84	140
	2	3,254	136,638	17	44	30	50
	3	858	125,888	9	12	10	17
	4	448	233,767	25	6	16	26
	Total	16,065	561,835	63	217	140	233
27	1	64,922	353,151	30	182	106	177
	2	10,656	422,939	24	30	27	45
	3	1,850	267,627	8	5	7	11
	4	869	535,757	39	2	20	34
	Total	78,297	1,579,474	101	220	160	267
281, 282, 286, 287	1	4,587	31,014	7	131	69	115
	2	1,908	82,924	13	55	34	56
	3	525	79,268	7	15	11	19
	4	467	441,594	204	13	109	181
	Total	7,487	634,800	231	214	223	371
29	1	1,984	12,847	7	139	73	121
	2	650	26,647	10	45	28	46
	3	153	22,487	5	11	8	13
	4	144	116,221	75	10	43	71
	Total	2,931	178,202	97	205	152	251
283, 284, 285, 289	1	8,008	51,357	11	146	78	131
	2	2,771	113,021	16	50	33	56
	3	625	89,941	8	11	10	16
	4	490	381,080	99	9	54	90
	Total	11,894	635,399	134	216	175	293
30	1	10,044	68,191	11	128	70	116
	2	4,971	216,387	23	63	43	72
	3	1,401	203,925	13	18	15	25
	4	622	367,120	79	8	43	72
	Total	17,038	855,623	125	218	171	285
32	1	14,499	88,932	20	158	89	148
	2	4,207	165,910	25	46	35	59
	3	873	125,243	11	10	10	17
	4	448	287,208	90	5	47	79
	Total	20,027	667,293	146	218	181	303
33	1	4,983	35,305	6	113	60	99
	2	2,803	121,305	15	64	39	65
	3	1,006	148,235	10	23	17	28
	4	711	624,153	201	16	109	181
	Total	9,503	928,998	232	215	225	373
34	1	28,985	189,564	23	144	83	139
	2	11,804	482,529	38	58	48	81
	3	2,386	341,917	16	12	14	23
	4	1,079	863,642	773	5	389	649
	Total	44,254	1,877,652	849	219	534	892
35	1	56,226	333,182	37	167	102	170
	2	13,592	537,656	38	40	39	65
	3	2,537	371,119	15	8	11	19
	4	1,678	1,400,963	515	5	260	433

APPENDIX 1.—Detailed Sample and Population Tabulation—Continued

(Number of Firms and Sample Size For Industries To Be Surveyed)

SIC group	Size [2]	Total plants [1]	Total employees	Sample size est. (employ-ment)	Sample size est. (propor.)	Target sample size	Total calls
	Total	74,033	2,642,920	604	220	412	687
36	1	15,765	99,666	9	130	69	116
	2	6,587	284,161	17	54	35	59
	3	2,238	335,327	11	18	15	25
	4	1,894	1,656,583	253	16	134	224
	Total	26,484	2,375,737	289	219	253	424
37	1	9,863	56,832	6	143	75	125
	2	2,997	125,699	9	44	26	44
	3	1,026	153,328	6	15	11	18
	4	1,072	1,682,451	396	16	206	343
	Total	14,958	2,018,310	418	217	318	530
38, 39	1	35,112	183,200	30	171	100	167
	2	7,503	302,126	29	36	33	55
	3	1,586	232,479	13	8	10	17
	4	953	680,153	212	5	108	181
	Total	45,154	1,397,958	284	219	251	420
40	1	1,424	7,523	3	75	39	65
	2	395	15,536	3	21	12	20
	3	143	22,212	3	7	5	9
	4	183	144,943	53	10	31	52
	Total	2,145	190,214	63	112	87	146
41, 42, 44, 45	1	(1)	401,574	25	30	28	46
	2	(1)	401,574	25	29	27	45
	3	(1)	401,574	25	29	27	45
	4	(1)	401,574	25	30	28	46
	Total	23,331	1,606,295	100	118	110	182
481, 482, 484, 489	1	(1)	14,413	25	20	23	38
	2	(1)	14,413	25	19	22	37
	3	(1)	14,413	25	19	22	37
	4	(1)	14,413	25	20	23	38
	Total	228	57,652	100	78	90	150
491, 492, 493	1	4,051	31,032	5	61	33	55
	2	2,513	107,768	12	38	25	41
	3	657	98,713	6	10	8	14
	4	490	370,260	110	7	59	98
	Total	7,711	607,773	132	117	125	208
494, 495, 496, 497, 46	1	9,370	51,527	17	97	57	95
	2	1,695	66,702	14	18	16	26
	3	205	29,126	3	2	3	5
	4	73	66,886	57	1	29	48
	Total	11,343	214,241	91	117	105	174
501, 55, 751, 753	1	(1)	176,974	25	30	27	45
	2	(1)	176,974	25	29	27	45
	3	(1)	176,974	25	29	27	45
	4	(1)	176,974	25	30	27	45
	Total	35,813	707,896	100	118	108	180
503, 521, 505	1	(1)	124,769	25	30	28	46
	2	(1)	124,769	25	29	27	45
	3	(1)	124,769	25	29	27	45
	4	(1)	124,769	25	29	27	45
	Total	10,039	499,076	100	117	109	181
5093, 508, 515, 516, 517	1	(1)	168,794	25	29	27	45
	2	(1)	168,794	25	29	27	45
	3	(1)	168,794	25	29	27	45
	4	(1)	168,794	25	29	27	45
	Total	6,729	675,177	100	116	108	180

APPENDIX 1.—Detailed Sample and Population Tabulation—Continued

(Number of Firms and Sample Size For Industries To Be Surveyed)

SIC group	Size [2]	Total plants [1]	Total employees	Sample size est. (employment)	Sample size est. (propor.)	Target sample size	Total calls
7692	1	8,413	27,045	97	114	105	161
	2	194	6,086	10	3	6	20
	3	9	1,267	1	0	1	5
	4	1	600	0	0	0	1
	Total	8,617	34,998	108	117	112	187
13	1	(1)	255,724	25	30	28	46
	2	(1)	255,724	25	29	27	45
	3	(1)	255,724	25	29	27	45
	4	(1)	255,724	25	29	27	45
	Total	12,243	1,022,895	100	117	109	181
Total		591,845	26,589,903	5,275	5,230	5,254	8,755

[1] SOURCE: Dun and Bradstreet except for cells shown with a single asterisk in which total establishment and employment counts were obtained from BLS Bulletin 2297, dated December, 1987.

[2] Size categories are defined as follows: Size 1=(1-19 employees); Size 2=(20-99 employees); Size 3=(100-249 employees); Size 4=250 plus.

APPENDIX 2.—REPRESENTATIVE PRECENT STANDARD ERRORS

Variable being estimated	Employment (percent)	Porportion (percent)
1	7	6
2	7	6
3	5	7
4	7	6
5	7	6
6	5	7
7	5	7
8	6	6
9	8	5
10	7	6
11	7	6
12	6	6
13	7	6
14	8	5
15	10	4
15	8	4
17	7	5
18	8	5
19	7	5
20	10	9
21	N/A	8
22	N/A	7
23	10	7
24	10	8
25	N/A	8
26	N/A	8
27	N/A	8
28	7	8
29	N/A	8

Appendix 3.—Survey Instrument

OMB Approval # _____

July , 1988

Dear _____:

The Occupational Safety and Health Administration (OSHA) is studying potential changes to its regulations governing personal protective equipment (PPE) addressed in Subpart I of the General Industry Standards. Since these regulations were adopted in 1971 there have been a number of technology changes making many of these standards design restrictive and/or outdated.

Given the time elapsed since 1971, OSHA is conducting an Office of Management and Budget approced survey to determine what personal protection is in use and the processes for which it is needed. You firm has been selected to participate in this survey, and an interviewer will be calling you in a new weeks to ask some questions about your company's processes and practices with respect to personal protective equipment. Participation in the survey is voluntary and all responses, including any trade or technological secrets, will be kept strictly confidential.

Public reporting burden for this collection of information is estimated to average 45 minutes per complete response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N1301 200 Constitution Ave. N.W., Washington, DC 20210; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Will you help us expedite our survey process by deciding who at your facility is best qualified to answer question about work processes and apersonal protective equipment? Your firm's cooperation and information will help OSHA to develop the most feasible and cost effective stsandards.

We look forward to talking to your firm about these issues.

Sincerely,

John A. Pendergrass,

Assistant Secretary.

Personal Protective Equipment Questionnaire, OSHA, July 15, 1988.

[Interviewer Instructions: Record the Following Information.]

Interviewer Number

Call Record CASEID

Call Record SIC

Introduction

[Note to Reviewer: This section introduces the survey to the respondent, screens to insure that the respondent is in the correct SIC code, and collects basic information regarding types of business of activity and levels of employment.]

Hello. My name is _____ and I'm calling from KCA Research in Alexandria, Virginia. We are conducting a survey on behalf of the Occupational Safety and Health Administration of the U.S. Department of labor to assess the current practices in industry in the use of certain types of personal protective equipment. A letter was sent to you informing you of this survey.

As the letter indicted, we are interested in understanding the patterns of use of different types of personal protective equipment in industry. We would like to emphasize that all responses will be kept strictly confidential, and respondents will not be identified by name in any reports or data compilations.

Should I direct my questions to you, or is there someone else in the facility with whom you would prefer that I speak?

1. Our records show your firm to be in SIC code XXXX, which is _____. Is this correct?

Enter SIC GO TO Q.3
No GO TO Q.2
Don't know GO TO Q.3
Refused GO TO Q.4

2. What is your SIC Code?

Enter SIC Code
Don't know GO TO Q.3
Refused GO TO Q.4

3. How would you describe your line of business?

[Record Verbatim]

[If SIC Code/Line of business description is outside scope of survey, terminate.]

I'm going to read a list of activities which might be performed in firms like yours. I'd like you to tell me if each of these is performed at your present location. Do you _____ at your location?

4. manufacture
5. perform retail sales
6. perform wholesale sales
7. provide a business service
8. provide personal services
9. do administrative work

Yes
No
Don't know
Refused

10. Do you perform any other general types of activities at this location?

Yes
No GO TO Q.12
Don't know GO TO Q.12
Refused GO TO Q.12

11. What activity is that?

[Record Verbatim]

12. In total, how many employees are there at this location?

[Record Number] GO TO Q.14
More than 9,996 GO TO Q.13
Don't know GO TO Q.14
Refused GO TO Q.14

13. [Record Number of Employees Verbatim.]

How many of these are employed solely in providing the product or service of your firm (production workers), how may are employed solely in activities relatred to the maintenance and repair of your present facility, how many are engaged in such nonproduction activities in clerical, accounting, administration, management, or sales?

14. production employees
15. non-custodial maintenance and repair
16. nonproduction activities
17. some combination of employees performing in production and other areas

[RECORD NUMBER]
Don't know
Refused

[If number of employees in Q.14, 15 and Q.17 is none, terminate.]

[Note to Reviewer: This section collects information specifically about welding operations. Respondents are initially screened to determine whether any welding is conducted at their facility. Those who answer affirmatively are asked additional questions about employment of welders, PPE use, engineering controls, and other issues concerning welding safety.]

Do you perform _____ at your location?

18. gas welding or cutting
19. arc welding
20. resistance welding
21. brazing

Yes
No
Don't know
Refused

[If none performed, go to Q.57.]

22. How many employees perform one or more of these questions?

[Record Number]
Don't know
Refused

How many employees perform welding for _____?

23. production only
24. maintenance only
25. some combination of production and maintenance

[Record Number]
Don't know
Refused

26. Do gas or arc welders wear welding helmets or goggles or use hand shields?

Yes, all do
Some do
None GO TO Q.29
Don't know GO TO Q.29
Refused GO TO Q.29

27. Do the welders wear safety glasses or goggles under their helmets or faceshields?

Yes, all do
Some do
None
Don't know
Refused

28. Do welders' helpers or others in the vicinity of welding operations wear welding helmets, welding goggles or other tinted eyewear?

Yes, all do
Some do
None
Don't know
Refused

[If yes to Q.19, continue with Q.29; otherwise, go to Q.31.]

29. Are employees who operate and maintain arc welding equipment instructed in the OSHA safety regulations for welding operations?

Yes
No
Don't know
Refused

30. Are arc welders provided with gloves for use while welding?

Yes
No
Don't know
Refused

[If yes to Q.20, continue with Q.31; otherwise, go to Q.32.]

31. Do you provide guards for resistance welding equipment to prevent flying sparks?

Yes
No
Don't know
Refused

[If yes to either Q.20 or Q.21, continue with 32; otherwise, go to Q.33.]

32. Do operators of resistance welding or brazing equipment wear safety glasses or other protective eyewear?

Yes
No
Don't know
Refused

33. Are cautionary labels warning of welding hazards placed on containers of welding materials and major pieces of welding equipment?

Yes
No
Don't know
Refused

34. Firms like yours sometimes use special engineering features to reduce hazards to employees from welding operations. Do you use welding screens or cutrains for this purpose?

Yes
No
Don't know
Refused

35. Do you use ventilation systems for this purpose?

Yes
No GO TO Q.48
Don't know GO TO Q.48
Refused GO TO Q.48

36. Do you use any types of local ventilation methods such as canopy hoods to control for fumes or gases generated during welding operations?

Yes
No GO TO Q.44
Don't know GO TO Q.44
Refused GO TO Q.44

Do the local ventilation methods include any of the following? Do they include _____?

37. enclosures
38. canopy hoods
39. slotted ventilation hoods
40. flexible hose ventilation
41. tailpipe exhaust systems
42. downdraft hoods
43. side draft hoods

Yes
No

Don't know
Refused

Do you rely on any of the following other types of ventilation to control for welding fumes and gases?

44. roof or other exhaust fans
45. air supply fans
46. open doors and windows
47. air movements by thermal convection currents

Yes
No
Don't know
Refused

48. Are there any other engineering controls used to protect workers engaged in welding?

Yes
No GO TO Q.50
Don't know GO TO Q.50
Refused GO TO Q.50

49. What?

50. Do you perform air quality monitoring in conjunction with welding operations?

Yes
No
Don't know
Refused

51. In what percentage of your production welding work, must the welder wear a respirator?

[Record Number]
Don't know
Refused

52. In what percentage of your maintenance and repair welding work, must the welder wear a respirator?

[Record Number]
Don't know
Refused

53. Do noise levels associated with welding and cutting operations exceed 90 decibels?

Yes
No GO TO Q. 55
Don't know GO TO Q. 55
Refused GO TO Q. 55

54. Do welding operators wear hearing protection?

Yes
No
Don't know
Refused

55. Are welding operators required to manually handle materials or tools weighing 20 pounds or more as part of their normal job tasks?

Yes
No GO TO Q. 56
Don't know GO TO Q. 56
Refused GO TO Q. 56

56. Do welding operators wear safety shoes?

Yes
No
Don't know
Refused

[Note to Reviewer: The following questions pertain to the use of personal fall protection systems.]

56a. Do employees at your facility ever work at heights exceeding four feet without the protection of a guard rail or similar barrier?

Yes
No
Don't know GO TO Q. 57
Refused

56b. Do employees at your facility ever use personal fall protection systems?

Yes
No
Don't know GO TO Q. 57
Refused

Do these systems ever include _____?

56c. body belts with lanyard and lifeline

56d. body harness with lanyard and lifeline

Yes
No
Don't know
Refused

56e. Do these systems involve some type of personal fall protection system other than body belts or harnesses with lanyards and lifelines?

Yes
No
Don't know GO TO Q. 56g
Refused

56f. What type of system is that?

How many employees use personal fall protection systems for _____?

56g. production work only
56h. maintenance and repair work only
56i. some combination

[Note to Reviewer: The following questions are asked only of those firms in the pulp and paper industry (SIC 26XX). The questions are designed to collect information relevant to an analysis of compliance with the OSHA pulp and paper industry standard. This information will supplement that collected from pulp paper firms in the other sections of the questionnaire.]

[If SIC 26XX, continue; otherwise, go to Q. 75.]

57. Do belt conveyers in your facility have emergency stop buttons located at each employee work station?

No belt conveyers
Yes
No
Don't know
Refused

58. Are all mobile cranes used in your facility equipped with a device to prevent the boom from snapping back over the cab in the event of a cable failure?

No mobile cranes
Yes
No
Don't know
Refused

59. Do any of your operations require employees to work above water?

Yes
No GO TO Q. 61
Don't know GO TO Q. 61
Refused GO TO Q. 61

60. Are such employees provided with either personal flotation devices or protective barriers and safety belts and lifeline?

Yes
No
Don't know
Refused

61. Do you operate chippers at your facility?

Yes
No GO TO Q. 64
Don't know GO TO Q. 64
Refused GO TO Q. 64

62. Are chipper spouts enclosed by a barrier 42 inches or higher?

Yes
No
Don't know
Refused

63. Do chipper operators wear a safety belt or harness and life line?

Yes
No
Don't know
Refused

64. Does your facility engage in chemical pulpmaking utilizing liquid sulfur?

Yes
No GO TO Q. 70
Don't know GO TO Q. 70
Refused GO TO Q. 70

65. Does your facility have written procedures for handling and storing liquid sulfur?

Yes
No
Don't know
Refused

66. Are employees trained in the hazards associated with chemical spills of liquid sulfur?

Yes
No
Don't know
Refused

67. Are employees trained in appropriate first aid practices to be followed in the event of a spill?
Yes
No
Don't know
Refused

68. How many employees are assigned to sulfur tank cars for initial unloading operations?
[Record Number]
Don't know
Refused

69. Does your facility have a venting system used in unloading of sulfur tank cars?
Yes
No
Don't know
Refused

70. Does your facility engage in pulpmaking operations that utilize furnaces and/or boilers?
Yes
No GO TO Q. 72
Don't know GO TO Q. 72
Refused GO TO Q. 72

71. Are employees working in recovery furnace operations trained in normal and emergency shutdown procedures?
Yes
No
Don't know
Refused

72. Do you engage in a bleaching process as part of your operation that requires the generation of chlorine dioxide?
Yes
No GO TO Q. 75
Don't know GO TO Q. 75
Refused GO TO Q. 75

73. Does your facility have written safety procedures for the operation and maintenance of chlorine dioxide generating and other associated equipment?
Yes
No GO TO Q. 75
Don't know GO TO Q. 75
Refused GO TO Q. 75

74. Are personnel who work on this equipment trained in these procedures?
Yes
No
Don't know
Refused

[Note to Reviewer: In the following section respondents are screened for processes occurring at their facility. The interviewer will prompt the respondent with 2 or 3 processes commonly present in that industry. The respondent will then be asked to list other processes which are present. These will immediately be coded and entered by the interviewer from a master list of processes. Interviewers will also have a list of hazards associated with each process.]

I'm going to read a list of processes that many firms engaged in your type of business often perform, exclusive of welding, which we have just discussed. I'd like you to tell me which, if any, of these processes are performed at your location. Do you perform _____?
75. Process A
76. Process B
77. Process C
78. Process D
79. Process E
80. Process F
81. Process G
82. Process H
83. Process I
84. Process J
85. Process K
86. Process L

Are there any other processes performed that I did not mention?
[Enter Each Process Number]
No processes
Other process 1
Other process 2
Other process 3
Other process 4
Other process 5
Other process 6
No more processes
87. [Record Verbatim Other Process 1]
88. [Record Verbatim Other Process 2]
89. [Record Verbatim Other Process 3]
90. [Record Verbatim Other Process 4]
91. [Record Verbatim Other Process 5]
92. [Record Verbatim Other Process 6]

[If no processes listed, terminate interview.]

[Note to Interviewer: USE THE RANDOM SELECTION PROCESSES TO IDENTIFY THE SIX PROCESSES FOR QUESTIONING IN THE FOLLOWING SECTION.]

[Note to Reviewer: In this section the respondent is asked a series of questions about the presence of engineering controls and associated PPE use for each process coded in the process screener. Engineering controls and PPE use for hazards not associated with the process will not be included in the questions. The interviewer will be supplied with a master list identifying the engineering controls that are appropriate for each process. The completed list of possible questions on engineering controls in presented below.]

Now I'm going to review with you those processes which you previously indicated were performed at your facility. I have a series of questions to ask about each process. The first process is _____.

[Note to Interviewer: For each process, key in the Response from the process helps list for each of the following: Is _____ of concern in this process?]
A. hazards from airborne materials, including dust
B. noise
C. potential for falling objects or materials
D. potential for flying materials such as particles and chips
E. potential for dropping equipment or materials that might injure a worker
F. hazards from handling sharp objects or heated materials
G. hazards from chemicals

93. How many workers at this location directly participate in this process?
[Enter Number]
Yes
Don't know
Refused

94. Do you use ventilation systems to reduce the level of airborne contaminants?
Yes GO TO Q. 67
No
Don't know
Refused

95. Do you use any types of local ventilation methods?
Yes
No GO TO Q. 103
Don't know GO TO Q. 103
Refused GO TO Q. 103

Do the local ventilation methods include any of the following:
96. enclosures
97. canopy hoods
98. slotted ventilation hoods
99. flexible hose ventilation
100. tailpipe exhaust systems
101. downdraft hoods
102. side draft hoods
Yes
No
Don't know
Refused

Do you rely on any of the following other types of ventilation?
103. roof or other exhaust fans
104. air supply fans
105. open doors and windows
106. air movements by thermal convection currents
Yes
No
Don't know
Refused

107. Of those performing this process, how many use respirators when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

108. Do noise levels around this process exceed 90 decibels?

Yes
No GO TO Q. 119
Don't know GO TO Q. 119
Refused GO TO Q. 119

109. Have you installed noise control systems?

Yes
No GO TO Q. 116
Don't know GO TO Q. 116
Refused GO TO Q. 116

Do you use:

110. mufflers or baffles on or in equipment
111. acoustical surface treatment of equipment for noise control
112. acoustical treatment of process areas and rooms
113. noise control enclosures around equipment
114. noise control enclosures around workers
115. relocation of worker station relative to noise sources

Yes
No
Don't know
Refused

116. Do you use any other type of noise control?

Yes
No GO TO Q. 118
Don't know GO TO Q. 118
Refused GO TO Q. 118

117. What?

118. Of those performing this process, how many use noise protection when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

In this process do you use any of the following to prevent hazards of falling objects?

119. overhead grates or bars above workstations
120. overhead netting or screens
121. toeboards at edge of open-sided overhead walkways, platforms and floors.

Yes
No
Don't know
Refused

122. Do you use any other type of controls to guard against falling objects?

Yes
No GO TO Q.124
Don't know GO TO Q.124
Refused GO TO Q.124

123. What?

124. Of those performing this process, how many use hard hats when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

Do you use any of the following physical barriers to limit eye and face hazards from equipment or materials in this process?

125. equipment enclosures
126. operator booths or enclosures
127. equipment shields
128. equipment hoods
129. screens around equipment or production areas

Yes
No
Don't know
Refused

130. Do you use any other physical barriers to limit eye and face hazards from equipment or materials?

Yes
No GO TO Q. 132
Don't know GO TO Q. 132
Refused GO TO Q. 132

131. What?

132. Of those performing this process, how many use safety goggles or glasses when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

133. Of the safety glasses worn, how many are equipped with side shields?

[Enter Number]
Don't know
Refused

134. Of those performing this process, how many use face shields or welding helmets?

[Enter Number]
Don't know
Refused

135. Of those performing this process, how many use tinted eyeglasses or tinted face shields?

[Enter Number]
Don't know
Refused

136. In this process is there a need for employees to manually handle objects or tools weighing 20 pounds or more?

Yes
No GO TO Q.144
Don't know GO TO Q.144
Refused GO TO Q.144

In this process do you use any of the following automated material handling systems to reduce manual lifting and carrying of materials and equipment?

137. fork lifts
138. conveyers
139. motorized hand carts
140. manual hand carts
141. pallet jacks

Yes
No
Don't know
Refused

142. Of those performing this process, how many use safety shoes without metatarsal guards when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

143. Of those performing this process, how many use safety shoes with metatarsal guards when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

144. In this process are employees required to handle sharp, abrasive, or heated materials?

Yes
No GO TO Q.147
Don't know GO TO Q.147
Refused GO TO Q.147

145. Do you use equipment or technologies that facilitate worker handling of sharp, abrasive or heated materials?

Yes
No.
Don't know
Refused

146. Of those performing this process, how many use gloves when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

In this process do you use any of the following automated chemical handling equipment or physical barriers?

147. automated dispensing systems.
148. automated chemical mixing systems
149. automated hopper filing systems.
150. enclosed bulk-handling chemical delivery systems
151. chemical splash barriers

Yes
Do Don't know
Refused.

152. Do you use any other automated chemical handling equipment or physical barriers to protect workers?

Yes
No GO TO Q.154
Don't know GO TO Q.154
Refused GO TO Q.154

153. What?

154. Of these performing this process, how many employees wear chemical splash goggles when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

155. Of those performing this process, how many wear aprons when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

156. Of those performing this process, how many wear rubber or other boots other than safety shoes when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

157. Of those performing this process, how many wear protective suits or other types of protective clothing when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

GO to Q.93 and repeat for each process reported.

[Note to reviewer: This section covers basis safety policy issues relevant to PPE use.]

158. Does your company have rules about the use of personal protective equipment at this facility?

Yes
No
Don't know
Refused.

You've described to me already use of personal protective equipment in certain processes. I'd like to know, however, about overall use of the equipment throughout your establishment. You may have already given me some of this information but I need to confirm it with you. How many workers in all in your establishment wear:

159. Goggles
160. Safety glasses with side shields
161. Safety glasses without side shields
162. Faceshields or welding helmets
163. Tinted eyeglasses or faceshields
164. Hard hats
165. Safety shoes without metatarsal guards
166. Safety shoes with metatarsal guards
167. Chemical splash goggles
168. Respirators
169. Aprons
170. Protective suits or other porotective clothing
171. Rubber or other boots other than safety shoes
172. Noise protection ear inserts or earmuff
172a. Personal fall protection system with a body belt
172b. Personal fall protection system with a body harness

[Record Number]
Don't know
Refused

173. Have you ever performed an assessment of the hazards in your workplace to determine whether your PPE policies are adequate?

Yes
No
Don't know
Refused

174. Have employees been trained in the recognition of hazards specific to the process in which they are engaged?

Yes
No GO TO Q.176
Don't know GO TO Q.176
Refused GO TO Q.176

175. Does this training encompass use of personal protective equipment for hazards associated with each process?

Yes
No
Don't know
Refuse

176. What percentage of workers who wear personal protective equipment have not been trained in its use?

[Enter Percent]
Don't know
Refuse

176a. Do employees receive training in the use of personal fall protection systems?

Yes
No GO TO Q.179
Don't know GO TO Q.179
Refused GO TO Q.179

176b. Is the training program for the use of fall protection systems documented in written form?

Yes
No
Don't know
Refused

Does the training program for fall protection involve _____?

176c. formal classroom training
176d. on-the-job training

Yes
No
Don't know
Refused

176e. What percentage of employees who use fall protection systems have received training in its use?

Yes
No
Don't know
Refuse

177. Do employees who wear personal protective equipment receive refresher training in its use?

Yes, all employees
Some employees
Few employees
No GO TO Q.179
Don't Know GO TO Q.179
Refused GO TO Q.179

178. How often is such refresher training provided?

At least one per year
Less frequently than once per year
No formal schedule
Don't know
Refused

178a. Do employees receive refresher training in the use of fall protection systems?

Yes, all employees
Some employees
Few employees
No GO TO Q.179
Don't Know GO TO Q.179
Refused GO TO Q.179

178b. How often is such refresher training provided?

At least one per year
Less frequently than once per year
No formal schedule
Don't know
Refused

Are any of the following part of your regular company operations or policies?

179. safety incentive programs
180. safety inspections to evaluate employee use of PPE
181. safety records used in performance evaluations for supervisors or management
182. disciplinary actions taken for employee's failure to use personal protective equipment

Yes
No
Don't know
Refused

183. Is your company in the State Worker Compensation program, or are you self-insured?

State Worker's Compensation
Self-insured
Don't know
Refused

184. Has your company ever done any analysis of accidents beyond keeping the accident log (i.e. the Form 200) required by OSHA?

Yes
No
Don't know
Refused

185. Did the company reevaluate its personal protective equipment policies the last time there was a major process change made in the facility?

Yes
No
No process changes
Don't know
Refused

[Note to Reviewer: In this section respondents are asked about specific PPE procedures that are required for full compliance with the OSHA PPE standard.]

186. Do employees ever independently select and supply their own personal protective equipment, without guidance from the company?

Yes
No GO TO Q.188
Don't know GO TO Q.188
Refused GO TO Q.188

187. Is employee-provided personal protective equipment checked over and approved by a foreman or safety official before it is used on the job?

Yes
No
Don't know
Refused

188. Are employees ever issued previously-used hard hats?

Yes
No GO TO Q. 193
Don't know GO TO Q.193
Refused GO TO Q.193

189. Please estimate how many hard hats are reissued monthly?

[Enter Number]
Don't Know
Refused

Before hard hats are re-issued, are they:

190. inspected for damage and repaired
191. cleaned
192. disinfected
Yes
No
Don't know
Refused

193. Are employees ever issued previously-used eye and face protective equipment?

Yes
No GO TO Q. 198
Don't know GO TO Q.198
Refused GO TO Q.198

194. Please estimate how many protective eyeglasses, goggles, or face shields are reissued monthly?

[Enter Number]
Don't Know
Refused

Before protective eyewear or faceshields are re-issued, are they:

205. inspected for damage and repaired
206. cleaned
207. disinfected
Yes
No
Don't know
Refused

198. Does your firm provide eyeglass cleaning stations or other means to help employees keep their safety eyewear clean?

Yes
No
Don't know
Refused

199. Are employees ever issued previously-used respirators?

Yes
No GO TO Q. 204
Don't know GO TO Q.204
Refused GO TO Q.204

200. Please estimate how many respirators are reissued monthly?

[Enter Number]
Don't Know
Refused

Before respirators are re-issued, are they:

195. inspected for damage and repaired
196. cleaned
197. disinfected
Yes
No
Don't know
Refused

208. Does the company have any policies or procedures which ensure that damaged or defective personal protective equipment is not used?

Yes
No
Don't know
Refused

208a. Are lanyards, lifelines, body belts, harnesses, and other components of personal fall protection systems inspected for damage and repairs before issue?

Yes
No
Don't know
Refused

209. Do employees contribute to the purchase of any personal protective equipment?

Yes
No
Don't know
Refused

210. Have you had any occupational injuries or illnesses within the past two years?

Yes
No Terminate
Don't know Terminate
Refused Terminate

211. How many occupational injuries have occurred?

[If none, go to Q.213.]

212. Of the _____ occupational injuries, how many resulted in the loss of one or more workdays?

213. How many work related illnesses have occurred?

[If none, go to Q.215.]

214. Of the _____ occupational related illnesses, how many resulted in the loss of one or more workdays?

215. Would you please send us the OSHA Form 200 accident log and the OSHA Form 101 or any equivalent form you are using?

Yes Give Mailing Instructions
No

Thank the respondent for his assistance and terminate interview.

[FR Doc. 88-16878 Filed 7-27-88; 8:45 am]
BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before August 29, 1988.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/786-0233 and Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503, 202/395-6880.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/786-0233, from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of

the number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension.

Title: Division of State Programs; Guidelines for Biennial Proposals.

Form Number: 3136–0080.

Frequency of Collection: Biennially.

Respondents: State humanities councils applying for funding.

Use: Application for benefits by state humanities councils to be regranted to nonprofit groups and organizations in their states to make focused, coherent humanities education possible in places and by methods that are appropriate to adults. Information will be used by reviewers, panelists, and the Endowment's chairman to determine eligibility for funding.

Estimated Number of Respondents: 26–28.

Frequency of Response: Biennially.

Estimated Hours for Respondents to Provide Information: 116 hours per respondent or 3,016–3,248 total hours for all respondents.

Estimated Total Annual Reporting and Recording Burden: 8,104–8,336.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 88–17006 Filed 7–27–88; 8:45 am]

BILLING CODE 7536–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval; Termination for Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval of extension.

SUMMARY: The Pension Benefit Guaranty Corporation has requested approval by the Office of Management and Budget for an extension of the expiration date of a currently approved information collection requirement (1212–0020) without any change in the substance or in the method of collection. The information collection is contained in PBGC's regulation on Notice of Termination for Multiemployer Plans, 29 CFR Part 2673. This notice advises the public of the PBGC's request for OMB approval of this extension.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel, (22500), 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8850 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The PBGC is requesting that the Office of Management and Budget extend for three years the approval of the information collection requirement contained in the PBGC's regulation on Notice of Termination for Multiemployer Plans, 29 CFR Part 2673. The regulation applies only to plan sponsors of terminated multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Section 4041A(f)(2) of ERISA gives the PBGC authority to prescribe reporting requirements for terminated plans. These reporting requirements are necessary to protect the interests of plan participants and beneficiaries and of the PBGC.

The regulation provides that a Notice of Termination shall be filed with the PBGC by a multiemployer plan when the plan has terminated either by plan amendment or by mass withdrawal. The regulation requires that such a plan must provide the PBGC with basic information, such as the plan identity, the date of termination, and the plan's most recent Form 5500. In addition, a plan that has terminated by mass withdrawal must supply certain financial information. This information enables the PBGC to assess the likelihood of benefit reductions or suspensions under a terminated plan and the need for PBGC financial assistance to the plan. More information is required with respect to mass withdrawal terminations because the risk of plan insolvency is greater in these cases.

Based on its experience since this regulation was promulgated, the PBGC estimates that it will receive 20 requests annually. The PBGC estimates that 16 of these notices will be from plans that have terminated by plan amendment, with each notice requiring two hours of preparation, and that four of these notices will be from plans that have terminated by mass withdrawal, with each notice requiring 14.5 hours of preparation. Thus, the total estimated annual burden on the public is 90 hours.

Issued in Washington, DC, on this 25th day of July 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88–17069 Filed 7–27–88; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25936; File No. SR–CBOE–88–13]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Change

On June 29, 1988, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder [2], a proposed rule change to permit stop and stop limit orders in all exchange traded options to be elected when the quoted bid or offer for the option reaches the stop or stop limit price, in addition to being elected when a transaction in the security occurs at the appropriate stop or stop limit price.

The proposed rule change amends CBOE Rule 6.53 which defines different types of Exchange orders. the Exchange proposes that stop and stop limit orders for all option contracts be activated when the market in the option series, as reflected in the quotation, reaches the investor's stop price. Current stop and stop limit orders for index option contracts, but not equity options, are handled in this manner. For example, a stop order to buy an index option becomes a market order when either the option contract is bid at or above the stop price or when the option contract trades at or above the stop order. For equity options however, a stop order to buy (or sell) only becomes a market order when the option contract trades at or above (or below) the stop price. The same is true for individual equity options stop limit orders. A stop limit order to buy an equity option becomes a limit order only when the option contract trades at or above the stop limit price.

The Exchange believes the rule change will minimize investor confusion arising from the disparate handling of index and equity option stop and stop

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1985).

limit orders. Additionally, the Exchange believes that this rule change will more accurately achieve the objectives of customers who use stop and stop limit orders. Currently, if no transaction occurs in a equity option at a customer's stop price or at a price that penetrates the stop price, then the stop order is never activated. This situation can be particular problematic in inactive equity option series, such as those series that are deep in-or out-of-the-money. More specifically, the options quotations in these series may move substantially, based upon changes in the value of the underlying security, without any options transaction occurring. In this case, the investor's order is never activated and his goal of protection against adverse price movements in the option is defeated.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [3] and the rules and regulations thereunder. The Commission notes that other Exchanges have adopted similar rules [4] and the Commission believes the proposed rule chnge will serve to reduce investor confusion by promoting uniformity within CBOE as well as among option exchanges. Additionally, the Commission believes the rule change enhances further the utility of stop and stop limit orders for investors that use options. The Commission believes also that the investor's interest, as well as the interest of a fair and orderly market, is protected through the separation of floor broker and market maker function of the Exchange. This division assures that market makers do not have knowledge of such stop or stop limit orders when establishing their bids and offers.

The CBOE has requested accelerated approval of the proposed rule change because the election of stop and stop limit orders on bids and offers is allowed at other exchanges, implementation will enable investors to enjoy a consistent practice in all CBOE traded options, and immediate implementation will protect current equity options stop and stop limit orders. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the Federal Register in that the Commission previously approved substantially identical proposals by other Exchanges and has not received any adverse comments on those rule changes,[5] and that implementation will reduce investor confusion.

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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 18, 1988.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: July 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-17002 Filed 7-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25937; File No. SR-NASD-88-28]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Section 1(d), Part VI, Schedule D to the NASD By-Laws

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) notice is hereby given that on July 1, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 amends section 1(d), Part VI, Schedule D to the NASD By-Laws to provide that a market maker in the National Association of Securities Dealers Automated Quotations ("NASDAQ") System may become registered in an issue included in the NASDAQ System immediately after the request to register in the system is entered by the market maker.

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 NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission recently approved amendments to the Rules of Practice and Procedures for the NASD's Small Order Execution System ("SOES") and to Schedule D to the NASD By-Laws (the "SOES amendments").[1] The SOES amendments significantly alter the obligation of NASDAQ market makers, and, in pertinent part, make participation in SOES mandatory for all market makers in NASDAQ National Market System ("NASDAQ/NMS") securities. The SOES amendments became effective on June 30, 1988.

Subsequent to filing the SOES amendments, the NASD Board of Governors reviewed a series of potential issues that may be of concern after the SOES amendments became effective. Because the SOES amendments not only make participation in SOES mandatory for all market makers trading NASDAQ/

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[3] U.S.C. 78f (1982).

[4] *See* American Stock Exchange Inc. Rule 950(f), New York Stock Exchange Inc. Rule 750(h), Philadelphia Stock Exchange Rule 1066(c)(3).

[5] *See* Securities Exchange Act Release No. 22240 (July 15, 1985) 50 FR 29776, Securities Exchange act Releases No. 22495 (October 2, 1985) 50 FR 41082 and Securities Exchange act Release No. 23473 (July 28, 1986) 51 FR 27621.

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1986).

[1] *See* File No. SR-NASD-88-1, Securities Exchange Act Release No. 25791 (June 9, 1988).

NMS securities, but also impose severe penalties for unexcused withdrawals from the NASDAQ System, the Board determined that a situation may arise where trading in a NASDAQ/NMS security is disrupted. In such a situation, the Board concluded it may be necessary for the NASD to seek to register new market makers to trade on the NASDAQ System. Currently, registration as a NASDAQ market maker becomes effective on the second business day after the registration is entered. The proposed amendment permits the registration of market makers in the NASDAQ System to become effective on the day the registration request is entered into the NASDAQ terminal. By elminating the current two-day delay imposed on market makers that seek to become registered in an issue traded on the NASDAQ System, the proposed amendment facilitates the registration process, permits these market makers to immediately begin issuing quotes, and may ameliorate potential disruptions in the trading of NASDAQ/NMS securities.

The proposed rule amendment is consistent with section 15(A)(b)(6) under the Act which mandates that the rules of a national securities association be designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market because the proposed rule amendment will result in the elimination of the two-day delay currently in effect for market makers that seek to register in the NASDAQ System and the amelioration of potential trading disruptions in the NASDAQ System.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule amendment imposes any burden on competition not necessary or appropriate infurtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule changes, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 18, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: July 22, 1988.

[FR Doc. 88–17003 Filed 7–27–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25861; File No. SR–NSCC–87–12]

Self-Regulatory Organizations, National Securities Clearing Corp. ("NSCC"); Order Extending Approval of Proposed Rule Change on a Temporary Basis

On October 15, 1987, NSCC filed a proposed rule change (File No. SR–NSCC–87–12) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposed rule change revises NSCC's rules to authorize and establish financial and operational standards for a new category of broker-dealer membership, whose activities would be restricted exclusively to the use of the Fund/SERV service. The proposal also revises NSCC's rules concerning Fund/SERV clearing fund contributions and allocating losses to that fund in the event of systems losses or member default. On January 26, 1988, the Commission approved the proposed rule change on a temporary basis for three months, through April 30, 1988. On May 2, 1988, the Commission extended the approval of the proposed rule change on a temporary basis, through June 30, 1988. As discussed below, the Commission is extending its approval of the proposed rule change on a temporary basis, through September 30, 1988.

The Commission, in its January 26, 1988, temporary approval order, asked NSCC to evaluate the benefits accruing from lower Fund/SERV clearing fund contributions and limited member assessments. The Commission also asked NSCC to monitor member Fund/SERV settlement activity, and report on the risk that Fund/SERV settlement debits and credits could not be reversed and fully-collected from other Fund/SERV system users. NSCC has asked for an extension of time to provide the Commission with information regarding the benefits and risks associated with the proposed rule change.

In its January 26, 1988 Order, the Commission stated it preliminarily believes that the proposed rule change is consistent with the Act and, accordingly, approved the proposed rule change on a temporary basis. The Commission, however, believes that, before granting final approval of the proposed rule change, the Commission needs to analyze fully the benefits and risks associated with lower Fund/SERV clearing fund contributions and limited member assessments. Therefore, the Commission believes that it is appropriate to extend the proposed rule change for three months.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the approval of proposed rule change (SR–NSCC–87–12) be, and hereby is, extended on a temporary basis through September 30, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 28, 1988.

Jonathan Katz,

Secretary.

[FR Doc. 88–17004 Filed 7–27–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-25935; File No. SR-NYSE-88-20]

Self-Regulatory Organizations; Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the Exchange's Minimum Numerical Listing Standards and Continued Listing Criteria for Domestic Companies

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 14, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendments to the Exchange's minimum numerical listing standards and continued listing criteria for domestic companies, as set forth in Paragraphs 102.00 and 802.00 of the NYSE Listed Company Manual, are detailed in Exhibit A.[1] The proposed rule changes establish that if the unit of trading of an equity security is less than 100 shares (e.g., 10 shares), the requirements relating to the number of holders of 100 shares or more would be met by an equivalent number of holders of a "unit of trading if less than 100 shares" and the requirements relating to the number of publicly held shares shall be reduced proportionately. The Exchange does not expect that the proposed rule changes will have any direct effect, or significant indirect effect, on any other Exchange rule in effect at the time of this filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rules changes and discussed any comments it received on the proposed rules changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes

(1) Purpose

Current listing standards governing the number of shareholders and the number of shares publicly held ("distribution standards") for domestic companies are as follows:

1. For listing on the NYSE.

—Number of holders of 100 shares or more, 2,000,
or
total stockholders, 2,200
together with average monthly trading volume, 100,000 shares

—Number of publicly held shares, 1,100,000 shares

2. For continued listing on the NYSE.

—Number of holders of 100 shares or more, 1,200

—Number of publicly held shares, 600,000

These distribution standards were adopted to facilitate the Exchange's ability to maintain fair and orderly markets and are based on the normal unit of trading, i.e., 100 shares. Exchange Rule 55 states: "The unit of trading in stocks shall be 100 shares, except that in the case of certain stocks designated by the Exchange the unit of trading shall be such lesser number of shares as may be determined by the Exchange, with respect to each stock so designated * * *." For example, the Exchange may determine that a stock with an unusually high price should be traded in a 10 share unit. Because the Exchange's distribution standards specifically refer to holders of "100 shares or more" and apply numerical criteria for shares publicly held based on the normal unit of trading, there is no distinct provision for listing a company where the Exchange determines to designate the unit of trading as less than 100 shares.

The modification to the Exchange's distribution standards would:

(1) Modify the present requirement as to the required minimum number of holders of 100 shares or more to allow, instead, a minimum number of holders of a "unit of trading" where such unit is less than 100 shares; and

(2) Modify the standards for the number of shares publicly held to that number which is proportionate to the unit of trading which is designated by the Exchange as less than 100 shares (e.g., if the unit of trading is 10 shares, the required number of publicly-held shares for listing would be 110,000 rather than 1,100,000).

(2) Statutory Basis

The proposed rule changes are consistent with section 6(b)(5) of the Securities Exchange Act of 1934 as amended ("the Act"). This section, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove inpediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange. Furthermore, the proposed rules amendments are consistent with section 11(A)(a)(1)(c)(ii) of the Act in that they will tend to assure fair competition among exchange markets and between exchange markets and markets other than exchange markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rules changes will not impose any burden on competition that is not necessary or appropriate in futherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rules Changes Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments concerning its proposed rules changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or with such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rules changes, or

(B) Institute proceedings to determine whether the proposed rules changes should be disapproved.

[1] Exhibit A is available in the Public Reference Branch at the Commission's headquarters in Washington, DC.

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 submission, subsequent amendments, all written statements with respect to the proposed rules changes that are filed with the Commission, and all written communications relating to the proposed rules changes 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 Branch, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submission should refer to the file number in the caption above and should be submitted by August 18, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

July 2, 1988.

[FR Doc. 88-17005 Filed 7-27-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80-2-69 established the first interim SFFL and Order 88-5-64 set the currently effective two-month SFFL applicable through July 31, 1988.

In establishing the SFFL for the two-month period beginning August 1, 1988, we have projected nonfuel costs based on the year ended March 31, 1988 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 88-7-33 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic, 1.1593
Latin American, 1.1288
Pacific, 1.5352
Canada, 1.1634

FOR FURTHER INFORMATION CONTACT: Julien R. Schrenk (202) 366-2441.

By the Department of Transportation.

Date: July 21, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-16962 Filed 7-27-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Proposed Advisory Circular 91-53A]

Noise Abatement Departure Profile

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 91-53A, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to noise abatement departure profiles. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATE: Comments must be received on or before September 26, 1988.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Flight Technical Programs Branch, AFS-210, 800 Independence Avenue SW., Washington, DC 20591. Comments may be inspected at the above address between 9:00 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Gough, AFS-210, at the address above, telephone (202) 267-3728.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 91-53A and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Flight Technical Programs Branch before issuing the final AC.

Background

The AC provides a technical analysis and description of noise abatement departure profiles that are consistent with the FAA's safety responsibilities. It describes safe standard noise abatement departure profiles for turbojet-powered airplanes consistent with the performance and operating requirements of Parts 25 and 91 of the FAR. The profiles contained in this AC should be considered for inclusion in all air carrier training and flight operations manuals as well as airport noise abatement plans. Besides flight profile information, Part 25 certification criteria are also included in the event that special flight hardware is installed.

Issued in Washington, DC, on July 18, 1988.

D.C. Beaudette,

Acting Director of Flight Standards.

[FR Doc. 88-16973 Filed 7-27-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Santa Clara County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of previous notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a previous decision to prepare an environmental impact statement (EIS) for a proposed highway project in Santa Clara County, California, has been withdrawn.

FOR FURTHER INFORMATION CONTACT: D.L. Eyres, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915. Telephone: (916) 551-1314, or Paul H. Hughes, Senior Environmental Planner, State of California, Department of Transportation, P.O. 7310, San Francisco, California 94120. Telephone (415) 557-1318.

SUPPLEMENTARY INFORMATION: On Tuesday, May 7, 1985, on page 19254 (Vol. 50, No. 88) of the Federal Register, the FHWA, California Division, published a Notice of Intent for preparation of an Environmental Impact Statement for a project proposing to widen Route 101 to eight lanes from the routes 101/280/680 interchange to Guadalupe Parkway (Route 87) in Santa Clara County (a distance of five miles). As a consequence of the proposed freeway widening, a number of existing interchanges would require modifications.

Subsequent to the publication of the Notice of Intent, the Santa Clara County Traffic Authority has proposed a similar but more limited project in the same location without Federal Highway Administration involvement, and the California Department of Transportation, the project sponsor, is withdrawing its proposal for a Federally assisted project.

Accordingly, with this notice the Federal Highway Administration withdraws the former Notice of Intent.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The Regulations implementing Executive Order 12371 regarding intergovernmental consultation on Federal Programs and activities apply to this program)

Issued on: July 20, 1988.

D.L. Eyres,

District Engineer, Sacramento, California.

[FR Doc. 88-16964 Filed 7-27-88; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Announcing the First Meeting of the Biomechanics Subcommittee of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the first meeting of the Biomechanics Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the February 1988 meeting to examine research questions regarding injuries other than thoracic and abdominal injuries occurring in side impact crashes and injuries caused by steering assemblies.

DATE AND TIME: The meeting is scheduled for August 19, 1988, from 10:30 a.m. to 5:00 p.m.

ADDRESS: The meeting will be held in Room 3200 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

This meeting of the Biomechanics Subcommittee will focus on head, neck, and child injuries. Discussions will cover: Available data on the nature, scope, and magnitude of the problem; test facilities and test procedures; analytical computer models; and the technical literature which is the basis of the above.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

A public reference file (Number 88-01—Biomechanics Subcommittee) has been established to contain the products of the Subcommittee and will be open to the public during the hours of 8:00 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street SW., Washington, DC 20590, telephone: (202) 366-2768.

FOR FURTHER INFORMATION CONTACT: Rolf Eppinger, Office of Research and Development, 400 Seventh Street SW., Room 6226, Washington, DC 20590, telephone: (202) 366-4875.

Issued on: July 22, 1988.

Howard M. Smolkin,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 88-16974 Filed 7-27-88; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirement Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirement submitted to OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and record keeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. USIA is required to certify the eligibility of foreign people for J-1 visas, so that they may visit the United States under one of USIA's exchange-visitor programs. USIA is requesting approval of the extension of a program OMB 3116-0008, which provides J-1 visas for exchange-visitor programs. Respondents will be required to respond only one time.

DATE: Comments must be received by August 15, 1988.

Copies: Copies of this Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Robin Eschinger, United States Information Agency, M/AS, 301 Fourth Street, SW., Washington, DC 20547. Telephone (202) 485-7503, and OMB review: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Title: "Certificate of Eligibility for Exchange Visitor (J-1) Status". ABSTRACT: This information collection is intended to facilitate the administration of an exchange-visitor sponsor, who in turn sends it to the individual abroad so that he or she may take it to the nearest American Consul to receive a J-1 visa.

Proposed Frequency of Responses:

No. Of Respondents: 90,000.
Recordkeeping Hours: 4,000.
Total Annual Burden: 15,500.
Average Burden per Response: 15 Minutes.

Date: July 25, 1988.

Charles N. Canestro,

Federal Register Liaison

[FR Doc. 88-16977 Filed 7-27-88; 8:45 am]

BILLING CODE 8230-01-M

A Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175

entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities," announced in the **Federal Register** December 16, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following program are encouraged to so indicate:

Cantonese-Speaking Asian Journalists Program

Summary

The Office of Private Sector Programs of the United States Information Agency requests proposals for a three-week issues-oriented program for 10 Cantonese-speaking editors and reporters from local print organizations in Hong Kong; Guangzhou, the Peoples Republic of China; Singapore; and Malaysia. Selected by USIA representatives, this program is scheduled for the Fall of 1988 and will focus on multi-lateral trade issues and business/economic reporting.

Background

Trade and economic issues play an increasingly important role in the United States-Hong Kong-Peoples Republic of China relationship and are of critical importance in relations with Malaysia and Singapore. Although the level of economic development and degree of market protection varies widely among the four countries, each is concerned that protectionist sentiments in the United States will adversely affect the health of the general international economic system. While access to the U.S. market is critical to each of these countries, the extent that our economy expands or contracts is even more critical to their economic health. The existence of quotas, tariffs and other barriers to trade would be meaningless if the American market contracted as a result of a recession. An appreciation of the connection between the vitality of the U.S. economy and access for U.S. goods to global markets is essential. The development of a trans-Pacific economic system depends upon each country's willingness to make the trading system work in a competitive and non-protectionist atmosphere.

Since many important journalists who write on economic issues in Hong Kong and Guangzhou have limited English language capabilities, a program focusing on contemporary international economic issues conducted in Cantonese would have the potential for significantly improving the participants' understanding of U.S. concerns and views. The Chinese-language press in Kuala Lumpur, Singapore and Hong Kong plays a more influential role in establishing trade and economic policies than is generally understood. A significant number of decision-makers who do read and speak English still prefer to rely on Chinese-language media for much of their information.

Many of these journalists have relatively little understanding of American society and values. They are aware that the U.S. is indeed motivated by its own interests, but do not realize how broad those interests are and how they are defined within a democratic, pluralistic and decentralized society. They recognize American power, but are unaware of the checks and balances that restrain the American system of government. Many of them are only dimly aware of how differing "special interest" groups influence the Congress and the Executive.

Other stereotypes are also worth exploring. Some participants are aware that U.S. exports are generally concentrated at each end of the market spectrum; i.e. high tech (computers, planes, etc.) and *primary products* (grains, timber, etc.). But they typically believe that the United States has unlimited wealth and that exports play an insignificant role in our economy's health. Therefore, some argue that their country's formal or informal trade barriers cannot be of major concern. Consequently, it might prove useful for the participants to travel to both agricultural and high-tech regions to discover the tremendous significance of U.S. export-oriented products to these communities.

Program Timing, Location and Participants

The Chinese Economic Writers program will take place in the Fall of 1988. The proposed date is late September well before the U.S. Presidential election. USIA would prefer that the project take place in the midwest and Washington, DC and exit from the West Coast. If necessary to insure logistical coordination, the program may include co-sponsorship on a consultative basis with one or more other non-profit organizations.

Participants will be selected by USIA representatives in the participating countries. It is unlikely that members of the delegation will have English language skills. Through the Language Service Section of the Department of State, USIA will provide three or four seminar-quality escort/interpreters. While a majority of the participants will be younger economic and business journalists, at least two or three will be somewhat older, highly respected professionals.

The following suggestions should serve not as a blueprint but as a stimulus for the development of an original program. The program should allow adequate free time, limited sightseeing activities (for group cohesion, and an opportunity for participants to discuss their countries interests and journalistic traditions).

The selected institution should brief the participants upon their arrival. All Americans who meet with the delegations should receive in advance detailed information outlining the specific composition of the delegation, its interests, the program's objectives, and each speaker's role in helping achieve those objectives. The program coordinators should not be surprised if the participants request some changes in the proposed itinerary, and if they argue for at least one or two high-level meetings with American political leaders. These requests could be addressed by arranging meetings with members of the state Congressional delegation.

The three-week program might consist of one week in Washington, DC to introduce participants to the different organizations and segments of American society dealing with trade matters, and to improve their understanding of how trade and economic policy is established. The program should include a seminar on U.S. trade relations and trade policy, meetings with officials from the Department of Commerce, Department of Treasury, Department of State, the U.S. Trade Representative, the White House and the Congress. Since many of the participants will be reporting back to their respective news organizations, time should be set aside for interviews with some of the officials involved in establishing U.S. trade policy as well as meetings with representatives of different interest and lobbying groups. The second week would include a visit to the midwest and include briefings at the Chicago Board of Trade, the Chicago Mercantile Exchange, a major American grain trader, a U.S. multi-national corporation with interests in Asia, an American newspaper, and perhaps an introduction to a high-tech center. The final week would consist of a university program on the programs of researching and reporting on economic/trade issues. The university organizers might wish to include sessions with prominent local journalists who cover business/economic affairs on a daily basis as well as the more basic academic course work on researching, writing and editing. The university program should improve the participating journalists' ability to report

and cover economic/business developments. Time might also be set aside for additional visits to corporations, news outlets and trade groups. A seminar should be scheduled to explore the bi-lateral trade issues that exist between the U.S. and the participating countries within the overall context of the trans-Pacific trading system. The university program should be conducted by an institution with a strong graduate program in journalism and some background with Chinese programs.

Programmatic success will be further determined through detailed participant evaluations and through the development of additional programs not necessarily requiring USIA funding. The grantee institution should also provide all participants with their colleagues' addresses, contact numbers, etc., and might publish and distribute an after-activity newsletter.

The entire three-week project should conclude with a debriefing session with representatives of USIA present. Under the Fulbright-Hays Act, a USIA-sponsored delegation program must be non-partisan and representative of the diversity of American society.

Funding

The Office of Private Sector Programs estimates that the Chinese Language Economic Journalists project will cost under $100,000. The following budget outline is illustrative of cost categories and represents the Office's experience in supporting projects of this type.

International Travel (10x$2200)	$22,000
Domestic Travel (16x$500)	8,000
Local Transportation Expenses	4,000
Per Diem (16x23x$105)	38,640
Cultural Allowance (14x$150)	2,100
Total Participant Expenses*	74,740

*Includes expenses for four interpreters and two program coordinators to travel with delegation.

Administrative expenses could include the following: Staff salaries, communication expenses, office supplies, modest honoraria (not to exceed $250 per person), indirect cost, and program materials.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a brief letter as soon as possible indicating their attention to submit a formal proposal. Upon receiving a letter indicating an institution's plan to submit a proposal, this office will forward additional *pro forma* application materials and proposal guidelines. Competing grantee institutions should forward *fifteen* copies of their final proposal to the same address. This proposal is due no later than one month from the date on this **Federal Register** announcement. Please refer specifically to this program, by name, in any correspondence.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (ATTN:—Asian Journalists Project), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: July 19, 1988.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 88-16978 Filed 7-27-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 145
Thursday, July 28, 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 ELECTION COMMISSION

DATE AND TIME: TUESDAY, JULY 26, 1988 at 2:00 p.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be open to the public.

Due to extraordinary circumstances, and in accordance with 11 CFR 2.7(b), the Commission will hold a special open meeting for the purpose of considering the National Republican Senatorial Committee's petition to deny certification of payments to Michael S. Dukakis and Lloyd M. Bentsen under the Presidential Election Campaign Fund Act.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, *Information Officer*, Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 17072 Filed 7–26–88; 10:25 am]

BILLING CODE 6715–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 2, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITMES TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, section 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, August 4, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Regulations: 11 CFR 110.1–110.6—Affiliation and Earmarking
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88–17140 Filed 7–26–88; 3:25 pm]

BILLING CODE 6715–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board Meeting

TIME AND PLACE: 2:00 p.m., Thursday, August 4, 1988.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800 Washington, DC 20005.

STATUS Open.

CONTACT PERSON FOR MORE INFORMATION: Bonnie Nance Frazier, Director of Communications, 376–2623.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes, June 21, 1988.
2. Budget Committee Report.
3. Personnel Committee Report.
4. Executive Director's Report.
5. Treasure's Report.
6. Proposed Establishment of Executive Committee.

Casrol J. McCabe,

Secretary.

[FR Doc. 88–17048 Filed 7–26–88; 8:46 am]

BILLING CODE 7570–01–M

Corrections

Federal Register
Vol. 53, No. 145
Thursday, July 28, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5F3256/R967; FRL-3405-5]

Pesticide Tolerances for AC 222,293; Technical Amendment

Correction

In rule document 88-14382 appearing on page 24069 in the issue of Monday, June 27, 1988, make the following correction:

§ 180.437 [Corrected]

On page 24069, in the third column, the section heading should read as follows:

§ 180.437 Methyl 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-p-toluate and methyl 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-m-toluate; tolerances for residues.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Reg. No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Employment-Wages-Self-Employment-Self-Employment Income

Correction

In proposed rule document 88-14766 beginning on page 24727 in the issue of Thursday, June 30, 1988, make the following correction:

On page 24728, in the second column, in the seventh line from the bottom, "§ 404.1041A" should read "§ 404.1051A".

BILLING CODE 1505-01-D

federal register

Thursday
July 28, 1988

Part II

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Proposed Rule and Notice of Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL 3409-9]

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: On December 8, 1987, the D.C. Circuit Court granted the EPA's motion for a voluntary remand of the benzene equipment leak standard and the withdrawal of proposed standards for ethylbenzene/styrene (EB/S) and maleic anhydride process vents, and benzene storage vessels in light of the same court's recent decision on the vinyl chloride standard [*Natural Resources Defense Council, Inc.* v. *EPA*, 824 F.2d 1146 (1987)] (hereafter referred to as *Vinyl Chloride*). The court ordered EPA to propose action on the above standards within 180 days and to promulgate them within 360 days. The order was subsequently modified to extend the time for proposal of actions by 45 days. This notice presents the Administrator's reexamination of the benzene withdrawals and the benzene equipment leak standard. The Agency's reassessment of the proposed coke by-product recovery plants standard is also presented. Also included is a response to public comments on the previously proposed coke by-product recovery plants standard.

This notice proposes four policy approaches that could be used in setting national emission standards for hazardous air pollutants (NESHAP) and would be consistent with the court's decision in *Vinyl Chloride*. The decisions that would result from application of each of the policy approaches to the five benzene source categories are described, and alternative standards are proposed.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning these proposed actions.

DATES: *Comments.* Comments must be received on or before October 3, 1988.

Public Hearing. A public hearing will be held on September 1, 1988, and, if additional time is needed, will continue on September 2, 1988. The hearing will begin at 9:00 a.m. and is scheduled to conclude at 5:00 p.m. on both days.

Request to Speak at Hearing. Persons wishing to present oral testimony must notify EPA by August 25, 1988.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention (to the appropriate docket numbers), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The applicable dockets are: Docket No. OAQPS 79-3, Part I for comments on benzene health effects; Docket No. OAQPS 79-3, Part II for comments addressing maleic anhydride process vents; Docket No. A-79-49 for comments addressing regulation of EB/S process vents; Docket No. A-80-14 for comments addressing the regulation of benzene storage vessels; Docket No. A-79-27 for comments addressing benzene equipment leaks; or Docket No. A-79-16 for comments addressing coke by-product recovery plants.

Public Hearing. The hearing will be held at the U.S. Department of Agriculture Auditorium, 14th Street and Independence Avenue, Washington, DC 20250. Persons wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Background Information Documents. A background document responding to comments on the coke by-product recovery plants standard originally proposed on June 6, 1984, may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Please refer to EPA-450/3-83-016b, "Benzene Emissions from Coke By-Product Recovery Plants—Background Information for Revised Proposed Standards."

Dockets. Docket No. OAQPS 79-3 (Part I) contains information considered in the health effects, listing, and regulation of benzene. Docket No. A-79-16 contains supporting information used in the development of the proposed standard for coke by-product recovery plants. Docket No. A-79-27 contains supporting information used in the development of the standard for benzene equipment leaks, and Docket Nos. OAQPS 79-3 (Part II), A-79-49, and A-80-14 contain supporting information on maleic anhydride process vents, EB/S process vents, and benzene storage vessels, respectively. These dockets are available for public inspection and copying between 8:00 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Central Docket Section, South Conference Center, Room 4, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information specific to coke by-product recovery plants or benzene storage vessels, contact Ms. Gail Lacy at (919) 541-5261, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information specific to benzene equipment leaks, EB/S process vents, or maleic anhydride process vents, contact Dr. Janet Meyer, at the above address, telephone number (919) 541-5254. For information concerning the health effects of benzene and the risk assessment, contact Dr. Ila Cote at (919) 541-5342, Pollutant Assessment Branch, Emission Standards Division (MD-13), at the above address.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Overview of Proposed Alternative Actions
  Policy Approaches
  Application of Approaches to Benzene Source Categories
  Request for Comment
II. Background Documents and Notices
  Background Documents
  Previous **Federal Register** Notices
III. Background
IV. Characterization of Benzene Health Risks
  Hazard Identification
  Dose/Response Assessment
  Exposure Assessment
  Risk Characterization
V. Policy
  Legal Framework Under *Vinyl Chloride*
  General NESHAP Policy Considerations
  Risk Measures Considered in NESHAP Policy Approaches
  Technology Availability and Plant Closure Considerations
  Description of Alternative Policy Approaches
  Comparison of Effects of Policy Approaches on Pending NESHAP
  General Discussion of Format of Standards Which Have No Technology Basis
VI. Maleic Anhydride Process Vents
VII. Ethylbenzene/Styrene Process Vents
  Soure Category Overview
  Estimation Methods and Uncertainties
  Risk Characterization
  Application of Alternative Policy Approaches
VIII. Benzene Storage Vessels
  Source Category Overview
  Estimation Methods and Uncertainties
  Risk Characterization
  Application of Alternative Policy Approaches
IX. Equipment Leaks
  Source Category Overview

Estimation Methods and Uncertainties
Risk Characterization
Application of Alternative Policy Approaches
X. Coke By-Product Recovery Plants
Source Category Overview
Estimation Methods and Uncertainties
Risk Characterization
Application of Alternative Policy Approaches
XI. Summary of Major Comments and Responses on 1984 Proposed Standard for Coke by-Product Recovery Plants
XII. Summary of Alternative Proposed Standards
XIII. Format of Alternative Standards
XIV. Paperwork Reduction Act
XV. Regulatory Flexibility Act
XVI. Public Hearing
XVII. Docket
XVIII. Miscellaneous
List of Subjects In 40 CFR Part 61

I. Overview of Proposed Alternative Actions

Policy Approaches

Under section 112 of the Clean Air Act (CAA), EPA is required to establish emission standards for hazardous air pollutants at a level which provides an ample margin of safety to protect public health. In *Vinyl Chloride*, the court set out a two-step decision process for EPA to follow in setting NESHAP under section 112. The two steps set out in *Vinyl Chloride* are: (1) Determine a "safe" or "acceptable risk" level, and (2) set the standard at the level—which may be lower but not higher than the "safe'" or "acceptable" level—that protects public health with an ample margin of safety. The court emphasized that judgments by EPA concerning scientific uncertainty are an important part of the process for establishing NESHAP.

As discussed in detail in Section V of this notice, the Agency is proposing four alternative policy approaches for making these two decisions for NESHAP. Commenters should assume that the final decision on the NESHAP approach could be one of the four described specifically in this notice or a variation. The final policy approach and the relative weight it gives to the various risk measures and uncertainties will become the framework for decisions on future NESHAP. Consequently, the Agency is interested in comments on general implications of the alternative policy approaches as well as in comment on the specific applications to the four benzene source categories.

The framework adopted for NESHAP will not apply to other Agency programs. The Court's interpretation of the process required for establishing NESHAP did not extend to regulatory decisions under any other statute administered by EPA; therefore, the Agency does not envision applying the process described below to regulatory judgments under other Acts. Regulatory decisions under other Acts will continue to be made using individual deliberative processes pursuant to those distinct statutory mandates.

The alternative Policy approaches being proposed differ in how the question of acceptable risk is addressed and in how uncertainty in risk measures is considered. The agency is using both the four proposed approaches and the applications of the approaches to the benzene source categories as a means to frame the public debate on these questions. The Administrator believes that the broad ramifications of any particular approach for establishing acceptable risk levels for all NESHAP should be subject to public debate, in order to elicit the fullest range of information on these important decisions.

Each of the four approaches treats the acceptable risk decision differently. The major characteristics of the four proposed approaches to acceptable risk and ample margin of safety decisions are described below.

Approach A. Case-by-Case Approach

This is the only approach in which all the health information, risk measures, and potential biases, underlying assumptions, and quality (i.e., uncertainties) of the information are considered together in the acceptable risk decision. The preferred range for the maximum individual lifetime risk in this approach is 10^{-4} or less; however, different decisions on acceptable risk for various pollutants and source categories may be made based on consideration of all the health information.

Approach B. Incidence-Based Approach

This approach only considers total incidence in the acceptable risk decision. All of the health information, the uncertainties, and individual risk are not considered until the ample margin decision. The incidence level being proposed as acceptable is 1 case/yr per source category.

Approach C. 1×10^{-4} or Less Maximum Individual Risk Approach

The only parameter considered in determining acceptable risk is maximum individual lifetime risk. The other health information, the uncertainties, and incidence are not considered until the ample margin decision. In this approach, a maximum risk of 1×10^{-4} or lower is defined as acceptable.

Apporach D. 1×10^{-6} or Less Maximum Individual Risk Approach

This approach is similar to Approach C; however, acceptable risk is defined as a maximum individual lifetime risk of 1×10^{-6} or lower.

Ample Margin of Safety Decisions

This decision is made the same way under the four alternative approaches. In each, all the health risk measures as well as technical feasibility, cost, estimation uncertainties, and economic impacts are considered. A question of particular concern in these decisions is whether to require all technically feasible controls for which costs are reasonable no matter how small the risk reduction.

Application of Approaches to Benzene Source Categories

In reexamining the previous benzene decisions, the Administrator used data and analyses available as of the publications in June 1984 and August 1985. The reassessment for coke by-product recovery plants used the estimated impacts which were revised after the June 6, 1984, proposal. The risk estimates for the benzene source categories and the acceptable risk determinations under the alternative approaches are summarized in Table I-1. Maleic anhydride process vents are not included in this summary because benzene is no longer used to produce maleic anhydride. The ample margin of safety risk levels and associated control levels determined under the alternative approaches are summarized in Table I-2. The standards under the alternatives include no additional control, application of all known technology that is available at a reasonable cost, and plantwide benzene emission limits, which are not expected to be generally achievable in several source categories using known technology. The bases for these decisions are discussed in Sections VII through X of this notice.

BILLING CODE 6560-50-M

TABLE I-1. SUMMARY OF ACCEPTABLE DECISIONS UNDER THE ALTERNATIVE POLICY APPROACHES

Source Category	Baseline[a] Risk Estimates								Is Baseline Risk Acceptable?			
			Cumulative Population[d]			Noncumulative Incidence[e]			Approach			
	MIR[b]	Case/yr[c]	$\geq 10^{-4}$	$\geq 10^{-5}$	$\geq 10^{-6}$	10^{-4}	10^{-5}	10^{-6}	A	B	C	D
Ethylbenzene/Styrene Process Vents	2×10^{-5}	0.004	0	700	40,000	0	0.0002	0.001	Yes	Yes	Yes	No
Benzene Storage Vessels[f]	4×10^{-5} to 4×10^{-4}	0.05 to 0.1	10	20,000	900,000	0	0.004	0.02	Yes	Yes	No	No
Equipment Leaks NESHAP	6×10^{-4}	0.2	3,000	60,000	1,000,000	0.007	0.02	0.04	Yes	Yes	No	No
Coke By-Product Recovery Plants	6×10^{-3}	3	100,000	3,000,000	30,000,000	0.4	0.9	1	Yes	No	No	No

[a] The baseline level of control is described for each source category in Sections VII through X.

[b] Maximum individual lifetime risk (MIR) is the increased risk of cancer due to exposure for 70 years to the maximum modeled concentration.

[c] Case/yr is the annual incidence in the modeled population. This is a measure of population aggregate risk.

[d] The estimated number of people exposed to benzene concentrations resulting in predicted individual risk levels above the level shown. Population is cumulative.

[e] This is the estimated annual number of leukemia cases for the population exposed to each risk level. It is not cumulative.

[f] The range of risks associated with storage vessels represents the range of emission estimates.

TABLE I-2. SUMMARY OF AMPLE MARGIN OF SAFETY DECISIONS UNDER THE ALTERNATIVE POLICY APPROACHES

	Ethylbenzene/Styrene Process Vents	Benzene Storage Vessels	Equipment Leaks	Coke By-Product Plants
Approach A: Case-by-Case				
Level of Control	No additional control. Existing control provides ample margin.	Cost effective equipment.[a]	1984 NESHAP Provides ample margin.	Cost effective equipment and work practices.[b]
MIR[c]/ case/yr	2×10^{-5}/0.004	3×10^{-5}/0.04	6×10^{-4}/0.2	4×10^{-4}/0.2
Population at $>10^{-4}/10^{-6}$	0/40,000	0/80,000	3,000/1,000,000	2,000/2,000,000
Approach B: <1 case/yr				
Level of Control	Same as above.	Same as above.	Same as above.	Same as above.
MIR/ case/yr				
Population at $>10^{-4}/10^{-6}$				
Approach C: $\leq 1 \times 10^{-4}$				
Level of Control	Same as above.	Same as above.	14 kg/day[d] and 1984 NESHAP.	34 kg/day[d] and controls required in A.
MIR/ case/yr			1×10^{-4}/0.07	1×10^{-4}/0.07
Population at $>10^{-4}/10^{-6}$			0/unknown	0/unknown
Approach D: $\leq 1 \times 10^{-6}$				
Level of Control	5.5 kg/day[d]	0.47 kg/day[d]	0.14 kg/day[d]	0.34 kg/day[d]
MIR/ case/yr	1×10^{-6}/0.0007	1×10^{-6}/0.002	1×10^{-6}/0.0007	1×10^{-6}/0.0004
Population at $>10^{-4}/10^{-6}$	0/0	0/0	0/0	0/0

[a] Controls required are internal floating roofs on fixed roof vessels, effective primary seals and fittings on all vessels, and secondary seals on external floating roof vessels.

[b] Controls required are gas blanketing on all process vessels, tar-bottom final coolers at foundry plants, wash-oil final coolers at furnace plants, and leak detection and repair for equipment leaks.

[c] MIR = maximum individual lifetime risk.

[d] Limit on total benzene emissions from plant.

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Table I–3 summarizes estimates of major anticipated economic impacts of the ample margin decisions made under the approaches for the benzene source categories. The estimates of number of facilities shown under Approaches C and D to be permanently shut down (i.e., a closure) are based on limits of known control technologies. These particular estimates are rough estimates and are not based on economic analysis. The job loss estimates are also rough approximations which include only the regulated plants. Estimates of impacts on related industries and general communities are not included and cannot be quantified at this time.

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TABLE I-3. SUMMARY OF ESTIMATED ECONOMIC IMPACTS OF AMPLE MARGIN OF SAFETY DECISIONS UNDER THE ALTERNATIVE POLICY APPROACHES

	Ethylbenzene/Styrene Process Vents	Benzene Storage Vessels	Equipment Leaks	Coke By-Product Plants
Approach A: Case-by-Case				
Annual control cost, million $/yr	No additional cost.	0.1	No additional cost.	16
Closure/No. of facilities	0/13	0/126	0/131	0/44
Jobs lost	None	None	None	None
Approach B: ≤1 case/yr				
Annual control cost, million $/yr	Same as above.	Same as above.	Same as above.	Same as above.
Closure/No. of facilities				
Jobs lost				
Approach C: $\leq 1 \times 10^{-4}$				
Annual control cost, million $/yr	Same as above.	Same as above.	Unknown[a] but at least 52, if controls were applied.	Unknown[a] but at least 26.
Closure/No. of facilities			100/131	4 closures and 8 with reduced production/44 40% loss of coke production capacity.
Jobs lost			~27,000[b]	~3,000[b]
Approach D: $\leq 1 \times 10^{-6}$				
Annual control cost, million $/yr	Unknown[a]	Unknown[a]	Unknown[a]	Unknown[a] but at least 29 if controls were applied.
Closure/No. of facilities	6-8/13[c,d]	Unknown/126[d]	131/131	44/44
Jobs lost	Unknown[d]	Unknown[d]	~35,000[b]	~7,000[b]

[a] The cost of closure is not included and cannot be estimated at this time. Closure estimate is not based on economic feasibility.
[b] Estimate represents only jobs that would be directly affected by closure of plants. No estimate can be made for job losses in associated industries. This estimate is only a rough approximation of job losses.
[c] Estimate derived from number of facilities with emissions exceeding 2 Mg/yr. Range reflects variation in amount of additional reduction required.
[d] These facilities are also affected by standard for equipment leaks. Thus, actual number of closures will be determined by the equipment leak standard.

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As shown in Table I–3, ample margin decisions under the alternative approaches are estimated to result in widely varying cost and economic impacts. These differences arise due to differences in technical feasibility of achieving the standards.

Although under the court's decision in *Vinyl Chloride*, EPA may not take cost or feasibility into account in setting an acceptable level of risk, those factors are relevant to the second, or ample margin of safety step. In any event, should widespread closure of facilities producing and using benzene result from any alternative standard, significant social as well as economic impacts would result. Benzene is a basic chemical used to manufacture a diverse number of chemicals and products; such as polystyrene, nylon, and synthetic rubber. These derivatives are used in consumer goods (toys, tires, packaging), household goods (refrigerators, carpeting), and transportation.

Request for Comment

Throughout this notice, comments and information are requested on specific areas. In addition, partly in response to the *Vinyl Chloride* decision, EPA is reexamining assumptions and decision methods it has relied upon in making section 112 hazardous air pollutant regulatory determinations. As part of that process, EPA is seeking to engage the public and all interested parties in discussion concerning both specific elements of alternative proposals for benzene standards and a broader reexamination of assumptions and decision methods.

In an effort to structure that discussion, EPA has formulated the four alternative approaches noted earlier for the control of hazardous air pollutant emissions under section 112 of the CAA. Today's **Federal Register** notice proposes these four approaches for the control of air emissions of benzene and thereby provides the opportunity for EPA to solicit comments from the public on a variety of issues associated with this reexamination of the Federal program for hazardous air pollutants. Determinations on many of these specific issues within the proposed benzene regulation are expected to set precedents for the approach to be used for the substantial number of forthcoming NESHAP decisions. Major areas on which the Administrator requests public comment include, among others:

(1) Should EPA consider all risk information in decisions on risk acceptability or rely on a single numerical risk criterion? If multiple risk measures are to be used as the basis for decisions on risk acceptability, how should EPA balance individual versus population risk reductions?

(2) What health risk is acceptable not considering cost and technical feasibility of achieving it? Moreover, what constitutes an ample margin of safety in cases where all exposures pose some risk?

(3) Should EPA require standards pursuant to the ample margin of safety decisions under section 112 that are "technology forcing"? What criteria should EPA use to define the "availability" and "feasibility" of technological controls?

(4) In the ample margin of safety determination, how should EPA balance the residual health risks versus the possibility of plant closures?

(5) How should uncertainty in risk estimates be considered in these decisions?

(6) How should EPA balance the various risk, technical, and economic considerations in ample margin of safety decisions? How should EPA consider the ramifications of potential errors and uncertainy of judgments on technology capability and costs?

(7) Should EPA allow site-by-site analyses by sources to comply with risk targets in lieu of reasonable worst-case emission limits?

II. Background Documents and Notices

Background Documents

The following is a listing of background documents pertaining to the health effects of benzene and previous regulatory development efforts for each source category. The complete title, EPA publication number, publication date, and National Technical Information Service (NTIS) and document numbers are included. Where appropriate, an abbreviated descriptive title used to refer to the document throughout this notice is also listed.

General Health and Policy Regarding Benzene (Docket No. OAQPS 79–3, Part I)

(1) "Assessment of Human Exposures to Atmospheric Benzene," EPA–450/3–78–031. May 1978. (NTIS Number PB–284203). (Docket Item II–A–28).

(2) "Assessment of Health Effects of Benzene Germane to Low Level Exposures," EPA–600/1–78–61. September 1978. (NTIS Number PB–289789). (Docket Item II–A–30).

(3) "Carcinogen Assessment Group's Final Report on Population Risk to Ambient Benzene Exposures," EPA–450/5–80–004. January 1979. (NTIS Number PB82–227372). (Docket Item II–A–31 and 31A).

(4) "Response to Public Comments on EPA's Listing and Regulation of Benzene Under Section 112: Comments of a General Policy Nature," EPA–450/5–84–001. May 1984. (Docket Item VII–B–2).

(5) "Response to Public Comments on EPA's Listing of Benzene Under Section 112," EPA–450/5–82–003. May 1984. (Docket Item VII–B–1).

(6) "Interim Quantitative Cancer Unit Risk Estimates Due to Inhalation of Benzene." Internal Draft. EPA–600/X–85–22. February 1985. (Docket Item VIII–A–4).

Maleic Anhydride Process Vents (Docket No. OAQPS 79–3, Part II)

(1) "Benzene Emissions from Maleic Anhydride Plants—Background Information for Proposal to Withdraw Proposed Standard," EPA–450/3–84–002. March 1984. (NTIS Number PB84–170174). (Docket Item V–B–1). Referred to in maleic anhydride sections of this preamble as: Withdraw Background Information Document (BID).

Ethylbenzene/Styrene Process Vents (Docket No. A–79–49)

(1) "Benzene Emissions from the Ethylbenzene/Styrene Industry—Background Information for Proposal to Withdraw Proposed Standards," EPA–450/3–84–003. March 1984. (NTIS Number PB84–176874). (Docket Item V–B–1). Referred to in EB/S sections of this preamble as: Withdrawal BID).

Benzene Storage Vessels (Docket No. A–80–14)

(1) "Benzene Emissions from Benzene Storage Tanks—Background Information for Proposal to Withdraw Proposed Standards," EPA–450/3–84–004. March 1984. (NTIS Number PB84–167683). (Docket Item V–B–1). Referred to in storage vessel sections of this preamble as: Withdrawal BID.

Benzene Equipment Leaks (Fugitive Emisions) (Docket No. A–79–27)

(1) "Benzene Fugitive Emissions—Background Information for Proposed Standards," EPA–450/3–80–032a. November 1980. (NTIS Number PB81–151664). (Docket Item III–B–1). Referred to in equipment leak sections of this preamble as: Proposal BID.

(2) "Fugitive Emission Sources of Organic Compounds—Additional Information for Emissions, Emission Reduction, Costs," EPA–450/3–82–010. April 1982. (NTIS Number PB82–217126). (Docket Item IV–A–24). Referred to in equipment leak sections of this preamble as: Additional Information Document (AID).

(3) "Benzene Fugitive Emissions—Background Information for Promulgated Standards," EPA–450/3–80–032b. June 1982. (NTIS Number PB84–210301). (Docket Item V–B–1). Referred to in equipment leak sections of this preamble as: Promulgation BID.

"Protocols for Generating Unit-Specific Estimates for Equipment Leaks of VOC and VHAP—Draft," EPA Contract Number 68–02–4338. December 1987. (Docket Item VII–A–1).

Coke By-Product Recovery Plants (Docket No. A–79–16)

(1) "Benzene Emissions from Coke By-Product Recovery Plants—Background Information Document for Proposed Standards," EPA–450/3–83–016a. May 1984. (NTIS Number PB84–209477). (Docket Item III–B–1). Referred to in coke by-product sections of this preamble as: Proposal BID.

(2) "Benzene Emissions from Coke By-Product Recovery Plants—Background Information for Revised Proposed Standards," EPA–450/3–83–016b. June 1988. Referred to in coke by-product sections of this preamble as: Revised Proposal BID.

The background documents listed above can be found in the dockets or purchased from NTIS, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number (703) 487–4650. The Revised Proposal BID for Coke By-Product Recovery Plants can be obtained from the U.S. EPA Library.

Previous Federal Register Notices

Previous **Federal Register** notices pertaining to standards development for the five source categories emitting benzene are listed below in chronological order. Since the complete **Federal Register** citation and dates are listed here, they will not be repeated throughout this notice.

(1) "National Emission Standards for Hazardous Air Pollutants: Addition of Benzene to List of Hazardous Air Pollutants," 42 FR 29332, June 8, 1977.

(2) "National Emission Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants; Proposed Rule and Notice of Public Hearing," 45 FR 26660, April 18, 1980.

(3) "National Emission Standards for Hazardous Air Pollutants; Benzene Emissions from Ethylbenzene/Styrene Plants; Proposed Rule and Notice of Public Hearing," 45 FR 83448, December 18, 1980.

(4) "Benzene Emissions from Benzene Storage Vessels; National Emission Standards for Hazardous Air Pollutants; Proposed Rule and Notice of Public Hearing," 45 FR 83952, December 19, 1980.

(5) "National Emission Standards for Hazardous Air Pollutants; Benzene Fugitive Emissions; Proposed Rule and Notice of Public Hearing," 46 FR 1165, January 5, 1981.

(6) "National Emission Standards for Hazardous Air Pollutants; Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, and Benzene Storage Vessels; Proposed Withdrawal of Proposed Standards," 49 FR 8386, March 6, 1984.

(7) "National Emission Standards for Hazardous Air Pollutants; Regulation of Benzene; Response to Public Comments," 49 FR 23478, June 6, 1984.

(8) "National Emission Standards for Hazardous Air Pollutants; Benzene Equipment Leaks (Fugitive Emission Sources); Final Rule," 49 FR 23498, June 6, 1984.

(9) "National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Benzene Emissions from Coke By-Product Recovery Plants; Proposed Rule and Notice of Public Hearing," 49 FR 23522, June 6, 1984.

(10) "National Emission Standards for Hazardous Air Pollutants; Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, and Benzene Storage Vessels; Withdrawal of Proposed Standards," 49 FR 23558, June 6, 1984.

(11) "National Emission Standards for Hazardous Air Pollutants; Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, and Benzene Equipment Leaks; Denial of Petition for Reconsideration," 50 FR 34144, August 23, 1985.

III. Background

Since the early 1900's, the scientific and medical communities have recognized benzene as a potentially toxic substance. Benzene was recognized as a potential human carcinogen (leukemia) in the mid-1970's based on occupational studies of synthetic rubber, chemical, and shoe workers. Other documented occupational effects include impairment of the blood-forming system, immunotoxicity, chromosome breakage, and neurotoxicity. Results of animal studies support the leukemogenic potential of benzene and show reproductive and developmental toxicity also.

Benzene is common in our indoor and outdoor air. Major sources of benzene include automobile exhaust, automobile refueling operations, consumer products, cigarette smoking, and industrial emissions.

In 1977, the Administrator announced his decision to list benzene as a hazardous air pollutant under section 112 of the CAA (42 FR 29332, June 8, 1977). Benzene was determined to be a hazardous air pollutant because of its carcinogenic properties. A hazardous air pollutant is defined as an

> * * * air pollutant to which no ambient air quality standard is applicable and which * * * may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

Section 112(b)(1)(B) of the CAA requires EPA to establish emission standards for a hazardous air pollutant "at the level which in [the Administrator's] judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant."

The listing of benzene as a hazardous air pollutant led to the development of proposed standards for benzene emissions from maleic anhydride process vents, EB/S process vents, benzene storage vessels, and benzene equipment leaks. These proposed standards were published respectively by EPA in the **Federal Register** in 1980 and 1981 (45 FR 26660, April 18, 1980; 45 FR 83448, December 18, 1980; 45 FR 83952, December 19, 1980; 46 FR 1165, January 5, 1981).

After receipt of comments from industry and members of the public, EPA published a final rule setting an emission standard for benzene equipment leaks on June 6, 1984 (49 FR 23498). On that date, EPA also withdrew its proposed standards for maleic anhydride process vents, EB/S process vents, and benzene storage vessels (49 FR 23558). The withdrawal was based on the conclusion that both the benzene health risks to the public from these three source categories, and the potential reductions in health risks achievable with available control techniques were too small to warrant Federal regulatory action under section 112 of the CAA. Also on that date, EPA published a proposed standard for benzene emissions from coke by-product recovery plants (49 FR 23522).

On August 3, 1984, the Natural Resources Defense Council (NRDC) filed a petition in the United States Court of Appeals for the District of Columbia Circuit, seeking review of the EPA's three withdrawals of proposed benzene emission standards, and the EPA's final standard for benzene equipment leaks (*Natural Resources Defense Council, Inc.* v. *Thomas*, No. 84–1387 (hereafter referred to as "*Benzene*")). On October 17, 1984, NRDC petitioned EPA under section 307(d)(7)(B) of the CAA to

reconsider its decisions to withdraw standards for maleic anhydride process vents, EB/S process vents, and benzene storage vessels, and to reconsider the promulgated standard for benzene equipment leaks. The EPA denied this petition on August 23, 1985 (50 FR 34144).

On July 28, 1987, the court handed down an *en banc* decision in *Natural Resources Defense Council, Inc.* v. *EPA*, 824 F.2d 1146 (D.C. Cir. 1987) (hereafter referred to as "*Vinyl Chloride*") (Docket No. OAQPS 79–3, Part I, Docket Item X–I–4). The case concerns the emission standard under section 112 for vinyl chloride. The court concluded in *Vinyl Chloride* that EPA had acted improperly in withdrawing a proposed revision to the standard for vinyl chloride by considering costs and technological feasibility without first determining a "safe" or "acceptable" emissions level. In light of the *Vinyl Chloride* opinion, EPA requested a voluntary remand in *Benzene* to reconsider its June 6, 1984, rulemakings. In an order dated December 8, 1987, the court approved the EPA's voluntary remand and established a schedule under which EPA must propose its action on reconsideration within 180 days of the order and take final action within 360 days of the order. This order was subsequently modified under a joint motion to extend the time for proposal of actions by 45 days. The EPA also decided to reconsider the proposed standard for benzene emissions from coke by-product recovery plants in light of the *Vinyl Chloride* decision and to publish a supplemental proposal.

In reconsidering the previous decisions, the Administrator has used data on emissions and plants, and analyses available as of the publications in June 1984, and the denial of the petition for reconsideration in August 1985. The health information considered consists of the information available at the time of the 1984 decisions as well as the recent assessment provided by the Agency for the Toxic Substances and Disease Registry (ATSDR) that was released for public comment in December 1987 (Docket No. OAQPS 79–3, Part I, Docket Item X–1–2). For coke by-product recovery plants, the estimated impacts were revised based on comments received after the June 6, 1984, proposal. These revised impacts were used in the Administrator's reconsideration.

The EPA received in April 1988 from the American Petroleum Institute (API) a report entitled "Quantitative Re-evaluation of the Human Leukemia Risk Associated with Inhalation Exposure to Benzene." This report is in Docket No. OAQPS 79–3, Part I (Docket Item X–D–2) and is available for public comment. Due to the limited time available between submittal of this report and the court deadline, this information could not be evaluated before the reconsideration.

IV. Characterization of Benzene Health Risks

The characterization of the potential adverse health effects of human exposure to benzene emitted from the subject source categories is presented in four parts: Hazard identification, dose/response assessment, exposure assessment, and risk characterization. Based upon the documented association between exposure to benzene and elevated leukemia incidence in occupational populations, the risk characterization section includes estimates of excess leukemia risk for the general population exposed to benzene emissions from the subject source categories. The attendant uncertainties in these estimates are also described.

Hazard Identification

As a widely used organic chemical, the potential toxicity of benzene has been recognized since the erly 1900's. Initially identified as a causative agent in cases of bone marrow poisoning and blood abnormalities, the understanding of benzene's toxic properties has gradually expanded to include associations with aplastic anemia and cancer.

Although a tentative association between exposure to benzene and leukemia was first documented in 1928, benzene was not broadly recognized as a potential human carcinogen until the early 1970's with the publication of several epidemiological studies of benzene-exposed workers reported by the Occupational Safety and Health Administration (OSHA) (Docket No. OAQPS 79–3, Part I, Docket Item X–J–2). Based on this evidence, the Administrator, on June 8, 1977, announced a decision to list benzene as a hazardous air pollutant under section 112 of the CAA. Supplementary information on the listing may be obtained from the EPA document "Response to Public Comments on EPA's Listing of Benzene under Section 112" (Docket No. OAQPS 79–3, Part I, Docket Item VII–B–1).

Although acute nonlymphocytic leukemia (leukemia) is not the only adverse health effect attributed to benzene, the serious nature of this disease and the uncertainties regarding the existence of any risk-free levels of exposure combined to make it of central importance in hazard assessment. The EPA's health basis for listing rested primarily on retrospective studies in occupationally exposed human populations. Of these, three reports documenting an association received the greatest emphasis: Infante el al., published in 1977, Aksoy et al., published in 1976, and Ott et al., published in 1977 (Docket No. OAQPS 79–3, Part I, Docket Items II–I–86, IV–J–16, and II–I–71). In the interval since the listing decision, additional human data and animal data have become available which further support a casual relationship. Notable in this regard are studies published in 1981 by Rinsky et al. of the National Institute for Occupational Safety and Health (NIOSH) (Docket No. OAQPS 79–3, Part I, Docket Item IV–J–9) providing improved follow-up of the Infante cohorts, and a study by the Chemical Manufacturers Association (CMA) published by Wong et al. in 1983, of mortality among chemical workers exposed to benzene (Docket No. OAQPS 79–3, Part I, Docket Item X–I–I). The results of these studies are summarized below.

Infante et al. reported on a cohort of 748 white males occupationally exposed to benzene at any time between 1940 and 1949 at two facilities manufacturing rubber hydrochloride (pliofilm). The cohort mortality study revealed a significant excess of leukemia deaths (7 observed versus 1.38 expected) associted with benzene exposure. Aksoy and co-workers reported the incidence of leukemia between 1967 and 1973 among 28,500 Turkish shoe, slipper and handbag workers exposed to airborne benzene. The shoe workers had more than twice the rate of leukemia when compared to the annual leukemia incidence in the general population of Turkey. Ott et al. reported the long-term mortality patterns of 794 workers in chemical manufacturing facilities. Three deaths from leukemia were observed at a chemical plant among benzene-exposed employees when only 0.8 deaths from leukemia were expected, a 3.75-fold excess risk. Rinsky et al. (1981, 1987) provided a follow-up retrospective mortality study of the benzene exposed workers in the pliofilm industry (Docket No. OAQPS 79–3, Part I, Docket Items IV–J–9 and X–I–3). In the 1981 analysis in which the workers were followed through June 30, 1975, 7 leukemia cases were observed as compared to 1.25 expected cases. Rinsky also provided further detail on atmospheric benzene concentrations to which the workers were exposed. Rinsky et al. (1987) extended the follow-up of the cohort

members to 1982. At this time, 9 cases of leukemia were observed when 2.7 were expected.

Wong et al. examined the causes of death for 7,676 chemical workers employed for at least 6 months between 1946 and 1975 (Docket No. OAQPS 79–3, Part I, Docket Item X–I–1). Upon comparison of specific mortality rates between workers exposed and workers not exposed to benzene, the authors found significant increased risk for benzene exposed workers of over four-fold when compared to nonexposed workers. Seven leukemia deaths were observed in the exposed group, and none were observed in the nonexposed group.

The EPA reviewed the weight of evidence of carcinogenicity from the various occupational studies and concluded that there is sufficient evidence of a causal relationship between benzene exposure and leukemia. Based on this evaluation, the Agency has classified benzene as Group A, a known human carcinogen, following the procedures set forth in the EPA's Guidelines for Cancer Risk Assessment (51 FR 33992, September 24, 1986).

In addition to leukemia, several of the studies described above noted increases in other cancers, most notably lymphosarcoma and multiple myeloma, in benzene-exposed cohorts. In these cases, however, the data are currently considered insufficient to document an association.

Animal studies that have been extensively reviewed in the OSHA rulemaking, offer general confirmation of the carcinogenic potential of benzene. Maltoni and Scarnoto (1979) reported that benzene administered orally to rats was associated with increases in tumors of the Zymbal gland and mammary tumors, as well as leukemia. (Docket No. OAQPS 79–3, Part I, Docket Item IV–J–6). Maltoni et al. (1982) found subsequently that Zymbal gland tumors were induced in rats exposed by inhalation exposure to benzene. Snyder et al. (1978) published a preliminary finding of myelogenous leukemia in mice exposed by inhalation to benzene (Docket No. OAQPS 79–3, Part I, Docket Item II–I–92). Snyder et al. (1980) also reported increased leukemia and lymphomas in mice exposed by inhalation of 300 parts per million (ppm) benzene, 6 hours per day, 5 days per week over a lifetime (Docket No. OAQPS 79–3, Part I, Docket Item IV–J–7).

In 1983, the National Toxicology Program (NTP) completed a 2-year chronic study of mice and rats orally exposed to benzene (Docket No. OAQPS 79–3, Part I, Docket Item IV–H–5). The study found a significant incidence in cancers at multiple sites in both sexes and both species of rodent. In rats an increased incidence of Zymbal gland carcinomas, skin cancer, and cancer of the oral cavity was observed. Increases in six types of tumors including malignant lymphoma, preputial gland carcinoma, and lung cancer were observed in male mice, and seven tumor types including lymphoma, lung cancer, ovarian cancer, breast cancer, and liver cancer were found in female mice.

Toxic effects in humans, other than cancer, have been associated with benzene exposure in various epidemiologic studies of occupationally exposed populations. Effects on the human hematopoietic (blood-forming) system have been documented by OSHA (Docket No. OAQPS 79–3, Part I, Docket Item X–J–2). A common clinical finding in benzene hematotoxicity is a decrease in various cellular elements of the circulating blood, termed cytopenia. This decrease can proceed to aplastic anemia, which is a rare disorder characterized by a reduction in all cellular elements in the peripheral blood and bone marrow. The OSHA has observed a case fatality rate of 30 to 50 percent within the first year of diagnosis of aplastic anemia.

The OSHA also reviewed numerous occupational studies in a recent rulemaking associating chromosomal aberrations in bone marrow cells and peripheral lymphocytes in workers exposed to benzene. Generally the epidemiologic studies indicate that chromosomal breakage can occur at exposures at or below 10 ppm, 8 hours per day.

Through the ATSDR with the help of EPA, the U.S. Public Health Service has recently reviewed the scientific literature on noncancer effects observed in animal studies (Docket No. OAQPS 79–3, Part I, Docket Item X–I–2). This review found that animal inhalation studies are available showing adverse systemic effects such as bone marrow depression, injury to cells of the hematopoietic organs, and immunotoxicity. Numerous studies in whole animals have associated the induction of bone marrow depression with inhalation exposure to benzene (Toft et al., Snyder et al., 1984). This effect generally occurs during short-term exposure to about 10 ppm benzene or above. Cellular immune dysfunction in mice has been reported by Rosenthal and Snyder, and was associated with short-term inhalation exposures of about 30 ppm benzene.

A number of investigations cited in the ATSDR review have evaluated developmental and reproductive toxicity in animals following inhalation exposure to benzene. These studies have shown that benzene is toxic to the developing embryo and fetus. Ward et al. (1985) observed that mice exposed to benzene at 300 ppm for 13 weeks experienced changes in the ovaries and testes such as atrophy, degeneration, and decreased spermatozoa. Ungvary and Tatrai (1985) demonstrated dose-dependent fetotoxic effects in mice and rabbits exposed to benzene during gestation. Keller and Snyder (1985) demonstrated alterations in hematopoiesis in the fetuses and offspring of pregnant mice exposed by inhalation to 10 ppm benzene (Docket No. OAQPS 79–3, Part I, Docket Item X–J–2).

Dose/Response Assessment

The dose/response assessment addresses the relationship between the dose of benzene administered or received in the various human and animal studies, and the incidence of an adverse health effect in the exposed study population. Although human exposure to benzene in the workplace has been associated with leukemia, aplastic anemia, multiple myeloma, lymphomas, pancytopenia, chromosomal breakages, and depression of bone marrow, EPA believes that the leukemia incidence in epidemiologic studies provides the clearest association between human exposures and the induction of disease for dose/response estimation purposes. Toxicity of the hematopoietic system as well as cytogenetic effects in humans have been causally related to benzene exposure; however, the magnitude and duration of dose required to elicit these effects are not well known at this time. Thus, carcinogenicity, specifically leukemia, is currently the focus of greatest concern in estimating the potential risk to the general population exposed to benzene emitted from stationary industrial sources. The association between benzene exposure and human leukemia is strengthened by observations of increased leukemia mortality rates among independent cohorts in different occupational settings. In addition, individuals exposed to benzene were evaluated over a time period that spanned the latency of leukemia. Although a dose/response association between cancer and benzene exposure has been demonstrated in rodent bioassays, EPA believes that human data, when available, should be given greater weight in assessing the potential risk to the benzene-exposed human population.

Since a specific environmental carcinogen is likely to be responsible for, at most, a small fraction of a community's overall cancer incidence, and since the general population is exposed to a complex mixture of potential causative agents, attempts to directly link actual human cancers with ambient air exposure to chemicals such as benzene are easily confounded. Epidemiologic techniques are generally not sensitive enough to measure such an association directly. Therefore, EPA must rely upon mathematical modeling techniques to estimate human health risks. These techniques, collectively termed "quantitative risk assessment," provide a means of mathematically estimating the risk of adverse health effects from ambient exposure to benzene by extrapolating effects found at higher occupational exposure levels to lower concentrations characteristic of population exposure in the vicinity of industrial sources. A key element in this extrapolation is the unit risk estimate (URE). For benzene this estimate is derived from the dose/response relationship observed in the occupational studies and represents the estimated upperbound on the increased risk of contracting leukemia for an individual exposed for a lifetime (70 years) to a specific concentration of benzene (e.g., 1 ppm) in the air.

In deriving the URE for benzene, EPA has used the geometric mean of four URE (derived by maximum likelihood) based on two model types (additive risk and multiplicative risk) each with two measures of exposure (unweighted and weighted cumulative exposure). It is assumed that the leukemia response is linearly related to benzene dose, even at very low levels of exposure. The Office of Science and Technology Policy maintains that while there are biological data supporting this approach, and epidemiologists have frequently assumed a linear model for dose/response analysis of carcinogens, there are also data which suggest that, for some carcinogenic agents, the dose/response relationship is not linear, with the response decreasing faster than the dose at low levels of exposure (Docket No. OAQPS 79–3, Part I, Docket Item X–J–1). At such low levels the nonlinear model produces smaller risk factors than the linear model.

The possibility of a carcinogenic threshold for benzene, an exposure level below which there would be no risk of leukemia, has also been debated (Docket No. OAQPS 79–3, Part I, Docket Item VII–B–2). At present, the mechanisms involving the induction of leukemia following chronic benzene exposure remain largely unknown, and data are limited. In the absence of sound scientific evidence to the contrary, EPA has concluded that a nonthreshold presumption represents appropriate scientific policy.

The EPA has elected to use the linear nonthreshold assumption for the benzene dose/response assessment because it is generally considered to be conservative compared to the nonlinear alternatives, is consistent with some proposed mechanisms of carcinogenesis, and provides a good "fit" for the benzene data. This choice of models results in a plausible estimate of leukemia unit risk to the exposed population. If true linearity holds at low environmental exposures, then these numbers will overestimate risk 50 percent of the time and underestimate risk 50 percent of the time. If the true low-dose/response relationship is less than linear, then these estimates would err on the high end and in favor of the protection of the public health. The limited data from which the extrapolation is made are consistent with the linear model.

On October 17, 1984, NRDC petitioned the Administrator of EPA to, in part, evaluate the most current scientific literature on benzene carcinogenicity and revise the EPA's URE accordingly. This petition culminated in an update of the carcinogenic potency estimate for benzene summarized in a report entitled "Interim Quantitative Cancer Unit Risk Estimates Due to Inhalation of Benzene," (Docket No. OAQPS 79–3, Part I, Docket Item VIII–A–4). In response to the concerns of the petitioner, EPA evaluated the risk implications of the epidemiological findings of the 1981 Rinsky et al. study of rubber workers, the Wong et al. study of chemical workers, and the Ott et al. study of chemical workers, all of which were known to involve benzene exposure in the workplace (50 FR 34144, August 23, 1985) (Docket No. OAQPS 79–3, Part I, Docket Item IX–A–1). Although various animal bioassays were considered, EPA concluded that the URE for inhalation of benzene was appropriately based upon the epidemiologic studies since these studies were of recognized quality, and had the greatest relevance in the estimation of health risk to humans. In the reevaluation of the URE, EPA pooled the leukemia responses observed in the 1981 Rinsky et al. and Ott et al. cohorts, and computed a geometric mean of each maximum likelihood point risk estimate. The observations of Wong et al. were used as a comparison to the computed risk estimates of the pooled studies. The resulting ratio between these two sets of data was used to adjust the computed geometric mean estimate. Based on these calculations, the URE for benzene was revised in 1985 from an excess of 2.2 chances in 100 of contracting leukemia for a lifetime exposure to 1 ppm benzene in the air (0.022/ppm) to an excess of 2.6 chances in 100 (0.026/ppm) (50 FR 34146, August 23, 1985) (Docket No. OAQPS 79–3, Part I, Docket Item IX–A–1).

There are uncertainties inherent in the derivation of the URE for benzene that can only be addressed qualitatively at this time. These uncertainties may lead to either an overestimation or underestimation of the potential leukemia risk to the exposed population. The derivation of the URE considered only the incidence of myelogenous leukemia in epidemiological studies. The URE might be increased by considering other types of cancers manifested in the benzene exposed workers, e.g., multiple myeloma. In contrast, the assumption of low dose linearity in the risk modeling may tend to overestimate the dose/response function if the true shape of the relationship is curvilinear. A third major area of uncertainty is that EPA has extrapolated the leukemia risks identified for occupationally exposed populations (generally healthy white males) to the general population in which susceptibility to a carcinogenic effect could differ. Such susceptibility can differ with age, sex, genetic variability, and present state of health. The URE for benzene may underestimate the leukemia risk to more susceptible subgroups.

Exposure Assessment

Estimation of the potential leukemia risk associated with the emission of benzene from industrial sources requires estimation of the concentrations of benzene to which the population may be exposed, and determination of the magnitude of population exposure. In the absence of adequate monitored ambient air levels near the industrial sources, EPA used mathematical models to predict the dispersion of emissions and subsequent potential for human exposure.

Estimates of population exposure to benzene in the ambient air resulting from emissions from industrial sources were developed using the EPA's Human Exposure Model (HEM). The HEM accepts as inputs the locations and emission characteristics of the subject source categories of benzene. This information is combined with census and meteorological data contained in the model to estimate the magnitude and

distribution of population exposure. Emission and plant parameters often must be estimated rather than measured, particularly in determining the magnitude of fugitive emissions, and where there are large numbers of sources that individually emit small amounts of benzene. As discussed in more detail later in this notice, this can lead to overestimates or underestimates of exposure. Similarly, meteorological data are not available at specific plant sites, but are available only from the closest recording weather stations that may or may not be representative of the meteorology of the plant vicinity. The dispersion modeling of the emissions usually assumes that the terrain in the vicinity of the sources is flat. For sources located in complex terrain where the surrounding topography is at higher elevation than the emission point, this assumption would tend to underestimate the maximum annual concentration of benzene, although estimates of aggregated population exposure would be less affected.

The exposure modeling also assumes that the population density in the vicinity of the source remains unchanged for 70 years and that the population is exposed for 24 hours per day for a 70-year lifetime. The exposure estimates do not consider the dynamics of population growth, decline, or mobility. This may lead to over- or underestimates of population exposure, depending on the nature of population flux. The benzene exposure assessment also assumes the industrial sources under analysis will operate for 70 years to account for potential lifetime exposures. This assumption overestimates maximum and aggregate exposure. The degree of overstatement varies, however, among industries.

The current exposure analysis does not include an analysis of indirect exposure pathways of benzene such as dermal absorption or ingestion. Furthermore, the analysis did not include concomitant exposure that may result from pollutants co-emitted from the sources. Exclusion of such factors may underestimate total potential exposure from these sources. A final uncertainty in the exposure analysis is that the current version of HEM does not account for potential increased maximum exposures that may result from the co-location of facilities, although EPA believes this effect would, in most cases, be very small.

The mathematical exposure models predict population exposure based on the estimated rate of release of benzene from the industrial source categories. While no reliable benzene monitoring data exist in the vicinity of the subject industrial source categories, EPA has reviewed a limited number of measurements taken of benzene concentrations in urban and rural areas of the United States. Table IV–1 summarizes the range of measured benzene concentrations in urban and rural air. It must be emphasized that these data are the result of 24-hour measurements, and may not reflect annual average benzene concentrations in the atmosphere at those locations. Nevertheless, the data suggest that the average background benzene concentration in urban areas ranges from about 1.5 to 6 parts per billion (ppb), and the average background concentration of benzene in rural areas seems to be less than 1 ppb.

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TABLE IV-1. 24-HOUR MEASUREMENTS IN URBAN AND RURAL AREAS IN THE UNITED STATES

Study	Benzene Concentration (ppb) Minimum	Average	Maximum
TEAM (1986)[1]			
Elizabeth-Bayonne	0.4	3.0	28.25
Los Angeles	0.6	N/A	6.2
HUNT (EPA 1985)[1*]	2.0	3.0	5.0
EPA (1986)[1**]	1.5	3.26	5.0
SINGH (1982)[2,3]			
Houston	0.84	5.78	37.7
St. Louis	0.11	1.41	5.82
Denver	0.11	4.39	23.91
Staten Island	0.082	4.20	19.03
Chicago	0.588	2.56	8.77
ROBERTS (1985)[2,3]			
73 kilometers (km) from Denver rural area	0.02	N/A	0.85
HOLZER (1977)[2,3]			
Rural area - Talladega National Forest	0.2	0.4	1.3

*Minimum = Philadelphia; Average = Baltimore, Los Angeles, N. New Jersey, Houston, Philadelphia; Maximum = Houston.

**Urban measurements in California.

[1]Docket No. OAQPS 79-3, Part I, Docket Items X-A-1, X-A-2, X-A-3.

[2]Quality assurance/quality control not available.

[3]Sources cited in Toxicological Profile for Benzene (1987), Draft Report, ATSDR, U. S. Public Health Service (Docket No. OAQPS 79-3, Part I, Docket Item X-I-2).

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The principal sources of the ambient background levels of benzene are not well understood. Benzene is both naturally occurring and has a fairly long atmospheric half-life. There is speculation that anthropogenic sources, especially tail-pipe emissions from mobile sources, may be largely responsible for these general background levels in the U.S.; however, EPA recognizes the possible influence on benzene levels in urban areas from petrochemical facilities, chemical manufacturing facilities, and other industrial sources of benzene located in these cities.

Risk Characterization

The exposure estimates obtained from the HEM are combined with the estimate of carcinogenic potency for benzene ("unit risk") to calculate the probability of the increased risk of cancer in the exposed population. In combining the estimates of population exposure with the URE for benzene, two measures of excess leukemia risks are calculated: the aggregate population risk, and the maximum individual lifetime cancer risk. Individual lifetime risks can also be expressed in terms of population risk distribution. The aggregate population risk, expressed as annual cancer incidence, is defined as the average number of excess cancer cases expected annually in the exposed population residing in the vicinity of the industrial sources of benzene. This measure is obtained by dividing the expected excess lifetime incidence by 70.

The maximum individual lifetime cancer risk is defined as the probability of contracting cancer following a lifetime exposure to benzene at the maximum modeled long-term ambient benzene concentration. Estimates of maximum individual lifetime cancer risk are usually expressed as a probability represented in scientific notation as a negative exponent of 10. A risk of contracting cancer of 1 chance in 10,000 is written as 1×10^{-4}, 1 chance in 1,000,000 as 1×10^{-6}, etc. These risks, because of the uncertainties and assumptions inherent in the dose/response assessment and exposure assessment, cannot be construed as absolute measures of the true risk burden to the benzene exposed population. The quantitative risk assessment is best viewed as a relative estimate of the likelihood of cancer associated with benzene emissions from the industrial source category, for comparision with estimates from alternative emission scenarios or other benzene source categories.

The estimated maximum individual lifetime cancer risk and annual cancer incidence resulting from inhalation exposure to predicted ambient concentrations of benzene emitted from the industrial source categories are summarized in Table IV–2.

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TABLE IV-2. SUMMARY OF THE MAXIMUM INDIVIDUAL CANCER RISK[a] AND ANNUAL CANCER INCIDENCE[b] ASSOCIATED WITH BASELINE BENZENE EMISSIONS FROM INDUSTRIAL SOURCES

Industrial Source Category	Maximum Individual Lifetime Risk (MIR)[a,e]	Estimated Excess Annual Leukemia Incidence[b,e]
Maleic Anhydride	0	0
Ethylbenzene/Styrene	2×10^{-5}	0.004
Benzene Storage[c]	4×10^{-5} to 4×10^{-4}	0.05 to 0.1
Equipment Leaks[d]	6×10^{-4}	0.2
Coke By-Product Recovery Plants	6×10^{-3}	3

[a]Maximum individual lifetime risk is defined as the upperbound of the probability of contracting cancer following a lifetime exposure at the maximum modeled average annual ambient benzene concentration.

[b]Annual cancer incidence is defined as the average number of excess leukemia cases expected annually in the exposed population.

[c]Range of risks associated with benzene storage reflects the range for emission estimates.

[d]Risk estimates based on emissions remaining after application of 40 CFR Part 61, Subpart J.

[e]Based on the weight of evidence from epidemiological studies, EPA classifies benzene as Group A, a known human carcinogen.

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As was noted in the dose/response subsection, the estimated excess cancer risk estimates calculated from the URE are based on leukemia mortality in rubber and chemical workers exposed to benzene. One uncertainty in the quantative risk assessment involves the linear extrapolation from relatively high occupational benzene exposures to much lower predicted ambient exposures in the vicinity of the industrial source categories. The study by Ott eta al. demonstrates a four-fold increase in leukemia for workers who had been exposed to average benzene concentrations of about 5 ppm for an average of about 9 years. Furthermore, two out of the four individuals in the study who died from leukemia were characterized as having been exposed to average benzene levels below 2 ppm. Case 2, for example, had 1.5 ppm-years cumulative benzene exposure over 18 months. Daily exposures in the NIOSH cohort were more typically in the range of 20 to 40 ppm over an 8-hour shift (Docket No. OAQPS 79–3, Part I, Docket Item II–J–9).

By comparison, EPA has estimated maximum modeled annual ambient benzene concentrations near the industrial source categories of benzene emissions to range from 0.8 ppb (near an EB/S facility) up to 230 ppb (near a coke by-product recovery plant). Thus, the highest predicted ambient air exposures to benzene are at least roughly one order of magnitude lower than those associated with increased leukemia risk in the epidemiological studies. In addition, an elevated leukemia risk has not been detected in the vicinity of stationary sources emitting benzene; however, it is very unlikely that such an association could be detected, given the limited power of epidemiological studies.

The subsequent sections of this notice provide tables of the distribution of lifetime cancer risk and an estimate of the number of people that may fall within a particular risk interval. These risk distributions are specific to benzene emissions from the industrial sources identified in Table IV–2. Sources that are located within the HEM exposure modeling radius (e.g., 20 to 50 km) of each other would result in an overestimation of the number of people exposed to the long-term predicted benzene concentration. However, the estimates of aggregate population risk are not affected by this particular modeling approach. That is because with a linear dose/response model, two individuals exposed to a concentration of 1 ppm benzene represent the same population risk as one individual exposed to a concentration of 2 ppm benzene.

The maximum individual lifetime risk will almost never be significantly affected by proximity of sources unless the industrial sources are located very close together. This is because the predicted benzene concentrations within the modeling radius decline quickly with distance from the emission point. In the rare cases where sources are very close in proximity (within 200 to 300 meters), the maximum individual lifetime risk may be underestimated.

The estimated distribution of individual cancer risks, however, is affected by the proximity of sources. Correction for double counting of exposed individuals would somewhat increase the individual risk for the population who are exposed to more than one source. Elimination of double counting may shift some of the population at the lower risk levels (i.e., 10^{-6}) to the next higher risk level. However, the principal effect of eliminating double counting would be a reduction in the number of people in the middle to lower risk categories.

Other factors of the quantitative risk assessment may tend to overestimate or underestimate the computed benzene risks. The relative uncertainty associated with the derivation of the cancer risk estimates can only be qualitatively discussed. The EPA currently cannot statistically describe the error range associated with each of the assumptions comprising the quantitative risk assessment. For example, the fact that the risk assessment focused only on leukemia and not other forms of cancer that have been causally linked with benzene exposure in epidemiological studies may lead to an underestimation of the overall potential cancer risk. In addition, the risk analysis excludes consideration of serious, noncancer effects associated with occupational exposure to benzene. Though it is not known whether such effects could occur at much lower ambient benzene exposures, there remains a possibility that the current analysis may underestimate the total potential population health risk.

Although benzene exposure has been associated with other cancer and noncancer effects (multiple myeloma, lymphomas, aplastic anemia, pancytopenia, depression of blood cells, and chromosomal aberrations), EPA has determined that leukemia incidence in workers provides the strongest basis for quantitative risk assessment. Departure from the assumption of nonthreshold, low dose linearity inherent in the derivation of the URE for benzene might result in lower estimates of benzene's carcinogenic potency. The Agency does not find, however, that there is sufficient scientific evidence given the current knowledge of the mechanisms of carcinogenesis, to warrant departure from the nonthreshold and low dose linearity assumptions.

The assumptions involving the exposure assessment may tend to overestimate or underestimate risk. The dispersion modeling normally assumes flat terrain in the vicinity of the source. For sources located in rolling or complex terrain, this assumption would tend to under-predict maximum benzene exposure and maximum individual lifetime risk. Other assumptions are likely to overestimate the exposure to the most exposed subset of the population. Maximum individual lifetime risk estimates are based on the assumption that the individual is exposed for 70 years to the estimated maximum annual average concentration and that the source continues to operate for 70 years. The degree of overestimation will vary among industries and as a function of individuals' movements.

A final factor of uncertainty in the risk assessment is the fact that the analysis did not account for individuals within the exposed population who may be uniquely susceptible to benzene carcinogenesis because of incompetent immunity, or chronic infirmity. For this subgroup within the exposed population the risks may be underestimated.

V. Policy

Legal Framework Under Vinyl Chloride

The EPA considers the *Vinyl Chloride* decision to further define the legal framework for setting NESHAP under section 112 of the CAA. The court set out a two-step process for EPA to follow in making these judgments: (1) Determine a "safe" or "acceptable" risk level, and (2) set the standard at the level—which may be lower but not higher than the "safe'" or "acceptable" level—that protects public health with an ample margin of safety.

In this case, the court emphasized that judgments by EPA concerning scientific uncertainty are an important part of the process for establishing NESHAP. As the court noted, Congress, in directing EPA to set NESHAP, recognized that uncertainties over the health effects of the pollutants greatly complicate the task. *Vinyl Chloride,* 824 F.2d at 1152. These same uncertainties, according to the court, mean that the Administrator's "decision in this area 'will depend to a greater extent upon policy judgments' to

which we must accord considerable deference." *Id.*, 824 F.2d at 1163 (citations omitted).

"Safe" or "Acceptable" Level

The first step is for the Administrator to determine what level of risk to health caused by emissions of a hazardous air pollutant is "safe" or "acceptable." (The court used these terms interchangeably). The court in *Vinyl Chloride* explicitly declined to determine what risk level is "acceptable" or to set out the method for determining the "acceptable risk" level. Instead, the court stated that these determinations are within the Administrator's discretion.

The court did, however, provide some guidance on the "safe" or "acceptable risk" determination. The court stated that the Administrator must base the "safe" decision on "an expert judgment" concerning "the level of emissions that will result in an 'acceptable' risk to health [*Vinyl Chloride*, 824 F.2d at 1164–65]." To exercise this judgment, "the Administrator must determine what inferences should be drawn from available scientific data and decide what risks are acceptable in the world in which we live." *Id.* at 1165. However, the court emphasized that "safe" does not require elimination of all risk. To support these propositions, the court cited *Industrial Union Dep't, AFL–CIO* v. *American Petroleum Inst.*, 448 U.S. 607, 642 (1980) (hereafter referred to as *OSHA Benzene Case*) and its statement that "There are many activities that we engage in every day—such as driving a car or even breathing city air—that entail some risk of accident or material health impairment; nevertheless, few people would consider those activities 'unsafe.'" *Vinyl Chloride*, 824 F.2d at 1165. As a final matter, the court said the Administrator cannot consider costs or technological feasibility in this step.

Ample Margin of Safety

Once an "acceptable risk" level is determined, the second step under *Vinyl Chloride* is to determine whether the emission levels accompanying that determination should be reduced further in setting an "ample margin of safety." Noting that the purpose of the ample margin of safety requirement is to protect against incompletely understood dangers, the court stated that EPA "may * * * decide to set the level below that previously determined to be safe." The court reiterated that because the assessment of risk is uncertain, "the Administrator must use his discretion to meet the statutory mandate." The court added that it is at this stage of the standard-setting process that EPA may consider costs and technological feasibility and other relevant factors: "Because consideration of these factors at this stage is clearly intended 'to protect the public health', it is fully consistent with the Administrator's mandate under Section 112." *Vinyl Chloride*, 824 F.2d at 1165.

Uniqueness of Decision

The effect of the *Vinyl Chloride* decision is to require a unique decisionmaking process for public health protection decisions, unlike any other regulatory decision faced by the Agency. This is the result of the court's prescription of two separate steps for decisionmaking, the first in which only health factors can be considered in setting an acceptable risk level, and the second in which additional factors including cost, technological feasibility, and other relevant factors may be considered in providing an ample margin of safety. This scheme is unlike any other under the CAA itself, or any of the other statutes administered by EPA because the acceptable risk that EPA adopts in the first step cannot be exceeded by the standard EPA adopts in the second step.

In contrast, other EPA statutes have very different structures and legal requirements for decisionmaking on public health standards. For example, while the Safe Drinking Water Act provides for two separate decisions, the first is a purely health-based goal toward which to work, but not necessarily meet; the second is an enforceable standard that is based on cost and feasibility considerations. Under both the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the balancing of health concerns and benefits of continued chemical use, and control costs are explicitly provided for in decisionmaking. The Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act both require statutory decisionmaking very different from the bifurcated process mandated by the court for section 112.

Although not reflected in the *Vinyl Chloride* decision reviewed by the D.C. Circuit, the EPA's recent judgments under section 112 were made in integrated approaches that considered a range of health and risk factors, as well as cost and feasibility in certain cases. These approaches were followed in NESHAP for the source categories of radionuclides, arsenic, and the prior decisions on benzene source categories (49 FR 23498, 49 FR 23522, 49 FR 23558, 50 FR 5190, 50 FR 7280, 51 FR 27958, 51 35056). However, the *Vinyl Chloride* decision eliminates those approaches to section 112, since the integrated approaches did not partition consideration of health factors into a first step separate from consideration of the other relevant factors.

Thus, the *Vinyl Chloride* decision forces EPA to consider whether a risk is acceptable *without* at the same time considering benefits of the activity causing risk, feasibility of control, or other factors that EPA (or anyone) would normally consider in deciding whether a risk was "acceptable." This problem is particularly acute in the case of many carcinogens, for which the Agency has stated that it is unable to identify a threshold no-effect level.

The very examples cited by the court bring home the unusual nature of the court's "acceptable risk" decision step. The court (quoting the Supreme Court's decision in the *OSHA Benzene Case*) cited "driving a car or even breathing city air" as activities that "few people would consider * * * 'unsafe.'" But driving a car entails risks that most people would consider high; the annual incidence approximates 50,000 fatal accidents, and the average individual risk (not the maximum, but the actuarial average risk) approximates a 1 in 100 chance of automobile-related death over a 70-year lifetime. Yet the court was correct to say that our society accepts (or tolerates) risk from driving cars. As a society we continue to try to reduce the level of risk, but we value the benefits in increased mobility that the automobile affords. The same is true of "breathing city air"—leaving aside the circularity (city air may contain some of the contaminants that EPA is considering regulating), individuals live in cities to be close to the workplace, for the recreational and cultural advantages associated with cities, and for a variety of reasons extrinsic to the risk itself.

If decisions on the acceptability of risks are inherently balancing judgments, how is EPA to make those judgments on acceptability? Later in this section, EPA sets forth four approaches that deal with this issue in differing ways.

The approaches cover a range of possible risk levels and they give prominence to different measures of risk, e.g., individual versus population risk. The purpose is to elicit comment that will contribute to the EPA's resolution of the decisionmaking problems presented by *Vinyl Chloride*.

Survey of Societal Risk

After assessing the health risks for emissions of a specific hazardous air

pollutant, the Administrator, in following the *Vinyl Chloride* decision, is next faced with the question of how to determine an acceptable risk for a particular source category emitting that pollutant. This question cannot be answered in a vacuum, but requires him to determine "what risks are acceptable *in the world in which we live.*" 824 F.2d at 1165 [Emphasis added]. Such a determination requires some context within which to evaluate and compare risks and other health factors bearing on that question.

In approaching the question of what level of risk is "acceptable or "safe," EPA surveyed a range of health risks that our society faces. The objective of this survey was to develop information to place the benzene risk estimates in perspective. Thus, the survey included risks encountered in everyday life, such as driving a car and breathing city air, which were cited in the *Vinyl Chloride* decision, as well as a range of regulatory judgments or risks. The EPA surveyed both the individual risk and the incidence in the population exposed to risk associated with the activities. Considering incidence comports with the purpose of section 112 to protect "public health" when incidence is viewed as a measure of health of the population as a whole.

The risks surveyed ranged from individual risks of 1 in 10 (10^{-1}) to less than 1 in 10,000,000 (10^{-7}). Everyday risks include risks from natural background radiation as well as risks from home accidents. Natural background radiation at sea level creates individual lifetime cancer risks in the range of 3 in 1,000 (10^{-3}) and an estimated 10,000 cancer cases per year. Naturally occurring radon in homes poses an additional source of radiation risk, and these risks can be as high as 1 in 100 to 1 in 10 (10^{-2} to 10^{-1}) and cause an estimated 5,000 to 20,000 cancer cases/yr. In the U.S., accidents, natural disasters, and rare diseases pose individual risks of death from 1 in 10,000 (10^{-4}) (e.g., tripping and falling which cause approximately 470 deaths per year) to 1 in 10,000,000 (10^{-7}) (e.g., rabies which causes an average of 1.5 deaths per year).

Judgments on risks have also spanned a broad range of risk levels. The National Council on Radiation Protection and Measurement (NCRP), following recommendations of the International Commission on Radiological Protection, has recommended that maximum individual exposures be limited to an amount corresponding to risks of 3 in 1,000 (3×10^{-3}).

The Food and Drug Administration (FDA) establishes tolerances for poisonous or deleterious substances, such as polychlorinated biphenyls (PCB's), at a level found necessary to protect the public health, taking into account the extent to which the substance is required or unavoidable in the food supply and the other ways the consumer may be affected by the same substance. For example, FDA has established a tolerance level for PCB's in fish at an individual risk of 7×10^{-5}, which would result in 34 cancer cases each year among heavy fish consumers alone (44 FR 38333, June 29, 1979).

The EPA regulates pesticide uses under the FIFRA based on whether the pesticide creates unreasonable adverse effects, a statutory term defined as requiring balancing risks and benefits. The EPA has authorized some uses of the pesticide chlorobenzilate that would create individual risk of 1×10^{-6} to 7×10^{-6}, and would result in 2 to 9 additional cancer cases per year (EPA banned other uses of this pesticide).

Regulatory judgments have also been made to require lower risks. For example, under the provisions of the Food, Drug, and Cosmetic Act (FDCA), which provides that "no residue" from carcinogenic additives to animal feed may remain in any edible portion of the animal, FDA has established a policy of not allowing the use of additives that create a risk to the animal higher than 1 in 1,000,000 (1×10^{-6}). A more complete description of the risks EPA considered is presented in a document in the docket entitled, "Survey of Risks" (Docket No. OAQPS 79–3, Part I, Docket Item X–B–1).

No fixed risk level could be identified as acceptable in all cases and under all regulatory programs for two main reasons. First, as discussed above, in most cases the calculation of risks depends on different data, assumptions, and uncertainties. For example, the risk associated with motor vehicle and other common accidents can be calculated directly from accident records and therefore reflect actual risk; whereas environmental risks are based on estimating procedures and assumptions and therefore are more uncertain. Thus, actuarial and environmental risk estimates cannot be directly compared so as to draw precise judgments as to whether one risk is larger, or less acceptable, than another. Second, acceptability of risk is a relative concept and involves consideration of different factors. Considerations in these judgments may include: The certainty and severity of the risk; the reversibility of the health effect; the knowledge or familiarity of the risk; whether the risk is voluntarily accepted or involuntarily imposed; whether individuals are compensated for their exposure to the risk; the advantages of the activity; and the risks and advantages for any alternatives. Thus, different judgments on acceptability can be made for similar numerical risks. In addition, the uses of individual risk and incidence as comparative factors face limitations since the relative size of the risks associated with an activity are sensitive to how the activity is defined. For example, the individual risk and incidence associated with a single leaking pipe at a plant within a particular industry could be quite small, but the cumulative risks associated with all plants within the industry could be significant. This limitation can be ameliorated by careful selection of the appropriate category of sources.

In summary, EPA surveyed and considered this risk information to provide perspective on society's consideration and acceptance of risks. In its consideration, EPA is not judging whether each of the risks presented here is acceptable or unacceptable. They are presented, instead, to provide a context for evaluating the relative public health implications of a range of activities and the risks presented in activities being considered for regulation under section 112.

General NESHAP Policy Considerations

The purpose of this section is to discuss and solicit comments on the appropriate criteria for the two decisions the *Vinyl Chloride* opinion requires. In the two decisions EPA will both consider the information available to it relating to measures of health risk, and take into account the limitations and uncertainties of the risk estimation methods and basic data. In the discussion which follows, the risk estimates, methods, and their limitations and uncertainties will be discussed, and four approaches to making the two "acceptable risk" and "ample margin of safety" decisions will be proposed. Comments are solicited on all aspects of the discussion and the four approaches and potential combinations of approaches. Commenters should assume that the final decision on the approach to be used and the policies adopted about relative weight to be given to various parameters and related factors will apply not only to the decisions before the Agency in this proceeding, but also may become the policies for decisions on future NESHAP. The framework adopted will not, however

apply to other Agency programs or other sections of the CAA.

The main purpose of the discussion presented here is to provide a basis for comment on the major policy issues raised by the court's opinion, in particular, on the requirement that in regulating under CAA section 112 the Agency must decide what risk is acceptable in "the world in which we live." In the months since the court's decision, issues about acceptability of risk from air toxics have been the subject of discussion both within the Agency and in public debate. The four alternative policy approaches outlined address the acceptable risk decision in different ways. Each approach would answer the following questions in a different way. The basis questions are: What measure or measures of risk should be given weight in the acceptable risk decision? Are there specific levels of individual or population risk that are acceptable? How should EPA balance individual versus population risk reductions? Should the same levels be set and the same measures applied for all NESHAP? How should uncertainty in risk estimation be considered?

The approaches described include one in which all risk information and measures available as well as estimation limitations and uncertainties are considered in determining acceptable risk on a case-by-case basis. Other approaches simply apply one quantitative risk parameter, either risk to the maximally exposed individual or aggregate risk of increased cancer incidence in the population (population risk). The approaches also vary in the level of risk that would be acceptable. The details of the results of applying each of the approaches to benzene source categories are described in Sections VII through X of this preamble. A later part of this section describes the effects of single-criterion approaches on source categories for pollutants other than benzene.

Three of the approaches use either maximum individual risk or population risk as the criterion for acceptable risk. Some take the view that added cancer risk to the individual is the most, or only, important measure. Two of the approaches use this as the only criterion for acceptable risk. Others would consider the number of people at risk and the estimated added cancer incidence in the population to be most important. One of the approaches uses incidence as the only criterion for acceptable risk. Arguments in favor of the individual risk measure are that no individual should be at high risk, that considering the number of people at risk leads to acceptance of higher individual risk when few people are exposed, and that it is inequitable for acceptable risk to an individual to depend upon the number of people similarly exposed. Arguments favoring use of added incidence are that it is an appropriate measure of total public health impact and this total risk to the population is a good indicator of acceptable risk. On the other hand, incidence is only one of a number of possible health effects and thus may not accurately measure the total health impact nor total population risk. Comments on these issues and on using these parameters singly or in combination are requested.

Uncertainty of risk estimates is also dealt with differently by the alternative approaches. Under Approach A, the case-by-case approach, all risk factors including estimation uncertainties would be considered in the acceptable risk determination. Approaches B, C, and D use a single risk measure as the criterion for the acceptable risk decision and thus would leave consideration of other risk measures and specific judgments concerning much of the overall uncertainty until the second step, the ample margin of safety decision. How to weigh these uncertainties is a problem under any approach because while the Agency often has quantitative estimates of uncertainty to use on specific elements of the risk assessment, it can often only make a qualitative judgment about whether the overall uncertainty in the methods and assumptions has resulted in an over- or underestimated risk. Comment is solicited on the consideration of uncertainty in acceptable risk decisions.

Each alternative deals similarly with the ample margin of safety decison. In each, all the health information as well as cost, technical feasibility, estimation uncertainties, and other relevant factors would be considered. Comment is requested on five issues in particular. First, is the margin of safety step more suitable than the acceptable risk step to take into account (usually qualitatively) the direction and extent of estimation uncertainties? Second, should all technically feasible and affordable controls be required without regard to whether any significant risk reduction is associated with the control? Third, should the Agency adopt a policy of using the ample margin step to force technology to reduce risk? Fourth, how should EPA balance the various risk, technical, and economic considerations in ample margin of safety decisions? Fifth, what criteria should EPA use to define the "availability" and "feasibility" of technological controls?

The remainder of this section covers various risk measures, how they are derived, general questions regarding control technology and plant closure considerations, and the four alternative regulatory approaches. The approaches are considered from the perspective of application to the benzene source categories covered in today's notice and to the NESHAP program.

Risk Measures Considered in NESHAP Policy Approaches

In decisions on cancer risks from stationary sources of hazardous air pollutants, the Agency has estimated three measures of health risk. These are termed "maximum individual risk," "risk distribution," and "incidence". Each of these combines an estimate of the dose/response for a pollutant with estimates of exposure to the pollutant. The response estimated is the pollutant-related increase in the probability that an individual will develop cancer in his or her lifetime. The exposure estimated is the average daily exposure assuming continuous exposure for 70 years.

Maximum Individual Risk

Individual risk is expressed as an estimated probability, e.g., 1 in 100 (10^{-2}), 1 in 1,000 (10^{-3}), 1 in 10,000 (10^{-4}). Thus, a 1×10^{-3} individual risk is an *added* "chance" of 1 in 1,000 of developing cancer sometime in the individual's lifetime.

In this discussion, the maximum individual lifetime risk is the addition to cancer risk of a person due to continuous exposure for 70-year lifetime at a point of maximum concentration of a pollutant emission. (The maximum individual risk is sometimes called the maximum exposed individual risk). This estimate is based on the fact that the concentration of an emission, and the consequent risk, diminishes with distance from its source. For NESHAP decisions, the practice has been to estimate this figure for the largest annual average pollutant concentration to which any member of the public may be subject according to census data on residence locations. It has also been estimated in other Agency decisions as the maximum at the source perimeter.

The maximum individual lifetime risk is different from average individual risk which is sometimes estimated for sources like public drinking water systems or food in which the concentration of a pollutant and other factors are assumed to be equal at all distribution locations. This distinction is particularly relevant when considering the maximum risk one might find acceptable from different sources.

In using the maximum individual risk in acceptable risk decisions for hazardous air pollutants, its limitations should be considered. Used alone, the measure does not tell how many people may be so affected; it relates only to the risk to the most exposed individual(s).

Risk Distribution

A risk distribution estimates how many persons within a certain distance (e.g., 20 to 80 km) of a source of pollutant emissions are at what level of individual risk (see, e.g., Table V–1A shown in the discussion of Approach A later in this section). Typically, the distribution is given for 10-fold increments of individual risk. Such a distribution provides the decisionmaker with information on both the individual risk level for those exposed and the number of persons exposed at each level. For NESHAP and other decisions, the Agency has examined risk distributions both as measures of risk and to compare the effects of various strategies for risk reductions across a source category.

In making an acceptable risk decision, one relevant consideration could be how many people are exposed at each risk level, e.g., a 10^{-2} risk might be acceptable if only one person were at that level, but not if 1,000 people were subject to it. Similarly, the numbers of persons exposed at various individual risk levels could be an important element in deciding on acceptable risk. The risk distribution could be used in a similar way to consider whether an ample margin of safety exists.

Incidence

Incidence is an estimate of population, rather than individual, risk. Incidence estimates the addition to population cancer incidence in the specified population. It is derived by multiplying individual risk by the estimate of the number of persons at that level of risk. This number which provides a lifetime population risk figure is then divided by 70 (years) to give an annual cancer incidence estimate. The incidence parameter can be used as an estimate of impact on the entire exposed population within a given area by totalling the incidences associated with each increment of individual risk. Incidence can also be portrayed along with individual risk and population numbers in a risk distribution (e.g., see Table V–1A shown in the discussion of Approach A later in this section). Typically, the Agency weighs incidence estimates in conjunction with maximum individual risk or average individual risk estimates. Estimated incidence generally is a particularly informative parameter when looking at aggregate risk from a category of like sources. One feature to take into account whenever it is used is its dependence on the size of the source category.

Uncertainties in Risk Measures

Each of the three risk parameters defined above has three elements. These are the estimated response per unit of pollutant concentration (e.g., ppm in air), the estimated exposure concentration, and the estimation of the population residing in the area of the sources (usually taken from census data).

Uncertainties exist in estimating each of these elements for a variety of reasons including the fact that the relevant data and our understanding of the biological events involved are not complete. Where data gaps exist, qualitative and quantitative assumptions are made and science policies are invoked which are based on our present understanding of biological mechanisms of cancer causation, estimates of air dispersion, engineering estimates, and other factors. Alternative plausible assumptions are often availabale for interpreting given data. Selection of certain assumptions to be used is a science policy choice. The Agency has published guidelines covering many of these for both cancer risk assessment and exposure assessment. They are "Final Guidelines for Carcinogen Risk Assessment," 51 FR 33992 (September 24, 1986) and "Final Guidelines for Estimating Exposures," 51 FR 34042 (September 24, 1986).

The following is a general outline of methods used to calculate these parameters, together with a few examples of some of the uncertainties.

Risk assessment under EPA guidelines takes into account the nature and amount of evidence that the agent will cause the effect of concern in humans as well as the uncertainties of interpretation of data and its quantification. When the toxicity data are from human studies, as they are for benzene which is a known human carcinogen, there are fewer uncertainties about the hazard of dose/response considerations than when they are solely from animal studies. Nevertheless, there are important uncertainties in using human data; these are explored in Sections IV and VII through X of this notice with regard to benzene. Examples include the fact that human epidemiological studies are often retrospective and measure effects of exposure that occurred many years in the past. The level of exposure to the agent at that time usually must be estimated and cannot be verified. Also, the human studies are often of workers exposed to the pollutant. Workers populations are not representative of the general population with respect to age, and usually not with respect to sex. Workers are also generally the healthier segment of the population. These factors of exposure and representation of human sensitivity to the agent can lead to over- or underestimation of risk. These are two of the important uncertainties; others exists.

When data from tests of a pollutant's carcinogenic activity in animals are used, uncertainties about exposure are experimentally controlled, but other uncertainties arise. Many of these concern the use of data from animal tests to estimate effects on humans. Many relationships have to be accounted for in doing this, for example, the equivalent dose for humans and laboratory animals given the size differential, and potential differences in metabolism and excretion of a chemical pollutant.

It is uncommon for there to be enough data to address all of the uncertainties. In addition to qualitative uncertainties of drawing conclusions about risk to the general populations from either human epidemiologic data or animal data, uncertainties arise in extrapolating the observed dose/response relationship from either workplace or animal test exposures to the usually lower dose levels of the general population.

In estimating exposure, the dispersion of a pollutant from a source is usually quantified by a predictive mathematical model using a known or model source emission rate, temperature, and velocity characteristics, and weather patterns at nearby stability array (STAR) stations; these are typically the nearest recording weather station. The model predicts the concentration of the dispersed pollutant at various distances from the source. Standard assumptions are that the population around the source resides there for a 70-year lifetime and is continuously exposed to the modeled concentrations for 24 hours a day. The amount of emissions can be derived from sampling and analysis of emissions at the source or from engineering estimates, with more or less uncertainty associated with each method according to the type of emission. There are varying degrees of accuracy and precision in sampling, analysis, estimates of emissions, or assumptions about the half-life of the pollutant in the air. Uncertainties in the method of estimating individual exposure and the number of individuals exposed are

numerous. The method of estimating the resident population and its location according to the census does not account for the fact that residents may be outnumbered by the workers or students who reside elsewhere, but come into the area during the day for months or years. Future increases in population in the area are not considered. Thus the method may underestimate the population exposed for some part of a lifetime. On the other hand, the method overestimates exposure for those who reside in the area fewer than 70 years or who leave the area for substantial parts of the day.

By these few examples, it can be seen that one can generally discuss and judge over- or underestimation in particular estimates, but not usually collect enough data to quantify uncertainty. Questions relevant to two-step decisionmaking under the *Vinyl Chloride* opinion are: At which step or steps should uncertainty be accounted for? How should uncertainty be considered if it cannot be quantified?

Graphical Method of Combining Maximum Individual Risk and Incidence

There are graphical ways to show individual risk and incidence concepts together, and one of these is explained here. Comment is requested on the use of such a method of considering these risk measures. Although specific maximum individual lifetime risks and incidences are shown on the figures, these are illustrative examples only.

Figure V–1 is a simple plot of individual risk on the y axis and the population size on the x axis. The plotted lines are 1×10^{-4} and 1×10^{-6} maximum individual lifetime risk. Figure V–2 shows the plot of the combinations of maximum individual lifetime risk and population size that correspond to an incidence of 1 cancer case per year. Figure V–3 shows the maximum individual lifetime risk and incidence lines together, and Figure V–4 adds shading in the area of the graph that contains all points meeting a hypothetical requirement that no person be at greater than 1×10^{-4} maximum individual lifetime risk and that the entire population risk be at less than 1 added cancer case per year.

The graphical approach can be used to plot the data from a risk distribution (such as that in Table V–1A shown in the discussion of Approach A). On Figure V–5, distributions are plotted for risk from four hypothetical sources. By examining where parts of a line fall with respect to selected maximum individual lifetime risk and incidence parameters, one can see how many people are at risks lower than any maximum individual lifetime risk or interest or whether a particular incidence is exceeded. It is also possible to see whether a risk distribution is skirting the edge of being above any acceptable risk line or is well under it. This allows consideration of whether to try to narrow uncertainties in the risk assessment.

Graphs such as these could be used to make regulatory decisions and communicate about them. Comment is requested.

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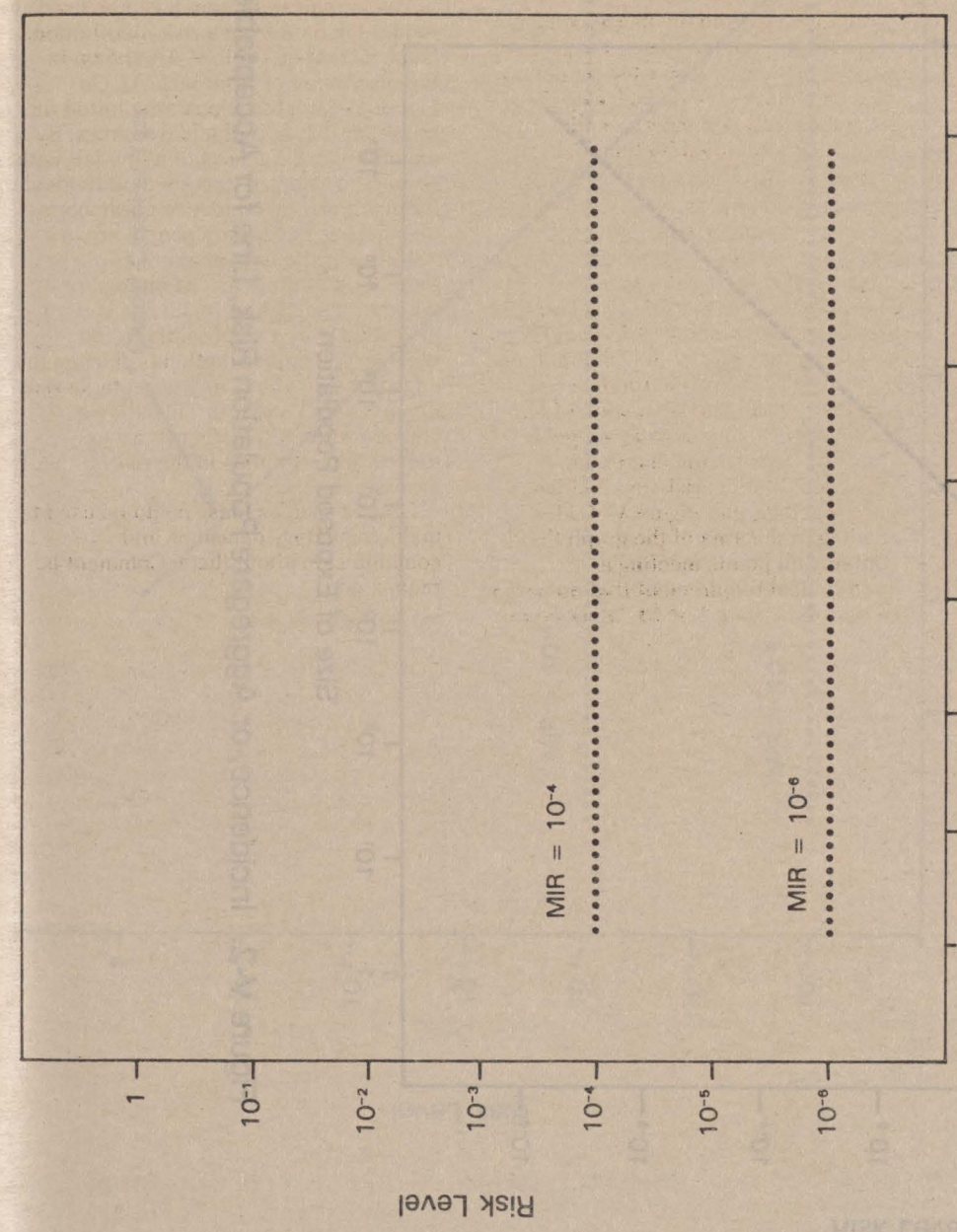


Figure V-1. Maximum Individual Lifetime Risk (MIR) Line for Acceptable Risk

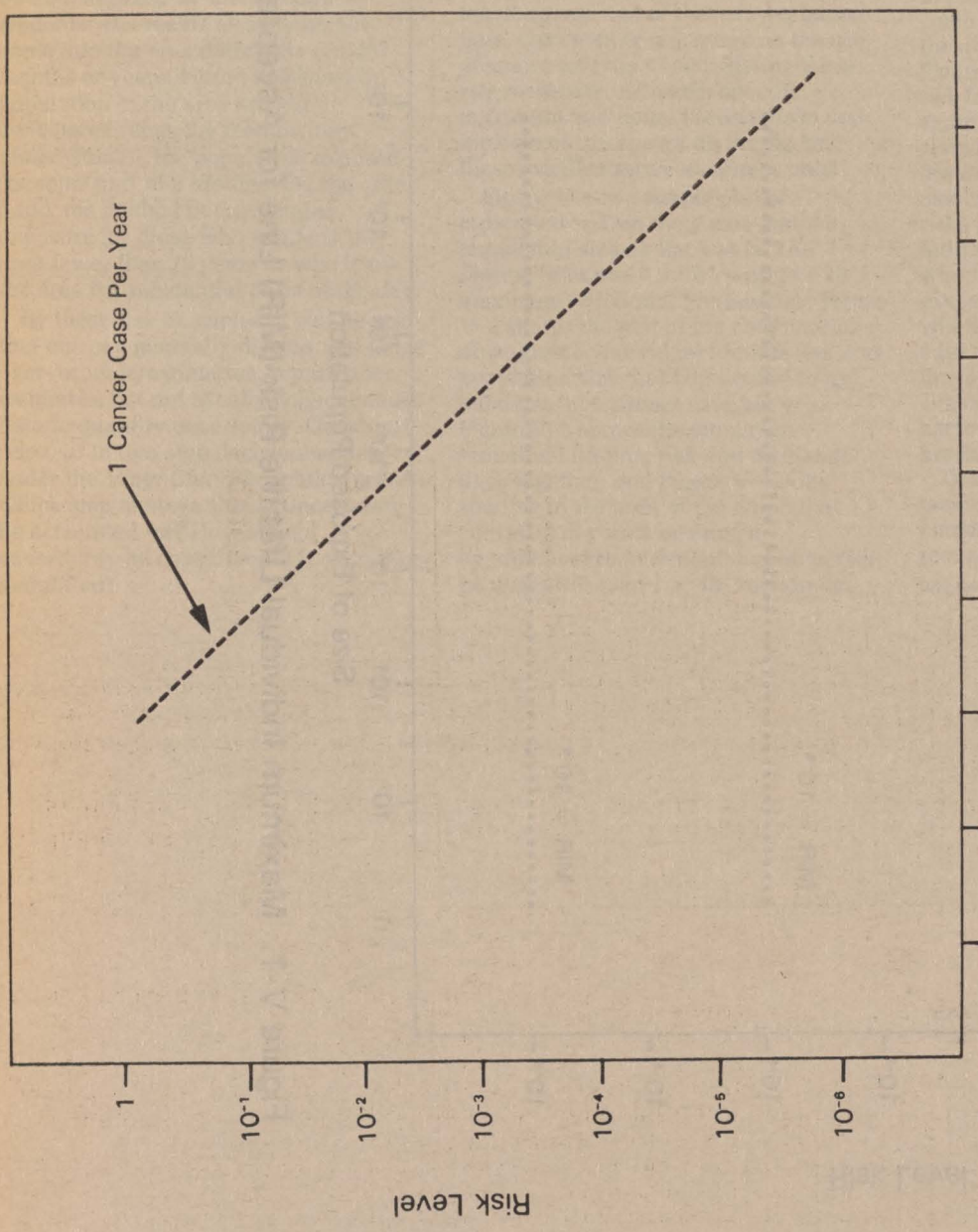


Figure V-2. Incidence, or Aggregate Population Risk, Line for Acceptable Risk

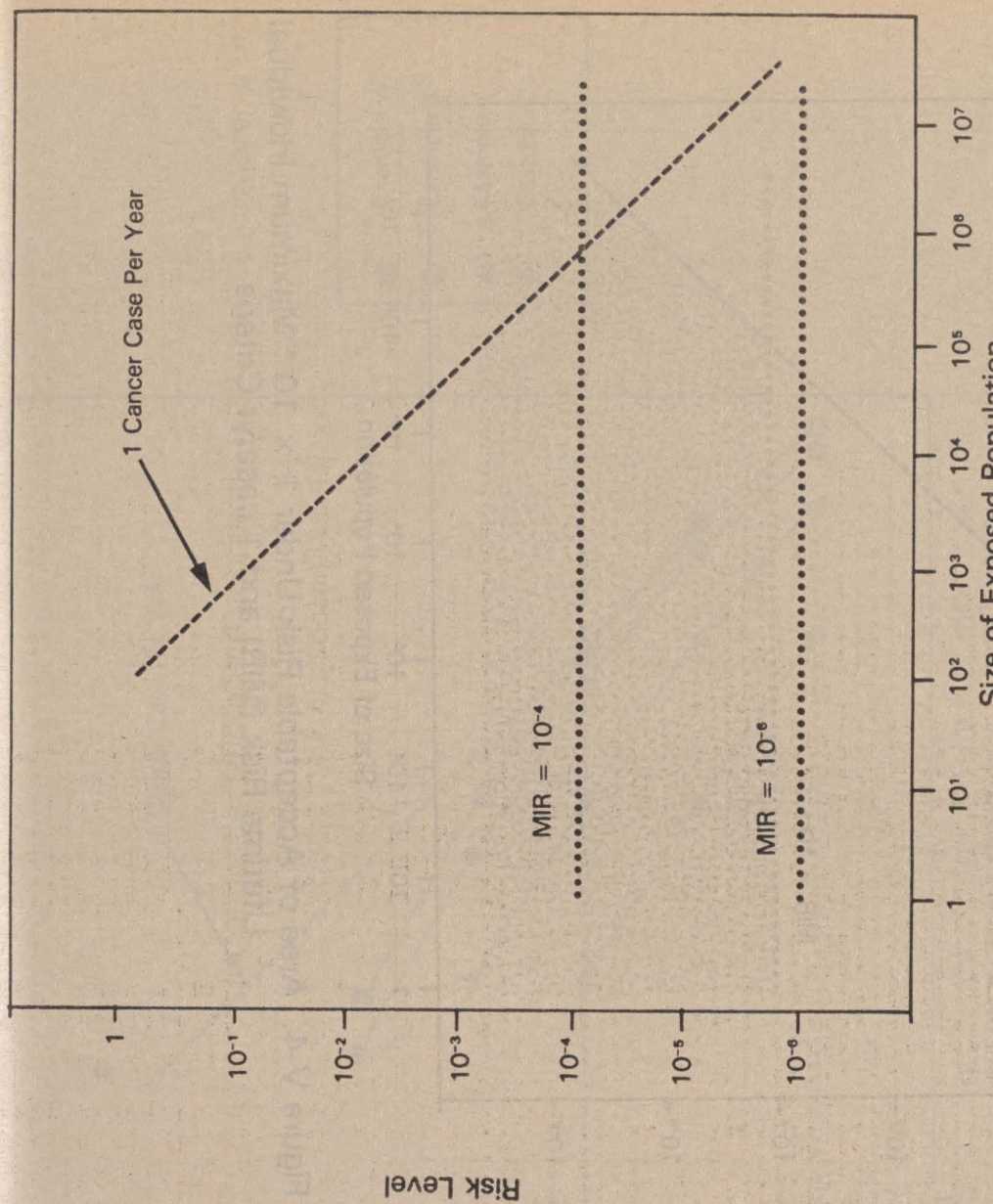


Figure V-3. Maximum Individual Lifetime Risk (MIR) and Incidence Line for Acceptable Risk

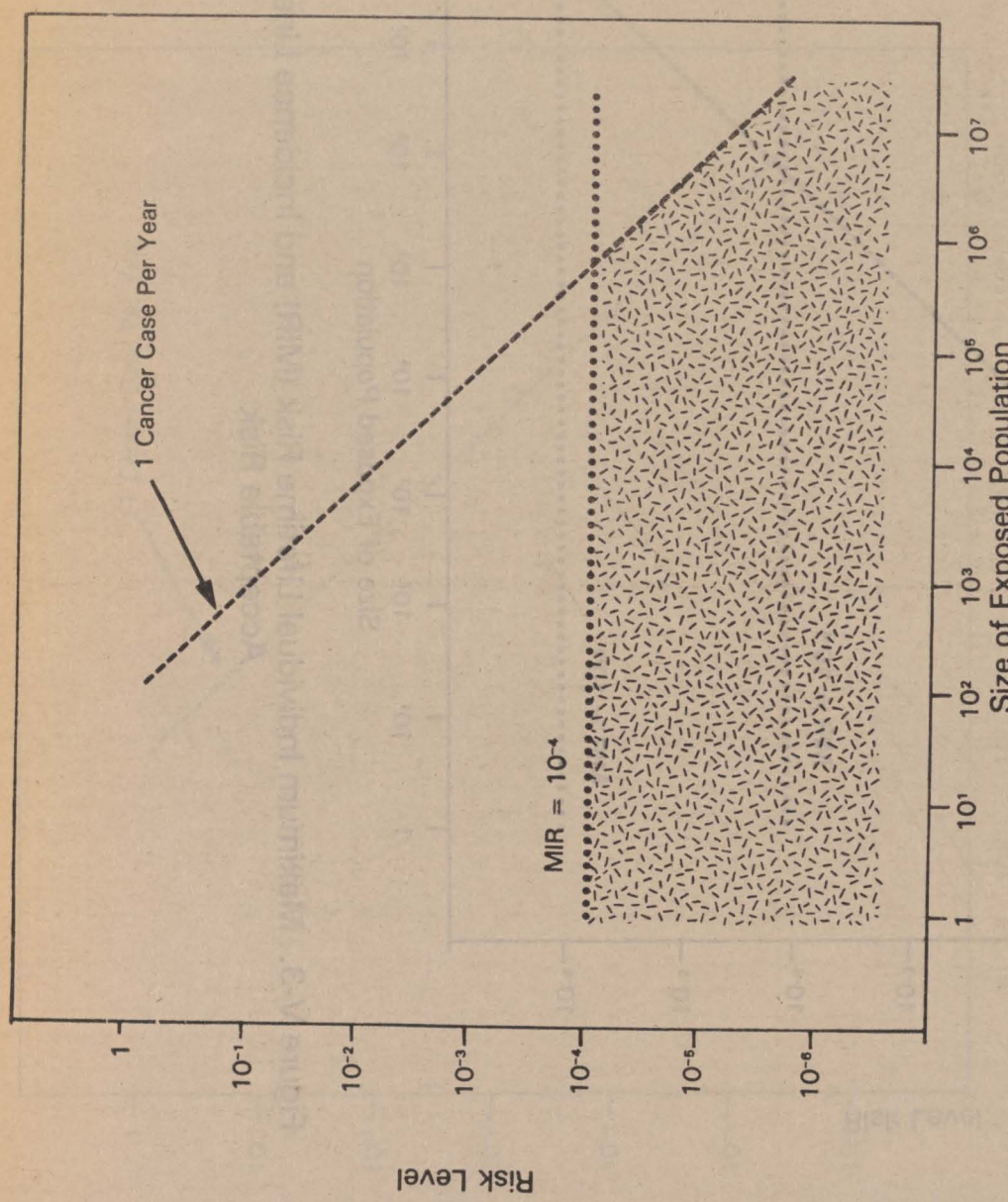


Figure V-4. Area of Acceptable Risk Under 1 × 10^{-4} Maximum Individual Lifetime Risk (MIR) and 1 case/yr Criteria

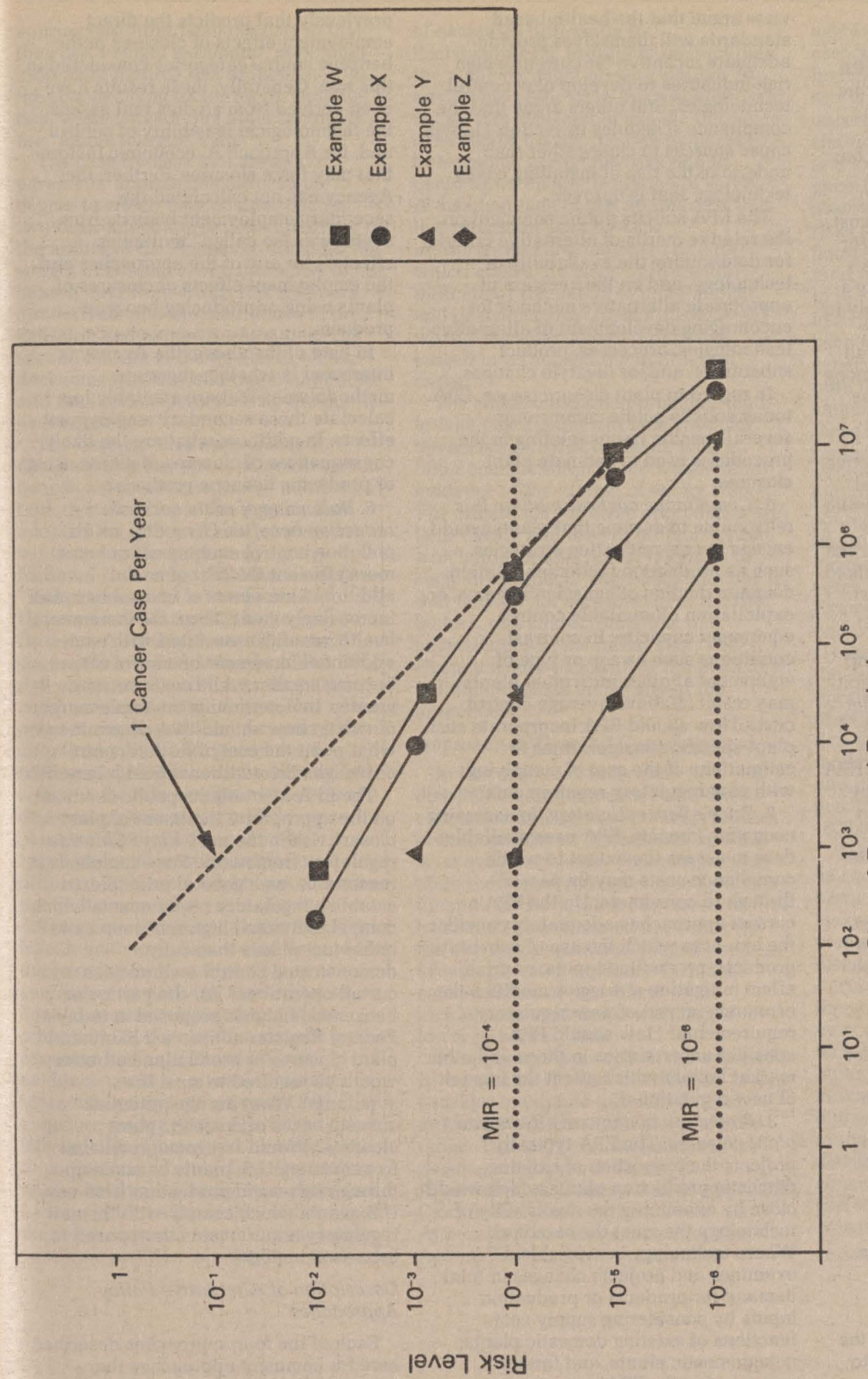


Figure V-5. Comparison of Several Hypothetical Risk Distributions with the Maximum Individual Lifetime Risk (MIR) and Incidence Lines for Acceptable Risk

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Technology Availability and Plant Closure Considerations

In previous NESHAP decisions, EPA has given primary consideration to the objective of reducing risks to public health. However, in evaluating alternative regulatory options, EPA has also considered the extent to which plants would be forced to: (a) Install control technologies which are not cost effective or fully demonstrated and/or (b) curtail or stop production. These considerations are reflected in today's proposal to the extent that they apply to affected benzene sources. However, these sources do not represent the full range of circumstances that exist among other source categories which will be affected by NESHAP decisions. For example, in other source categories control technology may be less effective, or costs may be greater; the financial strength of the industries may be greater or less; the ability to pass through control costs may be greater; and/or the ability to use nonhazardous materials to produce the same products may exist. The EPA is today soliciting public comment on several specific issues relating to technology availability and plant closure issues both in the context of today's proposal and in the broader context of future NESHAP decisions.

With regard to the availability of technology to control air pollutants, EPA has typically considered a technology available if it has been installed on a commercial scale in the U.S. and adequate data have been collected on plant and control equipment characteristics and performance. However, at various times in the past, and in the present proposal, EPA has considered emission standards which force plants to install technologies which do not meet these current "availability" criteria or curtail production or shutdown. For example, EPA has in the past considered a technology "available" if it has been commercially demonstrated in other countries, even if no units have been installed in the U.S. Also, EPA has considered bench- or pilot-scale demonstrations in order to judge reasonableness of expenditures for commercial demonstration of a given technology. Some have argued that potentially superior, costlier, but commercially undemonstrated technologies will not be installed in the absence of regulatory requirements to do so. Others have argued that EPA should not be concerned about the extent to which technologies are "available" since the standards should be solely based on public health considerations. Proponents of this latter view argue that the health-based standards will themselves provide adequate incentive for currently high risk industries to develop new control technologies. Still others argue that the compliance schedules in section 112 will cause sources to close rather than undertake the risk of installing costly technology that is uproven.

The EPA solicits public comment on the relative merits of alternative criteria for determining the availability of technology, and on the question of appropriate alternative methods for encouraging development of alternative technologies, processes, product substitutes, and/or lifestyle changes.

In regard to plant closure issues, EPA today solicits public comment on several specific issues relating to the procedures used to estimate plant closures:

1. *Compliance cost estimation.* It is reasonable to assume that plants would engage in cost mitigation strategies, such as production factor substitution, common ducting of emission streams, or exploitation of available control equipment capacity. In contrast, conditions such as age or type of equipment at other individual plants may result in above average control costs. How should EPA incorporate such plant-specific considerations in estimations of the cost of complying with new regulatory requirements?

2. *Price effect estimation.* In assessing economic impacts, EPA uses available data to assess the extent to which compliance costs may be passed through to consumers. Do the EPA's current approaches adequately consider the extent to which the use of substitute products, production inputs, or price effect mitigation strategies modifies the economic impact of new regulatory requirements? How should EPA consider uncertainties in these and other market factors which affect the impact of new regulations?

3. *Projection of demand effects and plant closures.* The EPA typically projects the proportion of existing domestic production plants which would close by examining the availability of technology the meet the standard. Where technology is available, EPA examines and projects changes in total demand for products or production inputs by considering supply cost functions of existing domestic plants, new domestic plants, and foreign sources. Are the EPA's current procedures for estimating plant closures resulting from predicted price and quantity effects reasonable?

4. *Employment effect estimation.* The Agency has presented information previously that predicts the direct employment effects of closures in the benzene source categories considered in this rule. Generally, these results have been derived from studies that assess the technological feasibility of control and, for Approach A, economic factors that may force closures. Further, the Agency has not calculated the secondary employment impacts from shutdowns (so called "multiplier effects") for any of the approaches and the employment effects of closures of plants using or producing benzene products.

In light of the above, the Agency is interested in whether there are methodologies that are available to calculate these secondary employment effects. In addition, what are the likely consequences of closures of plants using or producing benzene products?

5. *Balancing of costs and risk reduction benefits.* Generally, as air pollution control equipment becomes more efficient the cost of each additional increment of control becomes increasingly great. Thus, the incremental health benefits associated with each additional increment of control often become smaller while costs become greater. In determining an ample margin of safety, how should EPA determine at what point the cost of further control outweighs the additional health benefit?.

The EPA also solicits public comment on the appropriate treatment of plant closure risk in the post-*Vinyl Chloride* regulatory framework. For example, is it reasonable, as a general principle, to establish regulatory requirements which compel individual high-risk sources to either install less-than-fully demonstrated control technologies or curtail operations? For the particular benzene standards proposed in today's **Federal Register** notice, is it likely that plant closures or production cutbacks would be required to meet the standards? What are the potential consequences of domestic plant closures? Would foregone production from existing U.S. plants be made up through increased production from new U.S. plants which comply with the new regulatory requirements as opposed to increased imports?

Description of Alternative Policy Approaches

Each of the four approaches described here for comment approaches the "acceptable risk" decision differently. The first approach considers all risk factors in the acceptable decision and all risk factors plus cost and feasibility of emission controls in the ample margin of safety decision. The other three

approaches differ from the first in that they use a single parameter, maximum individual lifetime risk or incidence, as the sole deciding factor for acceptable risk, while considering other factors in the "ample margin" step.

The case-by-case and single parameter approaches differ in the degree to which they possess each of two desirable features. One feature is the ability of the Agency to consider the weight of evidence, or confidence, in the hazard data from which risk numbers are derived, and the confidence in the emission and exposure estimates. The second feature is the degree to which decisions are clear and understandable, and thus can be perceived by the public as consistent.

The case-by-case approach is designed to bring all of the evidence to bear in association with risk numbers at both decision steps. The Agency has adopted the policy of risk assessment contained in the 1983 study by the National Academy of Sciences entitled "Risk Assessment in the Federal Government: Managing the Process," National Academy Press. This study covers the various elements of cancer risk assessment and the assumptions and uncertainties it involves. One of the policies emphasized in the report and adopted by EPA is to give the risk manager a risk characterization which contains the information needed for a decision on how much confidence to place on numbers. For example, numbers for risk estimates for two different pollutants might look the same, but be based on data sets of quite different quality. A very large set of data from human and animal studies could be the foundation for a high degree of confidence in deriving a quantitative dose/response relationship. On the other hand, a quantitative dose/response estimate based on less evidence could be more uncertain. Moreover, emission estimates and exposure modeling may be based on site-specific information, assumptions, or combinations of the two. Depending on the data and assumptions, there can be large differences in the confidence of the exposure estimates. A risk manager would be justified in using the two kinds of estimates differently in decisionmaking, in spite of the fact that the numbers might be very similar. An advantage of the case-by-case approach is that it is designed to use the full range of evidence behind the risk numbers in determining acceptable risk and in deciding on an ample margin of safety. A disadvantage of this approach is that it is reliant on case-by-case interpretation and judgment of data, which makes the basis for decision difficult for the public to understand, and decisions may appear inconsistent when different numerical risks are judged to be acceptable in different cases.

The single measure approaches tend to take risk numbers at face value for the acceptable risk decision, with a fuller consideration of the weight of all evidence at the margin of safety step. The advantages of these approaches are their clarity and ease of administration, which are good bases for adoption of such an approach. Their disadvantage is that they do not consider all of the risk factors, risk characterization, and uncertainties in the initial step. The Agency would weigh all of the evidence in final decisions under any of the approaches.

Approach A. Case-by-Case Approach

In this approach individual risk, risk distribution, and incidence and their estimation limitations and uncertainties are all considered in determining what is an acceptable risk. The acceptability of an individual risk level is judged as a function of the number of persons at that level and the associated incidence for the exposed population. Judgment on an acceptable total incidence includes consideration of how much of the incidence is associated with higher or lower individual risk.

In applying Approach A, the approach is to examine the risk distribution and to consider maximum individual risks around 10^{-4} or less to be the preferred range. The 10^{-4} level was selected for reasons analogous to its use in Approach C (see discussion of Approach C for further explanation). Under all Approach A decisions, however, the Agency will closely examine the aggravating and mitigating factors associated with the risk estimates. Included in this examination is recognition that there are considerable uncertainties in the risk characterization, emission estimates, and exposure assumptions; these uncertainties may vary widely among assessment. Acceptability of higher risks includes consideration of the number of people at that risk and the total incidence. Greater weight is given to the incidence associated with individual risks greater than 10^{-5}; this is because risks lower than this are generally considered small. In addition, both the dose/response and exposure estimates increase in uncertainty at these lower levels, which generally represent large extrapolations from high to low doses and dispersion of the pollutant at greater distance from the source, respectively. Risks greater than the 10^{-4} or less preferred range may be judged acceptable in this approach when all factors are considered. Examples of circumstances that EPA believes appropriate to consider include: (1) the uncertainties of the analysis; (2) the degree of over or underestimation in the risk characterization; (3) the weight of evidence of the health effects and non-quantified health effects; (4) modeled versus measured exposures; and (5) the estimated population predicted at lifetime risk of around 1 in 10,000 or greater.

Table V–1A shows the risks proposed as acceptable under Approach A for two benzene source categories: Equipment leaks and coke by-product recovery plants. The findings are more completely discussed in later sections of this notice. In considering the risk parameters for the acceptable risk decision the fact that most of the incidence was associated with lower range individual risks was balanced against the fact that the maximum individual lifetime risks were higher than the preferred range of around 10^{-4} or less. The overall risk distributions shown in Table V–1A were considered acceptable when all factors and their estimation uncertainties were weighed.

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TABLE V-1A. ACCEPTABLE RISK LEVELS FOR TWO SOURCE CATEGORIES (APPROACH A)[a]

Risk Distribution	Equipment Leaks		Coke By-Product Recovery	
	Cumulative Population at Indicated Risk Level	Non-cumulative Incidence (case/yr)	Cumulative Population at Indicated Risk Level	Non-cumulative Incidence (case/yr)
$\geq 1 \times 10^{-2}$	0	0	0	0
$\geq 1 \times 10^{-3}$	0	0	4,000	0.1
$\geq 1 \times 10^{-4}$	3,000	0.007	100,000	0.4
$\geq 1 \times 10^{-5}$	60,000	0.02	3,000,000	0.9
$\geq 1 \times 10^{-6}$	1,000,000	0.04	30,000,000	1
$< 1 \times 10^{-6}$	-	0.2	-	0.3
	200,000,000	0.2	90,000,000	3
MAXIMUM INDIVIDUAL LIFETIME RISK:	6×10^{-4}		6×10^{-3}	

[a]All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table for risk group incidence may not sum to the value given for total incidence.

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The uncertainty of the risk estimation is considered at both the acceptable risk and ample margin of safety steps. For both source categories the uncertainty of the dose/response estimate for benzene was considered. In general, the data set on benzene is one of the better ones available on any chemical carcinogen. Benzene is classified as a human carcinogen and judgment that the quantitative dose/response estimate, derived from studies on humans, for leukemia might be on the high side, but still plausible, was balanced by consideration of the fact that other types of malignancy have been observed in human studies. Because these effects were not quantifiable from the available data, uncertainty existed about whether all of the cancer risk had been accounted for. On the exposure from both source categories, for several reasons described in later sections, the existing emission estimates were considered to be upperbound estimates.

For the proposed ample margin of safety decision the risk parameters were again considered along with the cost and feasibility of risk reduction. The costs and technical factors differ greatly among the categories and are discussed in detail in later sections. As shown in Table V–1B, these decisions result in similar after-regulation risk distributions for the two categories, equipment leaks and coke by-product recovery plants, with very low incidence associated with individual risks above 10^{-4} or 10^{-5}. At both steps, uncertainty is given weight and the risk parameters are considered together.

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TABLE V-1B. AMPLE MARGIN OF SAFETY FOR TWO SOURCE CATEGORIES (APPROACH A)[a]

Risk Distribution	Equipment Leaks		Coke By-Product Recovery	
	Cumulative Population at Indicated Risk Level	Non-cumulative Incidence (case/yr)	Cumulative Population at Indicated Risk Level	Non-cumulative Incidence (case/yr)
$\geq 1 \times 10^{-2}$	0	0	0	0
$\geq 1 \times 10^{-3}$	0	0	0	0
$\geq 1 \times 10^{-4}$	3,000	0.007	2,000	0.005
$\geq 1 \times 10^{-5}$	60,000	0.02	70,000	0.03
$\geq 1 \times 10^{-6}$	1,000,000	0.04	2,000,000	0.05
$< 1 \times 10^{-6}$	-	0.2	-	0.07
	200,000,000	0.2	90,000,000	0.2
MAXIMUM INDIVIDUAL LIFETIME RISK:	6×10^{-4}		4×10^{-4}	

[a]All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table for risk group incidence may not sum to the value given for total incidence.

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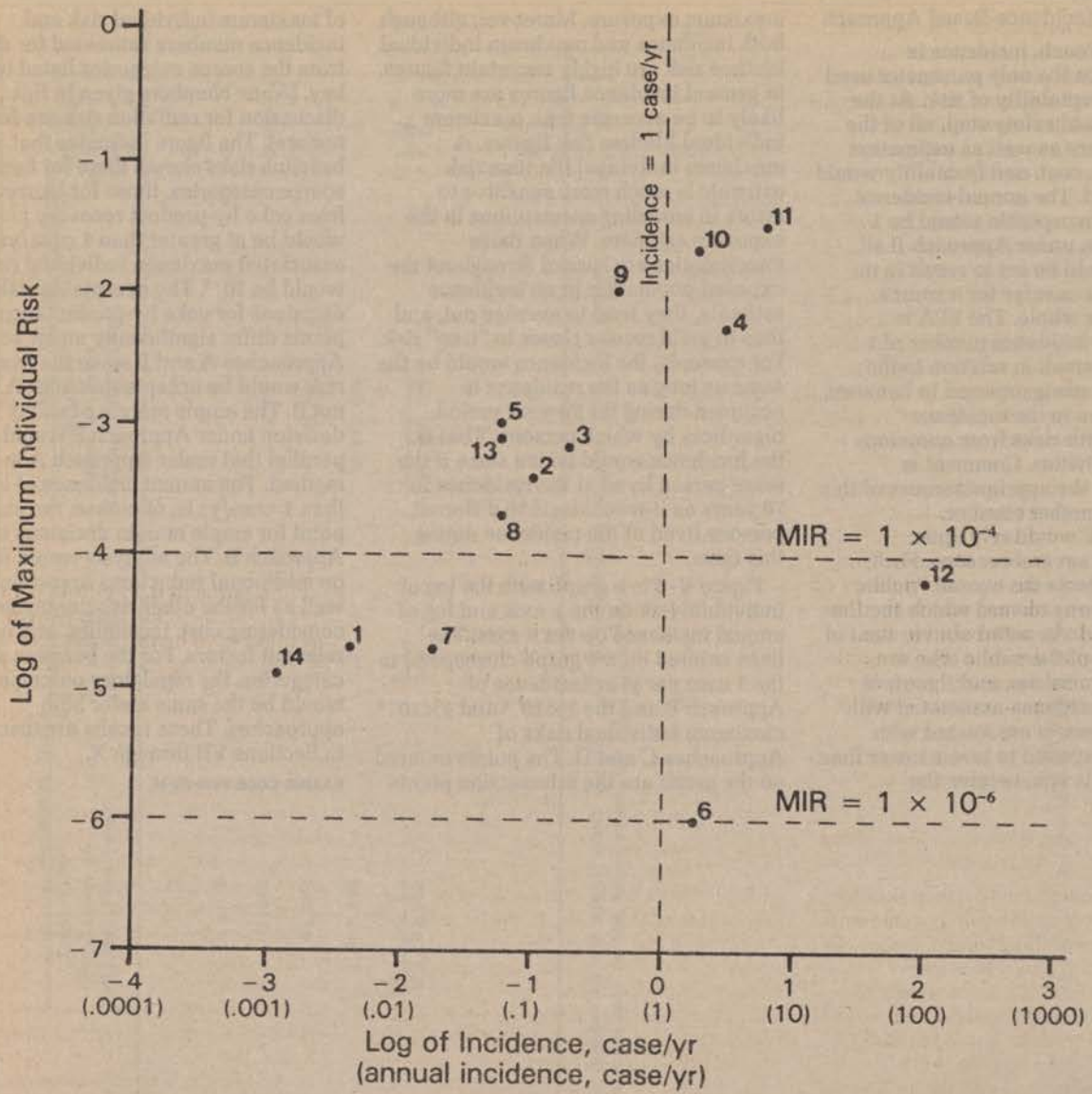
Approach B. Incidence-Based Approach

In this approach, incidence is proposed to be the only parameter used to decide acceptability of risk. At the ample margin of safety step, all of the risk parameters as well as estimation uncertainties, cost, and feasibility would be considered. The annual incidence proposed as acceptable would be 1 case/yr. Thus, under Approach B all NESHAP would be set to result in no greater than 1 case/yr for a source category, as a whole. The EPA is proposing an incidence number of 1 because it is small in relation to the millions of persons exposed to benzene, and in relation to the incidence associated with risks from numerous everyday activities. Comment is requested on the appropriateness of this criterion or another number.

Approach B would rely upon incidence for several reasons. First, incidence reflects the overall "public health" concerns toward which section 112 is directed. As noted above, most of the members of the public who are exposed to emissions, and therefore most of the incidence associated with those emissions, is associated with individuals exposed to levels lower than the individuals who receive the maximum exposure. Moreover, although both incidence and maximum individual lifetime risk are highly uncertain figures, in general incidence figures are more likely to be accurate than maximum individual lifetime risk figures. A maximum individual life time risk estimate is much more sensitive to errors in modeling assumptions in the exposure estimate. When those uncertainties are spread throughout the exposed population in an incidence estimate, they tend to average out, and thus to yield results closer to "true" risk. For example, the incidence would be the same as long as the residence is occupied during the 70-year period, regardless by which persons. That is, the incidence would be the same if the same person lived at the residence for 70 years as it would be if 10 different persons lived at the residence during this time.

Figure V–6 is a graph with the log of individual risk on the y axis and log of annual incidence on the x axis. The lines entered on the graph correspond to the 1 case per year incidence of Approach B and the 1×10^{-4} and 1×10^{-6} maximum individual risks of Approaches C and D. The points entered on the graph are the intersection points of maximum individual risk and incidence numbers estimated for risks from the source categories listed in the key. (*Note:* Numbers given in this discussion for radiation risk are for fatal tumors). The figure indicates that, of the baseline risks shown there for benzene source categories, those for benzene from coke by-product recovery plants would be at greater than 1 case/yr. The associated maximum individual risk would be 10^{-3}. The acceptable risk decisions for coke by-product recovery plants differ significantly under policy Approaches A and B since the baseline risk would be acceptable under A, but not B. The ample margin of safety decision under Approach B would parallel that under Approach A in method. The annual incidence of less than 1 case/yr is, of course, the starting point for ample margin decisions in Approach B. The analysis would focus on additional reductions in incidence as well as for the other risk parameters, considering cost, feasibility, and other relevant factors. For the benzene source categories, the regulatory outcome would be the same under both approaches. These results are discussed in Sections VII through X.

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KEY

1 Ethylbenzene/Styrene (benzene)
2 Benzene storage vessels
3 Equipment leaks (benzene)
4 Coke by-product recovery plants (benzene)
5 Elemental phosphorus plants (radionuclides)
6 Coal-fired boilers (radionuclides)
7 NRC licensees (radionuclides)
8 DOE facilities (radionuclides)
9 Underground uranium mine (radon)
10 Active uranium mill tailings
11 Coke oven emissions
12 Chromium from comfort cooling towers
13 Vinylidene chloride
14 Hexachlorobenzene

Figure V-6. Maximum Individual Lifetime Risk (MIR) and Incidence for Selected NESHAP Categories

Features to note about Approach B include the fact that since maximum individual risks plays no role in the acceptable risk decision, high maximum individual risk levels would be acceptable so long as the exposed population is sufficiently small that the incidence level is met (see Figure V–6). Another point to note is that the size of the incidence number may be due largely to exposure of a very large population to a small individual risk. For example, see Table V–1A. This makes the acceptable risk decision dependent to a great degree on estimates of exposure to the least exposed individual furthest from the source. As previously mentioned, the dose/response and exposure estimates increase in uncertainty at these low levels which generally represent large extrapolations from high to low dose and dispersion of the pollutant at greater distance from the source, respectively. Deficiencies of using only one risk measure in the first decision could be addressed in the "ample margin" decision. For example, when using only incidence gives slight attention to circumstances in which a small population may be at high individual risk, EPA could consider action to impart a margin of safety for the small population.

Approach C. 1×10^{-4} or less Maximum Individual Risk Approach

This approach would use maximum individual risk as the sole parameter for deciding acceptable risk. At the ample margin of safety step the risk distribution and incidence would be added to the factors considered as well as uncertainty, cost and feasibility.

The acceptable risk level for maximum individual risk under this approach is 1×10^{-4} or less. This level is analogous to the top of the target individual risk range used in some other EPA programs. This target range has evolved through a history of decisionmaking under the structure of other statutes. However, the decisionmaking structures under the statutes governing those programs are quite different, so comparison is imperfect. And, typically the target range there is for post-control risks, while here it would be the first step of the decisionmaking process. Additionally, the 10^{-4} risk level falls roughly into the middle of the risk range developed in the survey of risks, discussed earlier in this section.

For benzene, the regulatory outcome for the coke by-product and equipment leak source categories would be greater control than under either Approach A or B. Neither of the two categories would be at an acceptable risk level prior to regulation, and each would require control beyond the NESHAP proposed under previous approaches in order to be at 1×10^{-4} maximum individual risk or less. The result for benzene storage vessels and EB/S process vents would be the same under all three approaches.

This approach and Approach D would put great weight on the estimation of the maximum concentration to which anyone could be exposed, which is the exposure element of the maximum individual risk. Without the additional perspective of the risk distribution and incidence estimates and all other risk information, many decisions would ride exclusively on the highly uncertain prediction of the concentration and location of the area of maximum exposure. The accuracy of emission factors, meteorological data, and census data for specific source locations are among the more uncertain estimates, but would be the most critical elements under this decision.

However, at the ample margin of safety step, the other risk measures could be examined to bring the needed perspective to the overall decision.

Approach D. 1×10^{-4} or Less Maximum Individual Risk Approach

This approach is identical to Approach C except that it uses a more stringent criterion for individual risk. The acceptable risk is defined as 1×10^{-6} maximum individual risk. One reason why this level might be selected is that the risk below this level have been generally regarded as negligible additions to an individual lifetime risk of cancer. Additionally, the 10^{-6} level falls at the lower end of the risk range in the survey of risks, discussed earlier in this section.

Each of the benzene source categories would require additional control to reduce risks to an acceptable level meeting the acceptable risks which is also an ample margin of safety level for these categories. Requirements would entail maximum control and cessation of operation for some or all facilities in each category as later described.

Comparison of Effects of Policy Approaches on Pending NESHAP

Costs and feasibility cannot be considered at the acceptable risk stage, under *Vinyl Chloride*. However, as in other programs, such as setting National Ambient Air Quality Standards under CAA section 109, EPA will provide information to the public about broader implications of Approaches B, C, and D. The EPA views such information to be similar to that provided in an analysis under Executive Order 12291, or an environmental impact statement, but which is not considered as part of the statutory basis for decisionmaking. This section outlines questions about the feasibility of meeting such requirements in future NESHAP. It is apparent from analyzing the impact of various measures of acceptability on benzene source categories that such questions arise.

Because Approach A uses balancing of the three risk parameters and all other relevent risk information, as well as risk estimation limitations and uncertainties, it requires a separate judgment in each case. As a result, it is not susceptible of simple comparisons of effects on source categories of various pollutants. In contrast, Approaches B, C, and D use a single risk parameter as the criterion for acceptable risk, and their effects can be more easily compared among the baseline risk for other pollutants.

For Approach B, Figure V–6 indicates that, of the baseline risks shown there for other than benzene categories, those for coke oven emissions, radionuclides from coal-fired boilers, chromium from comfort cooling towers, and active uranium mill tailings would be at greater than 1 case/yr. The associated maximum individual risks range from 10^{-6} to over 10^{-2}. The highest individual risks that would be left (because associated incidence is less than 1 case/yr) would be between 10^{-3} and 10^{-2} for four source categories.

For the coke oven emissions category, current estimates indicate that in order to reduce annual incidence to less than 1 case/yr, all sources would have to meet the most stringent level of emission control being achieved by any currently operating coke oven, or otherwise comply with a maximum emissions cap. Some source closures and/or shutdowns of large proportions of some existing batteries would be likely. Overall, even applying present technology at all sources might not achieve the emission levels needed to meet the incidence criterion within the 2-year NESHAP compliance period. New technology for control of existing coke ovens, or alternative technologies for producing coke would likely be necessary, or, alternatively, imported coke would be used.

The incidence associated with emissions of radionuclides from coal-fired boilers comes from about 200,000,000 people being within 50 km of the 50,000 sources while exposed at individual risk below 1×10^{-6}. Whether it is feasible, considering costs, to achieve less than 1 annual incidence for this source category is presently unknown. Currently existing

requirements for disposal of uranium tailings will achieve an acceptable incidence level for emissions of radionuclides. With few exceptions, active mill tailings facilities could only achieve an annual incidence less than 1 by closing, and by going to disposal.

Chromium from comfort cooling towers is proposed to be regulated under the TSCA.

For Approach C, Figure V–6 shows that five of the source categories are within the acceptable range. The incidence associated with the categories above the line ranges from roughly 1 per 1,000 years to about 100 per year. Any category above the line would have to be controlled to achieve a level below the acceptable risk criterion.

Table V–2 shows the likelihood of several important source categories being able to meet this acceptable risk requirement. Table V–2 include rough estimates of the number of plants that would permanently shut down, and coke production cutbacks for coke by-product recovery plants. Although the underlying assumptions vary somewhat for the different categories, all of the estimates shown under Approaches C and D are based on the technological limits of the controls known to EPA. These estimates are not derived from economic analyses. More detail on the benzene source categories can be found in Sections VII through X.

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TABLE V-2. TECHNOLOGICAL FEASIBILITY OF COMPLIANCE WITH ACCEPTABLE RISK CRITERIA

Category	Approach B 1 case/yr		Approach C 1×10^{-4}		Approach D 1×10^{-6}	
	Feasible Control[a]	Shutdown/ Total Sources[a]	Feasible Control[a]	Shutdown/ Total Sources[a]	Feasible Control[a]	Shutdown/ Total Sources[a]
Chemicals						
Ethylbenzene/styrene	+		+	-	+Some	Some
Benzene storage	+	-	+	-	Unknown	Unknown
Equipment leaks	+	-	+(30/131)	100/131	-	All
Coke by-product plants	+	-	+(40/44)[b]	4/44	-	All
Coke ovens	±[c]	c	+(1-4/40)	36 to 39/40	-	All
Radionuclides/Radon						
Active uranium mill tailings	+	NA[d]	+	NA	-	NA
Underground uranium mines	+	NA	-	NA	-	NA
Elemental phosphorus plants	+	NA	+	NA	±	NA
DOE facilities	+	NA	+	NA	±	NA
NRC licensees	+	NA	+	NA	±	NA
Coal-fired boilers	+	NA	+	NA	+	NA

[a] Achievability of control level is estimated using available analyses of risks and technical feasibility, not costs. Qualitative assessments represent: "+" = technology is available and should achieve risk target in all cases; "±" = available technology will not reduce risks to target at all sites; and "-" = available technology cannot achieve target.

[b] Of the 40, 8 are not expected to meet the 1×10^{-4} risk with technologically feasible controls alone; production cutbacks would be necessary It is estimated that there would be a loss of 40 percent of the total coke production at 1×10^{-4}

[c] Theoretically, controls could achieve < 1 case/yr. However, it is not likely all sources can achieve this level of control

[d] NA = not assessed

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Additional perspective on the question of what proportion of source categories would or would not be at or below 1×10^{-4} maximum individual risk prior to regulation is gained from EPA preliminary risk assessment results on 1,878 sources of 19 carcinogens. About two-thirds of the sources were estimated to present risk at or below 1×10^{-4}, and would therefore meet this acceptable risk requirement. A 90 percent reduction in emissions is taken to correspond to a 10-fold reduction in maximum individual risk. Thus, a reduction from 1×10^{-2} to 1×10^{-4} would require a 99 percent reduction in emissions. If it is assumed that the greatest impact of this 10^{-4} acceptable risk level is on sources that would have to reduce emissions by 99 percent or more, then about 10 percent of the 1,878 sources would be in the group of greater impact.

Approach D would operate much like Approach C. However, the effect of having a 1×10^{-6} maximum individual risk "ceiling" on all toxic risk would be to impose significant additional requirements beyond those of any previous approach. First, many decisions not to regulate, or not to enter source categories into the Agency's ongoing risk assessment program would have to be reexamined. The surveyed assessment results discussed above indicate that approximately 85 percent of the 1,878 sources covered would be above 1×10^{-6} prior to regulation. About 40 percent would have to reduce emissions by 99 percent or more. Virtually every source of radionuclides or radon would require action. The specific impacts and costs cannot be projected accurately at this time, but would likely be measured in billions of dollars. A comparison with natural background radiation levels will give an idea of the extent of control that would be needed. A 1×10^{-6} lifetime risk would compare with:

1. For radionuclides other than radon—0.03 percent of annual natural background does.

2. For radon—0.01 percent of annual natural background dose from outdoor air.

To achieve this level of control, underground uranium mines would likely have to be closed and sealed. Uranium tailings piles would have to be covered; however, the practice of using soil and rock as cover would not be sufficient for some of the largest piles since average soil contains enough radium so that the amount needed to keep radon from escaping the tailings would itself generate enough radon to exceed the 1×10^{-6} maximum individual risk ceiling. Many processors and users of radioactive materials would have to control to virtually no emissions. The cost and feasibility of meeting the requirements can only be roughly estimated at this time, but may be assumed to impose significant burdens.

Table V–2 shows the effects of Approach D on the source categories on which effects were shown for other approaches. Because Approach D would require the most significant emission reductions, it would have the greatest impact. However, under each of the approaches there would be a potential of production curtailment or closure of some or many sources.

As noted earlier, the criteria and method of decisionmaking for the ample margin of safety step would be the same for all approaches. Because the decision involves a judgment based on concurrent consideration of numerous factors, the potential outcomes cannot be discussed simply here. The Agency requests comments on how the various risk, technical, cost, economic, and uncertainty considerations should be balanced in the decision process for the ample margin of safety.

General Discussion on Format of Standards Which Have No Technology Basis

For some source categories, the acceptable risk and/or ample margin of safety decisions can result in the necessity of risk and emission reductions beyond what is achievable with any known technology. This situation occurs under Approach C for equipment leaks and coke by-product plants and Approach D for all benzene source categories. Examples of potential formats for expressing such standards are emission limits that would apply to whole facilities, emission limits with risk-based waivers, or actual risk formats. The various formats are discussed under Approach D in Section VII of this notice. Selection of one of these formats requires the Agency to consider whether to allow sources to comply with risk targets using site-by-site analyses or whether to require compliance with a national emission limit standard. For today's benzene proposals the emission limit format was used. Comment is requested on this format as well as any alternative formats.

VI Maleic Anhydride Process Vents

Since proposal of the standard for maleic anhydride plants in 1980, the industry has consistently and voluntarily switched to the more economical n-butane feed process. Since the publication of the denial of petition for reconsideration, the one facility using benzene feed in the production of maleic anhydride has ceased to produce maleic anhydride (Docket No. OAQPS 79–3, Part II, Docket Item VIII–A–9). All benzene exposure due to this industry, and therefore, all risk from benzene, has been eliminated. Thus, the questions of acceptable risk and ample margin of safety are moot, and no Federal action is warranted.

VII. Ethylbenzene/Styrene Process Vents

Source Category Overview

In 1985, there were 13 plants manufacturing ethylbenzene, styrene, or both. These facilities emitted benzene from process vents, including emergency release vents. Benzene emissions from equipment leaks at these plants were regulated under the benzene equipment leak standard (40 CFR Part 61, Subpart J).

Estimation Methods and Uncertainties

In analysis of the EB/S source category, as with the other sources of benzene emissions, emission estimates were used in calculating leukemia risk. This section discusses how benzene emissions and the associated health risks were calculated for EB/S process vents and the uncertainties associated with these estimates.

Benzene emission estimates from EB/S process vents considered in today's notice were based on emissions from the 13 EB/S plants operating in 1985. Benzene emissions from the process vents at these facilities totaled an estimated 155 Mg/yr.

The EPA developed plant-specific estimates of emissions from EB/S process vents using data on emissions and control practices requested by the Agency under the authority of section 114 of the CAA and provided by the sources. These emission estimates were calculated using detailed vent-by-vent information that was based on measurements and site-specific engineering calculations (Docket No. A–79–49, Docket Items IV–D–13, IV–D–34, IV–D–35, and IV–D–36). At plants where control was already in place, the estimate relfects at least 98-percent control efficiency from boilers, flares and incinerators, and facility-specific efficiencies for product recovery. Using this methodology, EPA estimated total emissions to be 208Mg/yr. This estimate was used in calculating the risk estimates previously presented in the **Federal Register** notice on denial of the petition for reconsideration. However, the Agency also presented a revised

benzene emission estimate of 155 Mg/yr in the same notice. The revision was based on data supplied by CMA and reflected changes in emissions at 3 of the 13 plants (Docket No. A–79–49, Docket Item IV–F–2, VI–D–2). These changes included the addition of controls and process modifications. The fact that this total of 155 Mg/yr is based on site-specific measurements or engineering calculations at the 13 individual plants gives the Agency a high degree of confidence in this estimate of emissions from EB/S process vents in 1985.

To estimate leukemia risks attributable to benzene emissions from EB/S process vents nationwide, the EPA's Industrial Source Complex (ISC) dispersion model was used to predict ambient benzene concentrations, and the HEM was used to estimate population exposure to the concentrations and predict leukemia risk. Population exposure was modeled out to 20 km from each of the 13 sources. The ISC dispersion model was run using plant-specific data from the 13 plants for the case where total emissions were 208 Mg/yr. The risk estimates presented in today's notice were calculated by proportional adjustment of the risk estimates generated using ISC and HEM to account for changes in emissions at the three plants mentioned above.

The uncertainties associated with the ambient concentration estimates from the ISC and the exposure estimates from the HEM are typical of the general uncertainties associated with exposure modeling discussed in Section VI.

Risk Characterization

As discussed in Section V, the first step in making NESHAP decisions is determination of an acceptable risk level. In deciding what level of risk is acceptable for EB/S process vents under the four approaches, the Administrator considered the range of levels shown on Table VII–1. The levels represent example scenarios to show how different emission levels would result in different health risk profiles. Implicit in the range considered is the emission level of zero, not only for this source category, but also for the subsequent source categories discussed in this notice. The table presents the risk estimates at baseline in terms of estimated annual leukemia incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. All risk estimates for this and the subsequent source categories discussed in this notice have been presented to one significant figure. The baseline level represents the emissions as of 1985 with no Federal standard (i.e., the emission level of 155 Mg/yr). The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as Emission Level A.

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TABLE VII-1. RISKS[a] FOR ETHYLBENZENE/STYRENE PROCESS VENTS AT DIFFERENT EMISSION LEVELS

		Emission Levels	
		Baseline	A
Incidence (case/yr)		0.004	0.001
Maximum Individual Lifetime Risk (MIR)		2×10^{-5}	1×10^{-5}
Risk Distribution, cumulative (persons)[b,c] (modeled to 20 km)	$\geq 1 \times 10^{-2}$	0	Not available
	$\geq 1 \times 10^{-3}$	0	
	$\geq 1 \times 10^{-4}$	0	
	$\geq 1 \times 10^{-5}$	700	
	$\geq 1 \times 10^{-6}$	40,000	
	Total Modeled	400,000	
Incidence for Each Risk Group, non-cumulative (case/yr)[d]	$\geq 1 \times 10^{-2}$	0	Not available
	$\geq 1 \times 10^{-3}$	0	
	$\geq 1 \times 10^{-4}$	0	
	$\geq 1 \times 10^{-5}$	0.0002	
	$\geq 1 \times 10^{-6}$	0.001	
	$< 1 \times 10^{-6}$	0.003	

[a]All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table for risk group incidence may not sum to the value given for total incidence.

[b]The estimated number of people exposed to ambient concentrations resulting in predicted individual risk levels above the level shown. Population is cumulative (e.g., at baseline 40,000 people are exposed to risks greater than or equal to 1 in 1,000,000).

[c]Risks were calculated on a plant-by-plant basis and summed. Persons exposed to emissions from more than one plant were counted for each plant's impact. The effects of double counting on individual and other risk estimates are discussed in Section IV of this notice.

[d]This is the estimated annual number of cases of leukemia for the population exposed to each risk level. It is not cumulative (e.g., at baseline there would be 0.001 case/yr in the population exposed to risk levels greater than or equal to 1 in 1,000,000 but less than 1 in 100,000).

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Application of Alternative Policy Approaches

The decisions that would result from application on each of the four policy approaches, described in Section V, to the EB/S process vents source category are presented below.

Approach A. Case-by-Case Approach

Decision on Acceptable Risk. The estimated maximum individual lifetime risk of EB/S process vents is 2×10^{-5} at baseline. (This is the increased risk of contracting cancer if an individual were exposed continuously to the maximum modeled annual average concentration of 0.8 ppb for 70 years). This estimate is within the range generally considered to be preferred under the case-by-case approach. The annual incidence at the baseline is estimated to be 0.004 leukemia case/yr, which is considered to be small. In addition, as the table shows, only 0.0002 case/yr is associated with lifetime risk levels of 1×10^{-5} or higher. Most of the incidence is associated with the large population exposed to predicted lifetime risks in the 10^{-6} range or lower. As noted in Section V, incidence estimates at the 10^{-6} and lower risk levels are given less weight under this approach because they are generally considered to be small and the uncertainty in the risk estimates increases at these lower levels. The modeled maximum benzene concentration from EB/S emissions in 0.8 ppb, which is close to the estimated average rural background exposure, but most of the population is exposed to lower concentrations from EB/S emissions.

Based on consideration of the preceding factors, the health impacts at the baseline benzene emission level from EB/S process vents are considered acceptable under the case-by-case approach.

Decision on Ample Margin of Safety. In determining an ample margin of safety under all four policy approaches, and for any source category, factors such as model uncertainties, available controls and the risk reductions they would achieve, the cost effectiveness of emission and risk reductions, and other relevant factors are considered.

For EB/S process vents, the estimates of annual incidence and maximum individual lifetime risk at the baseline emission level are quite low. Moreover, the majority (75 percent) of the incidence is associated with lifetime risk levels of less than 1×10^{-6}. A very small additional reduction in risk achievable by control of the few remaining uncontrolled intermittent emission sources using 98-percent efficient combustion devices (e.g., boilers and flares). Control of these sources would further reduce benzene emissions by approximately 100 Mg/yr. Such additional control measures could reduce the estimated maximum individual lifetime risk from 2×10^{-5} to 1×10^{-5} and could reduce the annual incidence by 0.003 case/yr. The estimated cost of this additional control is relatively low, about $200,000/yr (1982$).

The baseline risks are considered under this approach to provide an ample margin of safety given that the majority of the low baseline risk is associated with exposure at lifetime risks of less than 1×10^{-6}. Additional control is not warranted because the costs are disproportionately high when compared to the small reductions in risk which would be achieved. Present controls in the EB/S industry are in the form of product recovery devices or by routing emissions to the process unit's boilers to conserve energy (less fuel would be required due to the energy content of the waste stream). Thus, there is no incentive for removal of existing controls. Additionally, there is no incentive for new sources to waste product or energy and major new sources would be subject to other EPA requirements (e.g., new source review, prevention of significant deterioration). Thus, less effective controls are not expected in the future. For these reasons, no standard mandating the present control level is proposed under Approach A.

Approach B. Incidence-Based Approach

Decision on Acceptable Risk. Total annual incidence from benzene emissions from EB/S process vents is estimated to be 0.004 case/yr, or 1 case every 250 years. Under the criteria of the incidence-based approach, the baseline level of risk for EB/S process vents would clearly be acceptable.

Decision on Ample Margin of Safety. For EB/S process vents, the estimates of annual incidence and maximum individual risk are low. The maximum modeled annual average benzene concentration is 0.8 ppb, which is comparable to rural background levels. Most of the population is exposed to much lower concentrations from EB/S process vents.

The baseline level of emissions reflects the fact that most EB/S process vents already have emission control equipment. Control of the remaining uncontrolled intermittent emission sources would further reduce benzene emissions by approximately 100 Mg/yr. Estimated annual incidence would be reduced by 0.003 case/yr, leaving a residual incidence of 0.001 case/yr. The majority of the baseline incidence is associated with the population at lifetime risk levels below 1×10^{-6}, and most of the incidence reduction is associated with the population exposed to these low risk levels. The estimated cost of this additional control is estimated to be about $200,000/yr (1982$).

Under the incidence-based approach, the baseline incidence is considered to provide an ample margin of safety. Factors considered in this determination include the fact that the population is exposed to very low risk levels at baseline and the disproportionate cost of control relative to the small risk reduction which could be achieved. Furthermore, for reasons stated in the discussion of Approach A, EPA would not propose a standard to mandate the present level of control under this approach.

Approach C. 1×10^{-4} or Less Maximum Individual Risk Approach

Decision on Acceptable Risk. As shown in Table VII–1, the maximum individual lifetime risk at baseline is estimated to be 2×10^{-5}. As previously discussed, this risk level is associated with exposures to an annual average concentration of 0.8 ppb continuously for a period of 70 years.

Under the criterion of this approach, which requires target maximum individuals risks in the range of 1×10^{-4} or less, the baseline risks would be judged acceptable.

Decision of Ample Margin of Safety. For EB/S process vents, the estimates of annual incidence and maximum individual risks are low. The predicted baseline maximum individual risk of 2×10^{-5} is within the target range for Approach C, and is well below the 1×10^{-4} level. As described in the discussions of Approaches A and B, the majority of the population exposed to emissions from EB/S process vents are exposed to risk levels below 1×10^{-6}. Only a small reduction in risks would be achievable using known control techniques. Maximum individual risks would be reduced from a baseline level of 2×10^{-5} to a level of 1×10^{-5} by applying these controls, and incidence would be reduced by 0.003 case/yr.

Considering the above factors, the baseline emission level would be judged to provide an ample margin of safety under policy Approach C. Furthermore, for reasons discussed in the section on Approach A, EPA would not propose a standard to mandate the present level of control.

Approach D. 1×10^{-6} or Less Maximum Individual Risk Approach

Decision on Acceptable Risk. At baseline, the estimated maximum individual lifetime risk is 2×10^{-5}, and maximum risks for 6 of the 13 facilities exceed the Approach D target maximum risk level of 1×10^{-6}. Therefore, under Approach D, the baseline risks would be judged unacceptable, and EPA would propose standards to reduce maximum individual risks to at or below 1×10^{-6}.

Decision on Ample Margin of Safety. For the facilities with baseline maximum individual risks above 1×10^{-6}, EPA cannot identify control technologies that would achieve risk levels of 1×10^{-6} or lower. As previously noted, application of the additional feasible control to uncontrolled intermittent emission sources would result in an estimated maximum risk of 1×10^{-5}, which exceeds the target level of Approach D of 1×10^{-6}. Thus, the only types of standards that could be proposed to reduce maximum individual risk to below 1×10^{-6} for all facilities would be emission limits, emission limits with risk-based waiver provisions, or risk-based limits. These limits would apply to the total combined benzene emissions from all process vents at an EB/S facility.

Under an emission limit format, total emissions from all facilities would be required to be below a given level. The level would be computed to ensure that no facility would cause maximum risks above 1×10^{-6}. However, since risk estimates will vary even for facilities with the same emission rate depending on dispersion characteristics (e.g., stack height, exit velocity, and flue gas temperature), meteorology, and population patterns, some facilities complying with the emission limit could have maximum individual risks well below 1×10^{-6}.

Under an emission limit with a risk-based waiver, a facility would be permitted a waiver from the emission limit if it could demonstrate that because of emission source dispersion characteristics, meteorology, or population patterns (in the case in which maximum risk were determined with reference to actual residences), the generally applicable emission limits resulted in maximum individual risks lower than 1×10^{-6}.

If a risk-based limit were chosen, each facility would have to reduce emissions to achieve estimated maximum individual risks of 1×10^{-6} or lower. Under this format, as well as the emission limit with risk-based waiver format, emission rates would be allowed to vary among facilities. The emission reduction required for each facility could be determined by facility-specific dispersion and exposure modeling. This alternative format could allow for land use planning in addition to emission reductions as means of achieving the target risk level.

To implement either a standard or a waiver to an emission limit that is risk-based, EPA would have to develop guidance on acceptable methodology for conducting the risk modeling. This would include guidance on acceptable (1) dispersion modeling assumptions such as, meteorology and atmospheric stability; (2) characterization of the emission rate, gas exit velocity and temperature, and release height of the emission sources; (3) estimation of the population and their location in the modeled area; and (4) the radial distances from the source for which concentrations are estimated. In addition, the Agency would have to decide whether maximum individual lifetime risk is to be determined at actual or potential sites of exposure. Even with the models used by EPA in risk assessments, many different assumptions can be used and these can significantly affect the estimates. Without such guidance it would be difficult for enforcement personnel to determine if the modeling analysis is appropriate for demonstrating compliance or to demonstrate that a modeling analysis is unacceptable. Although guidance can be developed from the existing models, it would require more time than is available under the court order to define precisely the range of acceptable assumptions for site-specific analyses.

For benzene, an ambient monitoring alternative to site-specific risk analysis also cannot be used for either 1×10^{-6} or 1×10^{-4} standards. A 1×10^{-6}, or lower, standard would require the benzene concentration from the source to be 0.04 ppb or lower; for a 1×10^{-4} risk standard, the concentration would be 4 ppb, or lower. Since background concentrations of benzene are typically 1 to 6 ppb, it would not be feasible to differentiate between a source's contribution to ambient concentrations and variations in natural background levels or in analytical measurements. Thus, compliance with or violation of the standards could not be demonstrated by monitoring.

As with a risk-based standard or waiver, it will take considerable time both to develop procedures, and to review and approve demonstrations of compliance with an emission limit standard. Compliance with an emission limit is expected to require extension of available procedures to low concentrations or development of new test methods and acceptable engineering analyses. In addition, many facilities may elect, subject to EPA approval, to conduct site-specific analyses including testing. In such cases it would be resource intensive to industry and EPA to implement the standard. However, of the alternatives, the risk-based limit is considered to present somewhat greater difficulties because of the additional considerations involved.

Therefore, in today's notice, to illustrate the effects of applying policy Approach D (1×10^{-6} risk target), EPA has selected an emission limit alternative. It is anticipated that all the alternatives would be difficult and costly to implement. However, the Agency requests comments on all alternatives.

The emission limit that would ensure that no EB/S plant produces maximum individual risks exceeding 1×10^{-6} is a total emission limit of 5.5 kg benzene/day (or 2 Mg/yr) from all process vents at any EB/S facility. This emission limit was calculated by determining the emission/risk ratios for EB/S facilities that control all process vent streams by combustion as seen in the risk modeling results and calculating the emission level that would correlate to a maximum risk of 1×10^{-6} for facilities with the highest risk per unit of emissions. This calculation assumes that risk will be reduced in proportion to emissions.

With an emission limit of 5.5 kg benzene/day, annual emissions from the 13 facilities would be reduced to no more than 26 Mg/yr if all 13 facilities continued to operate. Annual incidence for EB/S process vents would be reduced to about 0.0007 case/yr. No individual would be exposed to a lifetime risk level above 1×10^{-6}, and the majority of the population would be exposed to much lower levels. Therefore, under Approach D, this emission limit would also be considered to provide an ample margin of safety.

Since EPA has not identified control techniques that would reduce benzene emissions to 5.5 kg/day, the owners or operators would have to determine appropriate means of demonstrating compliance with the standard. Furthermore, the benzene concentrations in the exhaust gas that would be required to meet this emission limit at some facilities are below detectable concentrations using the available EPA-approved test methods. Therefore, EPA requests comments on how compliance would be demonstrated under this approach. It is also unknown if plantwide emissions can be reduced to 5.5 kg/day at all facilities. Controlled

process vents emissions at 8 of 13 facilities operating in 1985 exceeded this limit. Because EPA does not know how the standard might be achieved at those facilities, EPA cannot at present estimate the costs or economic impacts of achieving this emission limit. However, it is thought that some closures might result due to technical difficulties of achieving the emission limit. The potential economic impacts of any closures could include increased unemployment and the associated community impacts, loss of tax revenues, and price increases. The EPA also invites comment on the economic impacts of closure.

VIII. Benzene Storage Vessels

Source Category Overview

As of the June 6, 1984, withdrawal of the proposed standard for benzene storage vessels, 126 facilities with benzene storage vessels were identified. These facilities generally have multiple vessels. Benzene storage vessels are located in petroleum refineries, chemical plants, and bulk storage terminals.

Estimation Methods and Uncertainties

In analysis of the benzene storage vessel source category, as with other sources of benzene emissions, emission estimates were used in calculating leukemia risk. This section discusses how benzene emissions and the associated health risks were calculated for benzene storage vessels and the uncertainties associated with these estimates.

Benzene emission estimates presented in this notice are based on vessels at 126 plants, using model vessels as a basis for the estimates. The emission estimates have not been revised or updated since the analysis for the withdrawal of the proposed standard in 1984. When developing benzene emission estimates for storage vessels, EPA carefully considered data from four different testing programs conducted by Chicago Bridge and Iron for a storage vessel vendor, EPA, and API (two test programs). These tests spanned the range of equipment configurations typically used on benzene storage vessels such as various roof and seal types.

The emission estimates derived from the testing programs were applied to model units for large and small benzene producers, benzene consumers, and bulk storage terminals. The model units were assigned to each of 126 plants with benzene storage vessels in one or more of the above uses. Total emissions are estimated to be between 620 and 1,290 Mg benzene per year. The lower end of this range, 620 Mg/yr, reflects the assumption that all storage vessels have continuous seals. The upper end of the range, 1,290 Mg/yr, was based on the assumption that some vessels are equipped with shingled seals, which emit more benzene than continuous seals. The number of vessels estimated to have shingled seals is based on a 1978 survey of benzene storage vessels.

The Agency believes that the emission factor used to estimate emissions from vessels with shingled seals is likely higher than the true value. The emission tests on shingled seals involved some test procedure irregularities which EPA strongly believed caused emissions to be overestimated, although the Agency could not quantify this overestimation. More details on the development of emission estimates from test data can be found in the Withdrawal BID.

The risk of leukemia attributable to benzene emissions from benzene storage vessels was calculated based on the range of emission estimates that reflect the assumptions about the use of continuous seals and shingled seals. In developing the risk estimates, EPA ran the HEM based on the assumption that all model vessels had continuous seals. From these results, the estimates were proportioned to reflect the use of shingled seals. The HEM was run for 126 plants with exposure modeling to a 20-km radius around each plant.

Industry practice is to equip new benzene storage vessels with continuous seals rather than shingled seals. Thus, over the 70-year risk estimating period as existing shingled seal vessels are replaced with new continuous seal vessels, the estimated emissions and risks from storage vessels will likely lessen.

For a general discussion of risk assessment and modeling uncertainties, the reader is referred to Section IV of this preamble.

Risk Characterization

In deciding what level of risk is acceptable under the four approaches, the Administrator considered the range of levels presented in Table VIII-1, including, as noted previously, a zero emissions level.

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TABLE VIII-1. RISKS[a] FROM BENZENE STORAGE VESSELS AT DIFFERENT EMISSION LEVELS

		Emission Levels	
		Baseline	A
Incidence (case/yr)		0.05 - 0.1	0.03
Maximum Individual Lifetime Risk (MIR)		4×10^{-5} to 4×10^{-4}	3×10^{-5}
Risk Distribution cumulative (persons)[b,c] (modeled to 20 km)	$\geq 1 \times 10^{-2}$	0	0
	$\geq 1 \times 10^{-3}$	0	0
	$\geq 1 \times 10^{-4}$	10	0
	$\geq 1 \times 10^{-5}$	20,000	700
	$\geq 1 \times 10^{-6}$	900,000	80,000
	Total Modeled	70,000,000	70,000,000
Incidence for Each Risk Group, non-cumulative (case/yr)[d]	$\geq 1 \times 10^{-2}$	0	0
	$\geq 1 \times 10^{-3}$	0	0
	$\geq 1 \times 10^{-4}$	0	0
	$\geq 1 \times 10^{-5}$	0.004	0.0002
	$\geq 1 \times 10^{-6}$	0.02	0.02
	$< 1 \times 10^{-6}$	0.08	0.01

[a] All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table for risk group incidence may not sum to the value given for total incidence.

[b] The estimated number of people exposed to ambient concentrations resulting in predicted individual risk levels above the level shown. Population is cumulative (e.g., at baseline 900,000 people are exposed to risks greater than or equal to 1 in 1,000,000).

[c] Risks were calculated on a plant-by-plant basis and summed. Persons exposed to emissions from more than one plant were counted for each plant's impact. The effects of double counting on individual and other risk estimates are discussed in Section IV of this notice.

[d] This is the estimated annual number of cases of leukemia for the population exposed to each risk level. It is not cumulative (e.g., at baseline there would be 0.02 case/yr in the population exposed to risk levels greater than or equal to 1 in 1,000,000 but less than 1 in 100,000).

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The levels represent example scenarios to show how different emission levels would result in different health risk profiles. The table summarizes the risks (i.e., annual incidence, maximum individual lifetime risk, risk distribution, and incidence by risk group) that were estimated for the baseline emission level and a lower level shown as Emission Level A. The baseline represents the emissions as of 1984 with no Federal standard (i.e., the emission level ranging from 620 Mg/yr to 1,290 Mg/yr).

Application of Alternative Policy Approaches

The decisions that would result from application of each of the four policy approaches, described in Section V, to the benzene storage vessel source category are presented below.

Approach A. Case-by-Case Approach

Decision on Acceptable Risk. As shown in Table VIII–1, the estimated maximum individual lifetime risk at baseline ranges from 4×10^{-5} to 4×10^{-4}. (This is the increased risk of contracting cancer if an individual were exposed continuously to the maximum extrapolated concentration of 1 to 15 ppb for 70 years). These estimates are within the range generally considered to be preferred under the case-by-case approach. The lower end of this range reflects the assumption that all storage vessels have continuous seals, while the upper end of the range is based on the assumption that all vessels at the maximum risk plant have shingled seals. The upper end of the range 4×10^{-4}) is a particularly conservative estimate for three reasons. First, the emission estimate for shingled seals is believed to be an overestimate. Second, the assumption that all storage vessels at the maximum risk plant have shingled seals is a worst-case assumption and probably overestimates the risk. Third, over the assumed 70-year exposure period, many of the existing vessels will be replaced and the new vessels will likely have continuous seals and, therefore, lower emissions.

The estimated annual incidence ranges from 0.05 to 0.1 case/yr. The range reflects the range of emission estimates discussed above (620 to 1,290 Mg/yr). These incidence levels are considered to be relatively small. Furthermore, 0.004 case/yr is associated with a lifetime risk level of 1×10^{-5} or higher. Therefore, almost all of the incidence (0.1 case/yr) is associated with the large population exposed to lifetime risks in the 10^{-6} range or less. As previously noted, incidence estimates at the 10^{-6} risk level and lower are given less weight because they are generally considered to be small and the uncertainty in the risk estimates increases at these lower risk levels.

The annual average concentrations due to emissions from benzene storage vessels that result in the maximum risk range of 4×10^{-5} to 4×10^{-4} are around 1 to 15 ppb. Additionally, as mentioned above, essentially all of the incidence is associated with risks in the 10^{-5} range or less; these risks are from exposure to concentrations of less than 4 ppb. Average urban ambient (background) concentrations are around 3 to 6 ppb (see Section IV).

After consideration of the above factors, the baseline level of risk for benzene storage vessels is determined to be acceptable under the case-by-case approach.

Decision on Ample Margin of Safety. For further analysis, the Agency examined two control options that would require all vessels to have emission reduction equipment that many vessels already have. Option 2 would require the use of internal floating roofs on fixed roof tanks, more effective primary seals, improvements to fittings (e.g., gaskets), and secondary seals on external floating roof tanks. These are the same controls that are required for volatile organic liquid storage vessels (including benzene vessels) in 40 CFR Part 60, Subpart Kb, which affects vessels constructed or rebuilt after July 23, 1984. Option 1 would require the controls under Option 2 and additionally require secondary seals for internal floating roof tanks. The estimated impacts of the options are shown in Table VIII–2. These include the emission reduction, annual control cost, cost per Mg of emission reductions, the residual incidence, and the maximum individual lifetime risk.

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TABLE VIII-2. IMPACTS OF OPTIONS FOR BENZENE STORAGE VESSELS

Option	Annual Cost ($MM/yr) 1982[a]	Emission Reduction (Mg/yr)[b]	Average[c] $/Mg	Incremental[c] $/Mg	Population Left at Risk >1 x 10^{-4}	Residual Incidence[d]	Maximum Individual Lifetime Risk[d]
1	1.3	900	1,400	9,900	0	0.03	3×10^{-5}
2	0.1	780	140	140	0	0.04	3×10^{-5}
Baseline	0	0[e]	0	0	0 to 10	0.05 to 0.1	4×10^{-5} to 4×10^{-4}

[a] $MM is millions of dollars. The dollar year is 1982.

[b] Bz = benzene, VOC = volatile organic compounds.

[c] "Average" means compared to baseline. "Incremental" numbers compare each option with next less stringent option. They are not the same as the highest incremental value per source type.

[d] Risk estimates are rounded to one significant figure. Note that essentially all of the baseline incidence occurs in the large population with risk levels of 10^{-5} or less. These risks are associated with exposure to concentrations of less than 4 ppb. Average urban ambient (background) concentrations are around 3 ppb.

[e] Baseline emissions are between 620 and 1,290. The reductions are calculated from 1,290 Mg/yr, which is the more likely value of the two ends of the emissions range.

Option 2 would reduce the estimated maximum individual lifetime risk to 3×10^{-5} from the baseline range of 4×10^{-5} to 4×10^{-4}. (Under the control options, the risks are not expressed as ranges because all vessels would be required to have continuous seals. Thus, no facility could have vessels with shingled seals, which represent the upper end of the baseline range). The estimated annual incidence would be reduced by 0.01 to 0.06 case/yr. This option would also substantially reduce the population exposed to risk levels of greater than 1×10^{-5} and 1×10^{-6}. The nationwide annual costs associated with Option 2 are $0.1 million/yr, which are considered to be relatively low.

The Agency also considered Option 1. However, it would result in no additional reduction in maximum individual lifetime risk beyond that achieved by Option 2. Furthermore, annual incidence would be reduced by only an additional 0.01 case/yr, at a cost of $1.3 million/yr. The additional incidence reduction is associated mainly with the population exposed to lifetime risk levels of below 1×10^{-6}.

Under Approach A, EPA would consider Option 2 to provide an ample margin of safety. Although the baseline risks are relatively low (considering the conservatism in the upper end of the range), they can be reduced further at a reasonable cost using available control technology. Additional controls beyond Option 2 are not warranted. The costs of additional controls are disproportionately high considering that no additional reduction in maximum individual lifetime risk and only a small reduction in annual incidence would be achieved.

The regulation proposed under this approach would consist of the equipment specifications and operating practices described in Section XII.

A question in all of the approaches for the ample margin of safety decisions is whether to require all technically feasible controls for which costs are in some sense reasonable no matter how small the health risk or whether there is some risk reduction which is too small to warrant the public cost of rulemaking. Public comment is requested on this area.

Approach B. Incidence-Based Approach

Decision on Acceptable Risk. Total annual incidence resulting from benzene emissions from storage vessels is estimated to range from 0.05 to 0.1 case/yr. As previously described, the range reflects the range in emission estimates. The lower end of the range is based on the assumption that all plants have continuous seals while the upper end is based on the assumption that some vessels are equipped with shingled seals, which emit more benzene than continuous seals. Under the criteria of the incidence-based approach, the baseline level of risk for benzene storage vessels would clearly be acceptable.

Decision on Ample Margin of Safety. For benzene storage vessels, the estimates of annual incidence and maximum individual risk at the baseline emission level are relatively low and the upper end of the estimated ranges are conservative. Essentially all of the annual incidence is associated with lifetime risks below 1×10^{-5}, and the great majority of incidence (about 80 percent, or 0.08 out of 0.1 case/yr) is associated with lifetime risk levels of below 1×10^{-6}. Risk levels of 1×10^{-5} and below are associated with ambient concentrations of 0.4 ppb and lower, which is close to the average rural background exposure.

The baseline estimates reflect the assumption that most storage vessels are already fitted with equipment that reduces emissions. However, additional reduction in risk would occur by requiring that all vessels have emission reduction equipment. Table VIII–2 shows the impacts of two control options which are described under the discussion for Approach A. Option 2 would reduce the estimated maximum individual lifetime risk to 3×10^{-5} and incidence by 0.01 to 0.06 case/yr (from baseline) at a reasonable cost. Option 1 would further reduce residual incidence by 0.01 case/yr and would not change the maximum individual lifetime risk compared to Option 2. This would cost $1.3 million/yr. For these reasons (which are described more fully under Approach A), Option 2 would be considered to provide an ample margin of safety under Approach B. Additional control beyond Option 2 would not be warranted. The details of the equipment specifications and operating practices that are proposed under this approach are described in Section XII.

As with Approach A, a question was whether to require in the ample margin of safety step all technically feasible controls for which costs are in some sense reasonable no matter how small the health risk or whether there is some risk reduction which is too small to warrant the public cost of rulemaking.

Approach C. 1×10^{-4} or Less Maximum Individual Risk Approach

Decision on Acceptable Risk. As shown in Table VIII–1, the estimated maximum individual lifetime risk at baseline ranges form 4×10^{-5} to 4×10^{-4}. The upper end of the range, which exceeds the target risk, reflects the assumption that all storage vessels at the maximum risk plant have shingled seals. Under the criteria of the approach requiring target maximum risks in the range of 1×10^{-4} or less, the baseline risks would not be considered acceptable. Additional control would be necessary to reduce risks to an acceptable level at or below the 1×10^{-4} target.

Decision on Ample Margin of Safety. Reduction in maximum individual lifetime risks to below the 1×10^{-4} level can be achieved through application of available emission control equipment. Two options considered are shown in Table VIII–2. As previously noted, many benzene storage vessels are already fitted with emission reduction equipment at baseline. As noted in Approach A, Option 2 would require that all vessels have emission reduction equipment including the use of internal floating roofs on fixed roof tanks, more effective primary seals, improvements to fittings (e.g., gaskets) and secondary seals on external floating roofs. This option would reduce the estimated maximum individual lifetime risk to 3×10^{-5}, which is within the target range. Estimated annual incidence would be reduced by 0.01 to 0.06 case/yr. This would substantially reduce the population exposed to risk levels of greater than 1×10^{-5}. Control of the maximum individual risk to this level also reduces the population exposed to lifetime risks levels between 1×10^{-6} and 1×10^{-5}. The costs associated with this option are about $0.1 million/yr, which are considered to be low.

Option 1 would result in no additional reduction in maximum individual risk beyond that achieved by Option 2 (i.e., maximum risk would remain at the 3×10^{-5} level). Furthermore, annual incidence would be reduced by only an additional 0.01 case/yr, at a cost of $1.3 million/yr. The additional incidence reduction is associated mainly with the population exposed to lifetime risk levels of below 1×10^{-6}.

Under Approach C, EPA would consider Option 2 to provide an ample margin of safety. This option would reduce the maximum individual risk to within the target range and well below the 1×10^{-4} level. As described above, the population exposed to lifetime risks in the 10^{-5} and 10^{-6} ranges would be significantly reduced. Additional controls beyond Option 2 are not warranted. The costs of additional controls are disproportionately high considering that no additional reduction in maximum individual risk and only a

very small reduction in annual incidence would be achieved.

The regulation proposed under this approach would consist of the equipment specifications and operating practices described in the summary of standards in Section XII of this preamble.

Approach D. 1×10^{-6} or Less Maximum Individual Approach

Decision on Acceptable Risk. At baseline, the estimated maximum individual lifetime risk ranges from 4×10^{-5} to 4×10^{-4}, as described in previous sections. Since this is clearly above the 1×10^{-6} target risk level of Approach D, baseline risks would be judged unacceptable under this approach. Under this approach, EPA would propose standards to reduce the maximum individual risk to 1×10^{-6} or less.

Decision on Ample Margin of Safety. The EPA cannot explicitly state at this time what control technologies would be capable of achieving maximum individual lifetime risk levels of 1×10^{-6} or lower for all facilities with benzene storage vessels. As shown in Table VIII–2, application of the identified control techniques (Options 1 and 2), would result in an estimated maximum individual risk of 3×10^{-5}, which is still significantly above the target level of Approach D of 1×10^{-6}. Therefore, a facility emission limit (or risk limit) is currently the only means of reducing maximum individual risks to below 1×10^{-6} at all sites. As previously discussed in the EB/S section (Section VII) under Approach D, an emission limit format has been selected for illustrative purposes, however comments on both formats are requested.

The emission limit that would ensure that no facility produces maximum individual risks exceeding 1×10^{-6} is 0.47 kg/day (170 kg/yr). This emission limit would apply to the combined emissions from all benzene storage vessels located at a facility. The emission limit was calculated by proportional reduction of emissions from the storage facility with the highest maximum individual risk per unit of emissions.

With an emission level of 0.47 kg/day, annual emissions for the estimated 126 plants would be reduced to below 22 Mg/yr if all plants continued to store benzene. Annual incidence from benzene storage vessels would be reduced to about 0.002 case/yr, and no individual would be exposed to a lifetime risk level greater than 1×10^{-6}. Moreover, the majority of the population would be exposed to lifetime risk levels much lower than 1×10^{-6}. Therefore, under Approach D, this emission limit would be judged to provide an ample margin of safety.

Since EPA has not identified control techniques that would reduce emissions to 0.47 kg/day at all facilities, the owners or operators would have to determine the appropriate means of demonstrating compliance with the standard. One possibility that a plant may consider for complying with the emission limit is the venting of emissions from all storage vessels to a combustion device, such as a flare. However, EPA does not presently know if the emission limit could be achieved at all plants if this technique were applied to fixed roof vessels with no control equipment such as internal floating roofs. Moreover, EPA is not able to determine at this time whether the combination of emission reduction equipment (i.e., Options 1 and 2 in Table VIII–2) with a flare could achieve the emission limit at all plants. This is because EPA does not presently know if the emission reduction equipment specified in Options 1 and 2 will achieve as much control when used in combination with a flare as when used alone.

Because EPA does not know how the standard might be achieved, EPA cannot at present estimate the costs or economic impacts (including the potential for closures) of achieving this emission limit. However, it is expected that, at a mininum, the costs would be greater than those shown for the most stringent identified control technology (Option 1) in Table VIII–2. For example, the cost of retrofitting existing storage vessels with add-on control devices, such as flares, would vary with vessel design and the control device added. If a flare were used, an existing vessel may have to be replaced if it were unable to handle an inert gas blanket (which may be needed to avoid venting oxygen-containing streams to the flare). Also, the cost would vary depending on whether a flare were available onsite, and on the amount of supplemental fuel that was necessary for the flare.

IX. Equipment Leaks

Source Category Overview

Typical stationary sources which handle benzene and, therefore, are likely to have fugitive benzene emissions from equipment leaks are petroleum refineries, chemical plants, and bulk storage terminals. As of publication of the final rules for benzene equipment leaks in 1984, there were 131 such facilities in the United States. These facilities are now required to be in compliance with the standard specified in 40 CFR Part 61, Subpart J, that was promulgated in 1984.

In these facilities, the fugitive emission sources of benzene are pieces of equipment handling process streams that contain benzene. These sources include pumps, pipeline valves, open-ended valves, flanges, compressors, safety/relief valves, sampling connections, process drains, and product accumulator vessels. The standard affects equipment that contacts process streams with at least 10 percent benzene (by weight).

Estimation Methods and Uncertainties

The evaluation of human health effects of benzene emissions from equipment leaks involved estimating emissions from the equipment sources described above and then using the HEM to predict concentrations, exposures, and leukemia risks from the estimated exposures. In addition to the uncertainties inherent in estimating risk described in Section IV of this preamble, considerable uncertainty is involved in estimating emissions from equipment leaks of benzene. This section describes the methods EPA used and highlights areas of uncertainty, so that the basis and limitations of the EPA's estimates can be better understood.

When Subpart J was promulgated in 1984, EPA estimated the NESHAP would reduce benzene emissions from equipment leaks by about 69 percent from the existing baseline. The standard was estimated to reduce benzene emissions from about 7,900 Mg/yr to 2,500 Mg/yr. The estimate of 2,500 Mg/yr is based on all 131 facilities existing in 1984 implementing the requirements of Subpart J. The Agency's current estimate of benzene emissions from equipment leaks remains as 2,500 Mg/yr. This estimate has not been revised to reflect changes in the number of facilities or changes in typical industry practices which might have occurred after promulgation of the standard and which might have affected the quantity of benzene emitted from equipment leaks. To be meaningful, such adjustments must be based on additional information and actual analysis of current industry practices. However, such analysis and revisions to the emission estimate based on a new analysis were not feasible in the time available for reconsideration of the standard.

A model unit methodology based on estimated average numbers of various equipment components was used to estimate benzene equipment leak emissions. Emissions for each model

unit were estimated using petroleum refinery VOC emission factors for each equipment component as explained in a memorandum to the docket (Docket No. A–79–27, Docket Item IV–B–22) and in the Promulgation BID. Average weight percentages of benzene assumed for each model unit's process stream were used to adjust the VOC emissions to total benzene emissions as described in the Proposal BID, pp. 7–6 to 7–7. The petroleum refinery VOC emission factors were developed statistically from field measurements. An explanation and analysis of emission factor development may be found in the AID. Emission estimates made using the emission factors and model units were aggregated on a process unit basis to develop nationwide estimates and on a facility basis to estimate population exposures and risks (Docket No. A–79–27, Docket Item IV–B–11).

As stated previously, the 2,500 Mg/yr was based on compliance by all facilities with the NESHAP. Control efficiencies reflected in this estimate were based on estimates of efficiencies of NESHAP controls as shown in Table IX–1 for each equipment type. Finally, the entire emission estimation procedure is described more completely in the Promulgation BID and the AID.

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TABLE IX-1. EFFICIENCIES OF CONTROLS FOR EQUIPMENT LEAKS

Equipment Component	Control Technique	Percent Reduction in Benzene Emissions[a]
Pumps	Monthly leak detection and repair	61
Compressors	Degassing reservoir vents	100
Valves:		
Gas	Monthly leak detection and repair	73
Liquid	Monthly leak detection and repair	59
Pressure relief devices	Control equipment (no detectable emissions)	100
Sampling connections	Closed-purge sampling	100
Open-ended lines	Caps on open ends	100

[a]Percent reductions in benzene emissions based on data from the AID, Docket No. A-79-27, Docket Item IV-A-24. Benzene emissions were assumed to be reduced by the same percentage as VOC emissions.

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In evaluating uncertainties in the emission estimates, two issues should be mentioned. One involves the representativeness of petroleum refinery average emission factors used for estimating emissions of benzene. The benzene sources overall may have lower percentages of leaking equipment than were observed in the petroleum industry before implementation of leak controls. Recent studies indicate that the percentage of leaking components is probably lower than previously estimated due to changes over time and use of better controls for chemicals such as benzene with known human health risks. Specifically, limited surveys of sources subject to Subpart J show that the leak frequencies for valves are 2 percent or less (Docket No. A–79–27, Docket Items VII–I–2, VII–E–4, VII–D–2, VII–B–2). Evidence shows that improved maintenance does result in fewer leaking components and lower emission rates (Docket No. A–79–27, Docket Item VII–B–2). This lower percentage of leaking sources indicates that emission estimates may be overstated. The equipment leak estimates were calculated using factors estimating emissions for leaking and for nonleaking equipment, and these factors reflect average emission rates from facilities with higher percentages of leaking sources. For facilities with lower percentages of leaking sources, these factors will overestimate emissions for two reasons. First, the percentage of leaking sources, and hence the overall factor is overstated. Second, the average emission rates for leaking and nonleaking sources will not be characteristic of the distribution of sources at the facility. Therefore, the 2,500 Mg/yr estimate for equipment leak benzene emissions is likely to be overstated. However, the EPA believes that this level of control would not necessarily be found in the absence of a regulation.

The second uncertainty involved in the emission estimates concerns the assumed use of ordinary pumps and values in the model units. In actual practice, many facilities may use equipment with a lower potential to leak. Information has been submitted to the Agency showing that primary pumps in benzene service have been equipped with dual mechanical or packless seals in some facilities (Docket No. A–79–49, Docket Item II–D–13; Docket No. OAQPS 79–3, Part II, Docket Item II–D–008; Docket No. A–79–27, Docket Items II–D–65, II–D–70, II–D–77). The use of equipment with lower leak rates is not reflected in the emission estimates. Moreover, as mentioned previously, within the time allowed for reconsideration of the standard, it was impossible to revise the analysis of industry practice. Consequently, the emission estimates for the 131 facilities were viewed as upperbound estimates, and it is recognized that actual emissions today may be substantially lower.

The benzene equipment leak emission estimates for the 131 plants were input to the HEM and used to estimate population exposure and leukemia risks. Modeling revisions since 1984 included an extension of the modeling radius around each source from 20 to 50 km, and incorporation of the revised URE. For a general discussion of risk assessment and modeling uncertainties, the reader is referred to Section IV of this preamble.

In addition to the general modeling uncertainties discussed in Section IV, dispersion modeling of equipment leaks contains more uncertainty than modeling of emissions from stacks because equipment leaks are area sources. Only extremely limited verifications of area source modeling methodologies have been done to date. It is not possible to estimate the uncertainty because the uncertainty varies with the specific plant location and the meteorology used.

Risk Characterization

In deciding what level of risk is acceptable for equipment leaks under the four approaches, EPA considered the range of levels shown in Table IX–2. The levels represent example scenarios to show how different emission levels would result in different health risk profiles. Table IX–2 summarizes the risks (i.e., annual incidence, maximum individual lifetime risk, risk distribution, and incidence by risk group) that were estimated for the baseline emission level and two lower emission levels, shown as Emission Levels A and B. The baseline represents the emissions remaining after application of the NESHAP promulgated in 1984 (i.e., 2,500 Mg/yr).

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TABLE IX-2. RISKS[a] FROM EQUIPMENT LEAKS AT DIFFERENT EMISSION LEVELS

		Emission Levels		
		NESHAP (Current Baseline)	A	B
Incidence (case/yr)		0.2	0.1	0.04
Maximum Individual Lifetime Risk		6×10^{-4}	2×10^{-4}	4×10^{-5}
Risk Distribution, cumulative, (persons)[b,c] (modeled to 50 km)	$\geq 1 \times 10^{-2}$	0	0	0
	$\geq 1 \times 10^{-3}$	0	0	0
	$\geq 1 \times 10^{-4}$	3,000	600	0
	$\geq 1 \times 10^{-5}$	60,000	20,000	5,000
	$\geq 1 \times 10^{-6}$	1,000,000	300,000	200,000
	Total Modeled	200,000,000	200,000,000	200,000,000
Incidence for Each Risk Group, non-cumulative (case/yr)[d]	$\geq 1 \times 10^{-2}$	0	0	0
	$\geq 1 \times 10^{-3}$	0	0	0
	$\geq 1 \times 10^{-4}$	0.007	0.001	0
	$\geq 1 \times 10^{-5}$	0.02	0.006	0.001
	$\geq 1 \times 10^{-6}$	0.04	0.01	0.005
	$< 1 \times 10^{-6}$	0.2	0.08	0.03

[a] All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table for risk group incidence may not sum to the value given for total incidence.

[b] The estimated number of people exposed to ambient concentrations resulting in predicted individual risk levels above the level shown. Population is cumulative (e.g., at baseline 1,000,000 people are exposed to risks greater than or equal to 1 in 1,000,000).

[c] Risks were calculated on a plant-by-plant basis and summed. Persons exposed to emissions from more than one plant were counted for each plant's impact. The effects of double counting on individual and other risk estimates are discussed in Section IV of the notice.

[d] This is the estimated annual number of cases of leukemia for the population exposed to each risk level. It is not cumulative (e.g., at baseline there would be 0.04 case/yr in the population exposed to risk levels greater than or equal to 1 in 1,000,000 but less than 1 in 100,000).

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Application of Alternative Policy Approaches

The decisions that would result from application of each of the four policy approaches, described in Section V, to the benzene equipment leaks category are presented below.

Approach A. Case-by-Case Approach

Decision on Acceptable Risk. As shown on Table IX–2, the estimated maximum individual lifetime risk of 6×10^{-4} at the NESHAP emission level would fall within the range generally considered to be preferred under the case-by-case approach. (This is the increased risk of contracting cancer if an individual were exposed continuously to the maximum modeled annual average concentration of 35 ppb for 70 years). The estimated annual incidence at baseline is 0.2 case/yr, and nearly all of these cases occur in the large population exposed to predicted lifetime risks in the 10^{-6} range and lower. As noted in Section V, incidence estimates at the 10^{-6} and lower risk levels are given less weight under this approach because they are generally considered to be small and the uncertainty in the risk estimates increases at these lower risk levels.

In deciding an acceptable risk level under the case-by-case approach, EPA particularly examined the uncertainties discussed in Section IV and described earlier in this section. The assessment of these factors is summarized below. The overall weight of evidence for benzene carcinogenicity is strong (the URE is based on data from occupational exposure studies). Although the use of alternative dose/response models could produce different URE's for benzene (Docket Number OAQPS 79–3, Part I, Docket Item VIII–A–4), the linear non-threshold model used by EPA represents the best fit for the available data. The model is judged, however, to be conservative and therefore, the URE, as a measure of leukemogenic potency, could be considered to err in favor of the protection of public health. This URE, however, does not include nonleukemia cancer risks because statistical associations with other cancers have been found to date only in animal bioassays.

As previously noted, exposure modeling contains uncertainties and is based on emission estimates and other assumptions that, in this case, tend to overstate exposures. Specifically, the assumption that individuals are exposed continuously to the maximum modeled annual average concentration for 70 years may overestimate maximum individual lifetime risk. The assumption that the facilities will continue to operate at the same emission rate for 70 years particularly tends to overstate exposures because it ignores changes in design and operation of chemical plants and petroleum refineries. Furthermore, as discussed in the previous section, the annual emission estimates used in the analysis are considered to represent an upperbound estimate. If actual emissions and the expected decline in emissions over time could be considered in the exposure analysis, the risk estimates would be proportionally lower.

Even under these conservative emission assumptions, the estimated annual leukemia incidence is relatively low, 0.2 case/yr. Of this incidence, the majority is associated with lifetime risks of 10^{-6} and lower. Only 0.02 case/yr is associated with 10^{-5} risks and 0.007 caes/yr is associated with risks of 1×10^{-4} and greater. It is estimated that no one would be exposed to lifetime risks of 1×10^{-3} or higher, and the population at risk in the 10^{-4} range is estimated to be 3,000.

More than 90 percent of the predicted annual incidence is associated with the population exposed to benzene concentrations of less than 4 ppb, concentrations which are comparable with risks of less than 10^{-4}. These concentrations are similar to average urban ambient (background) concentrations described in section IV.

Thus, after consideration of all of the above factors concerning the estimated maximum individual lifetime risk and annual incidence, the large proportion of the incidence associated with lifetime risks of less than 1×10^{-6}, and the likely overstatement of emissions, the Agency would propose that estimated baseline risks due to emissions of benzene from equipment leaks are acceptable under Approach A.

Decision on Ample Margin of Safety. As discussed above, the baseline risks would be acceptable under Approach A. Further analysis of equipment leaks was based on a review of the leak controls identified during the development of the NESHAP for this source category. For these sources, the estimated impacts of application of additional controls (Option 1) are shown in Table IX–3. The emission reduction, anticipated cocontrol of VOC, annual control costs, cost per Mg of emission reduction, residual incidence, and maximum individual lifetime risk were estimated. Table IX–3 shows the emission, risk, and cost impacts of the identified additional control techniques. The additional control of Option 1 reflects use of dual mechanical seals for pumps and sealed bellows valves. For the purposes of this analysis, this equipment is considered to be leakless (i.e., 100-percent control). It is not known if leakless valves/sealed bellows valves are available for all sizes and types of equipment in benzene service. Equipment or maintenance practices that would provide emission and risk reductions beyond Option 1 have not been explicitly identified by EPA.

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TABLE IX-3. IMPACTS OF OPTIONS FOR BENZENE EQUIPMENT LEAKS

Option	Additional Annual Cost ($MM/yr) 1979[a]	Emission Reduction (Mg/yr) Bz/VOC[b]	$/Mg Bz/VOC	Population Left at Risk >1 x 10^{-4}	Residual Incidence[c]	Maximum Individual Lifetime Risk (MIR)[c]
Option 1	52.4	1,300/2,300	40,000/23,000	900	0.1	6×10^{-4}
Baseline = Current NESHAP	0	0/0[d]	0	3,000	0.3	1×10^{-3}

[a] $MM is million of dollars. The dollar year is 1979.

[b] Bz = benzene; VOC = volatile organic compounds.

[c] Risk estimates are rounded to one significant figure. Note that essentially all of the incidence occurs in the population at the 1 in 100,000 risk level or less. These risks are associated with exposure to concentrations of less than 4 ppb. Average urban ambient (background) concentrations are around 3 ppb.

[d] Baseline emissions are 2,500 Mg/yr of benzene and 3,900 Mg/yr of VOC (including benzene). Emissions before implementation of the standard were 7,900 Mg/yr of benzene and 12,300 Mg/yr of VOC.

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Under Option 1, the estimated maximum lifetime risk would be reduced from 6×10^{-4} to 2×10^{-4}, and the annual incidence would be reduced from 0.2 case/yr under the current NESHAP baseline to 0.1 case/yr. The majority of this incidence reduction occurs among the population exposed to lifetime risks less than 10^{-4} (i.e., exposed to concentrations of less than 4 ppb). As previously noted, these estimates are based on upperbound emission estimates. The actual emission reduction is expected to be less than indicated and the risk reduction would be proportionally lower. The additional annual cost to achieve Option 1 is estimated to be $52.4 million (Docket No. A–79–27, Docket Item V–A–1). The costs were computed using the annual cost per control component and the number of components used nationwide in existing units (Docket No. A–79–27, Docket Item IV–B–14). The majority of the estimated cost is from the cost of sealed bellows valves and would be incurred regardless of the magnitude of the actual emissions.

Although Option 1 shows some additional emission and risk reduction to be achievable, the control cost is disproportionately great when compared to the small reductions in risk which would be achieved. If the actual emission reduction were known and used, the option would likely be even less cost effective. Recognizing the conservatism in the emission estimates, the large proportion of the incidence associated with lifetime risks less than 1×10^{-6}, the questions regarding technical feasibility, and the costs of additional controls, under Approach A the Administrator would consider the emission levels associated with the existing NESHAP to protect public health with an ample margin of safety. Therefore, additional control beyond the existing NESHAP would not be warranted and thus would not be required under Approach A.

Approach B. Incidence-Based Approach

Decision on Acceptable Risk. Under the criterion of this approach, the incidence of 0.2 case/yr associated with the existing benzene equipment leaks standard would be acceptable.

Decision on Ample Margin of Safety. Since the predicted risk and incidence resulting from the current standard would be found acceptable under Approach B, the Agency would then consider other factors in determining an ample margin of safety. First uncertainties associated with the dose/response model were examined. As shown in Table IX–2, about 90 percent of the leukemia incidence is associated with risk levels less than 1×10^{-5}, which corresponds to exposure to benzene concentrations of less than 0.4 ppb. As noted in Section V, risk estimates in the 10^{-6} range and lower are given less weight because they are generally considered to be small and uncertainty in the risk estimates increases at these lower levels. Additionally, actual risks may be substantially lower due to actual leak frequencies in equipment subject to the NESHAP being lower than was assumed in the analysis. Other sources of uncertainty are discussed in Section IV and under Approach A in this section.

Next, EPA reviewed emission controls which were identified during development of the NESHAP for this source category. Table IX–3 shows the effects of an additional control level, Option 1, which reflects the use of dual mechanical seals for pumps and sealed bellows valves. For the purposes of this analysis, this equipment is considered to be leakless (i.e., 100 percent control). It is not known if leakless valves/sealed bellows valves are available for all sizes and types of equipment in benzene service. Equipment or maintenance practices that would provide emission and risk reductions beyond Option 1 have not been explicitly identified by EPA.

Risk reduction, cost, and cost effectiveness of controls were also examined in the evaluation of ample margin of safety. Under Option 1, the estimated maximum lifetime risk would be reduced from 6×10^{-4} to 2×10^{-4}, and the annual incidence would be reduced from 0.2 case/yr under the current NESHAP baseline to 0.1 case/yr. The majority of this incidence reduction occurs among the population exposed to lifetime risks less than 10^{-4} (i.e., exposed to concentrations of less than 4 ppb). As previously noted, these estimates are based on upperbound emission estimates and the actual emission reduction is expected to be less than indicated. As discussed under Approach A for equipment leaks, the additional annual cost to achieve Option 1 is estimated to be $52.4 million. The majority of the estimated cost is from the cost of sealed bellows valves and would be incurred regardless of the magnitude of the actual emissions.

Although Option 1 shows some additional emission and risk reduction to be achievable, the control cost is disproportionately high when compared to the small reductions in risk which could be achieved. If the actual emissions, and thus emission reduction, could be quantified, the option would likely be even less cost effective.

Under the criteria of this approach, the existing NESHAP would be judged to protect public health with an ample margin of safety. Additional control would not be judged warranted considering the small emission and risk reduction that would be achieved, the questions regarding technical feasibility, and the large cost.

Approach C. 1×10^{-4} or Less Maximum Individual Risk Approach

Decision on Acceptable Risk. Under the assumptions used in the analysis, the maximum lifetime risks under the existing benzene equipment leaks NESHAP is 6×10^{-4}. Under the criterion of the approach requiring target maximum risks of 1×10^{-4} or less, the baseline risks would not be considered acceptable. Additional control would be necessary to reduce maximum lifetime risks to 1×10^{-4} or below.

Decision on Ample Margin of Safety. To ensure that no facility has risks exceeding 1×10^{-4}, emission reductions beyond Option 1 would be required. Therefore, the only method of specifying the level of control necessary to achieve a maximum lifetime risk of 1×10^{-4} or less at all facilities would be through either a standard limiting facility emissions or a risk level standard. As previously discussed in Section VII, Approach D, a facility emission limit format has been selected to illustrate this. Comments are requested on both formats, however.

The emission limit for benzene equipment leaks which ensures that no facility engenders risk exceeding 1×10^{-4} would be 14 kg/day (5 Mg/yr). Thus, emissions from all 131 plant sites would, at the minimum, be reduced to less than 700 Mg/yr total. This 14 kg/day limit would apply to benzene emissions from all equipment contacting benzene at each and any plant site which contains equipment subject to the existing NESHAP. As discussed in Section VII, this limit was derived by proportional calculations of maximum risks and corresponding emissions.

In addition to ensuring that no one is exposed to lifetime risks greater than 1×10^{-4}, the 14 kg/day emission limit would also reduce risks to the total exposed population. Incidence would be reduced to roughly 0.07 case/yr total (if all 131 facilities continued to operate), and of this about 0.007 case/yr (or 7 cases in 1,000 years) would occur in the population exposed to lifetime risks greater than 1×10^{-5}. Many facilities would have maximum risks below 1×10^{-6}, and the additional emission reduction will primarily reduce the exposure levels of the populations

which are currently in the less than 10^{-6} lifetime risk category.

Based on available information, it is believed that the 14 kg/day emission limit will require control beyond Option 1 at all but the very smallest facilities. However, to ensure that no facility achieving less than 14 kg/day through a leak detection and repair program allows emissions to increase, the current NESHAP (40 CFR Part 61, Subpart J) would still be required. The majority of facilities would have to achieve an additional 50 percent emission reduction to comply with the 5 Mg/yr emission limit. Based on available information, it is unlikely that this can be easily done.

As previously noted, the Agency has not explicitly identified controls beyond Option 1. Thus, if the emission limit required by this approach were adopted, the plant owners or operators would have to determine the appropriate means of achieving essentially leakless operation throughout the plant. Consequently, EPA cannot at present quantify the costs and economic impacts of achieving this emission limit. However, it is suspected that the costs will exceed the control costs estimated for Option 1 in Table IX–3. Based on emission rates and technical feasibility for further emission reduction, the Agency expects that a substantial number of facilities (about 100 out of 131 plants) would permanently shut down under this approach. This estimate of permanent closures is not based on cost impacts or an economic analysis.

Of the approximately 150,000 people employed in the synthetic organic chemical industry, roughly 30,000 to 40,000 are estimated to be employed by facilities producing benzene and benzene derivatives. (To derive this estimate the ratio of benzene production and consumption capacity to total organic chemical production was applied to the total industry employment). If roughly 100 facilities were to close, roughly 27,000 jobs would be lost in the chemical and petroleum refining industries. In addition to these job losses, jobs would be lost in the affected communities and in related industries, such as manufacturers of rubber tires, lubricants, nylon fibers, and other plastics for consumer and military uses. The health risks associated with increased unemployment are an additional impact that has not been quantified. Indirect impacts of a substantial number of closures such as price increases and increased imports have not been quantified but are expected to be significant. Higher prices would be charged for imported goods made from benzene or for more expensive substitutes; thus, there would be a general inflationary impact. The balance of payments would be affected by an increase in imports of benzene-derived goods.

In summary, under the 1×10^{-4} risk target approach for NESHAP, the proposed standard would: (1) Limit benzene emissions from equipment leaks to no more than 14 kg/day at all facilities with equipment contacting benzene; and (2) require compliance with the existing NESHAP (40 CFR Part 61, Subpart J), so as to ensure that no facility currently achieving less than 14 kg/day through a leak detection and repair program could allow its emissions to increase. These two requirements together would be judged to provide an ample margin of safety under Approach C. Further description of the provisions of these alternative standards are contained in Section XII.

Approach D. 1×10^{-6} or Less Maximum Individual Risk Approach

Decision on Acceptable Risk. Under the assumptions used in this analysis, maximum lifetime risk under the existing NESHAP exceed the 1×10^{-4} target risk and would not be considered acceptable. Additional control would be necessary to reduce the maximum individual risk to 1×10^{-6} or less.

Decision on Ample Margin of Safety. As discussed under Approach C, the only method of specifying the level of control necessary to achieve a maximum lifetime risk of 1×10^{-6} or less would be through either a risk limit standard or a standard limiting facility emissions. A facility emission limit standard has been selected to illustrate this approach, but comments are requested on both types of standards.

The emission limit for benzene equipment leaks which ensures that no facility causes risks exceeding 1×10^{-6} would be 0.14 kg/day (50 kg/yr). Emissions from all 131 facilities would then be reduced to below 6.6 Mg/yr. The 0.14 kg/day limit would apply to all equipment contacting benzene, at any plant site that contains equipment subject to the existing NESHAP; even those facilities now exempted because they use or produce less than 1,000 Mg benzene/yr would be required to comply with the emission limit. As discussed previously, this limit was derived by proportional calculations of maximum risks and corresponding emissions.

In addition to ensuring that no one is exposed to lifetime risks greater than 1×10^{-6}, the 0.14 kg/day limit would also reduce the total leukemia incidence to 0.0007 case/yr in the modeled population of 200,000,000. Thus, under this approach, public health would be protected by an ample margin of safety with this emission limit.

However, the EPA has no knowledge of technology-based control measures that would acheive the 0.14 kg/day benzene emission rate. If this limit were adopted as the standard, the plant owners or operators themselves would have to determine how to achieve compliance with the standard. Consequently, the Agency cannot at present estimate the costs or economic impacts of such a standard. Qualitatively, based on known control measures, emission rates, and technical feasibility of further emission reduction, this emission limit would be expected to result in closures of essentially all operations producing or using benzene including chemical plants, petroleum refineries, and other facilities. If all 131 facilities were to close, roughly 30,000 to 40,000 jobs would be directly affected. As discussed under Approach C, other job losses in associated industries could also be expected. The health risks associated with inceased unemployment also have not been quantified. Indirect impacts associated with shutdown of the industry have not been quantified but are expected to be severe.

In summary, the proposed standard would: (1) Limit benzene emissions from equipment leaks to no more than 0.14 kg/day at all facilities with equipment in benzene service; and (2) eliminate the exemption existing in the current NESHAP for facilities producing or using less than 1,000 Mg/yr of benzene. These requirements would be judged to provide an ample margin of safety under Approach D.

X. Coke By-Product Recovery Plants

Source Category Overview

In the Coke by-product recovery process, various components of the gases emitted from coke oven batteries are separated and recovered to obtain products such as crude tar, naphthalene, light oils, benzene mixtures, and refined benzene. Benzene emissions from 44 existing plants are largely uncontrolled and are released from a variety of sources such as process vessels, sumps, storage vessels, the cooling tower associated with the final cooler, and leaking equipment (e.g., pumps and valves).

Estimation Methods and Uncertainties

In the analysis of the coke by-product recovery plant source category, as with other benzene source categories, emission estimates were used in estimating leukemia risk. This section

discusses how benzene emissions and the associated health risks were calculated for coke by-product recovery plants and the uncertainties associated with these estimates.

The emission estimates presented in this notice were developed based on emission factors derived from source sampling surveys and emission tests, engineering judgment, and site-specific production rates and process information provided by the plants. Differences in methods of operation, operating parameters, and design factors were taken into account to the extent possible by averaging applicable measurements to obtain an emission factor representative of a typical source. The nationwide emission estimates were based on application of the emission factors (which were in terms of benzene emissions per Mg of coke production) to site-specific information on which processes exist in each plant and each plant's coke production capacity, rather than by extrapolation from model plants.

Since the 1984 proposal, revisions to the emission factors and the data base have been made based on public comments. As discussed further below in the "Response to Comments" section of this preamble, separate emission factors have been developed to distinguish furnace from foundry plants because foundry plants use less volatile coal and longer coking cycles. The data base also has been updated using information provided by the industry and major trade associations at the close of the comment period for the proposal. As of November 1984, a total of 44 furnace and foundry plants with a combined operating capacity of 50.9 million Mg/yr were identified that are either in active operation or on cold-idle status (i.e., temporarily closed but able to restart on demand). Plants on cold-idle are included in the data base because information is insufficient to determine whether these sites will be closed permanently. Nationwide baseline benzene emissions from the 44 plants assuming all operate at full capacity are estimated at 26,000 Mg/yr. More detail on the estimation of emissions can be found in the Proposal and Revised Proposal BID's.

At proposal, the health risks attributable to benzene emissions from coke by-product recovery plants were calculated using the HEM dispersion model to estimate the benzene concentrations to which people living within 20 km of the plants were exposed. After the 1984 proposals, the HEM was again employed for the health risk analysis using the revised benzene URE, updated data base and revised emission factors, and with exposure modeling carried out to 50 rather than 20 km. In the risk analyses, EPA assumed that all plants were operating at full capacity.

The Agency acknowledges that many uncertainties are present in the emissions and risk estimates. Uncertainties in the emission estimates include the emission factors and the application of the emission factors to various plants that employ different methods of operation, designs, and operating parameters; these may tend to over- or under-estimate emissions. In addition, the 44 existing plants are not all operating at full capacity and, in fact, some are on cold-idle. Thus, nationwide emissions are overestimated. Further, the declining domestic coke market makes it particularly likely that EPA has overestimated emissions for the 70-year lifetime assumed in the exposure analysis. Additional uncertainty also is present for the dispersion modeling of area sources, such as are found in coke by-product plants, than for modeling of stack point sources. Only extremely limited verifications of area source modeling procedures have been done to date. Further information on general uncertainties in the exposure and risk analysis for benzene are described in Section IV of this preamble.

Risk Characterization

As discussed in Section V, the first step in making NESHAP decisions is determination of an acceptable risk level. In deciding what level of risk is acceptable for coke by-product recovery plants under each of the four approaches, the Administrator considered the range of levels shown in Table X–1, as well as a zero emission level. The levels represent example scenarios to show how different emission levels would result in different health risk profiles. Table X–1 presents the risk estimates, calculated as described above, in terms of annual incidence, maximum individual lifetime risk, risk distribution, and incidence by risk group.

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TABLE X-1. RISKS[a] FROM COKE BY-PRODUCT RECOVERY PLANTS AT DIFFERENT EMISSION LEVELS

		Emission Levels				
		Baseline	A	B	C	D
Incidence (case/yr)		3	0.5	0.2	0.05	0.004
Maximum Individual Lifetime Risk (MIR)		6×10^{-3}	1×10^{-3}	4×10^{-4}	2×10^{-4}	1×10^{-5}
Risk Distribution, cumulative, (persons)[b,c] (modeled to 50 km)	$\geq 1 \times 10^{-2}$	0	0	0	0	0
	$\geq 1 \times 10^{-3}$	4,000	400	0	0	0
	$\geq 1 \times 10^{-4}$	100,000	10,000	2,000	200	0
	$\geq 1 \times 10^{-5}$	3,000,000	300,000	70,000	20,000	1,000
	$\geq 1 \times 10^{-6}$	30,000,000	6,000,000	2,000,000	400,000	30,000
	Total Modeled	90,000,000	90,000,000	90,000,000	90,000,000	90,000,000
Incidence for Each Risk Group, non-cumulative (case/yr)[d]	$\geq 1 \times 10^{-2}$	0	0	0	0	0
	$\geq 1 \times 10^{-3}$	0.1	0.01	0	0	0
	$\geq 1 \times 10^{-4}$	0.4	0.02	0.005	0	0
	$\geq 1 \times 10^{-5}$	0.9	0.09	0.03	0.006	0.0004
	$\geq 1 \times 10^{-6}$	1	0.2	0.05	0.01	0.001
	$< 1 \times 10^{-6}$	0.3	0.2	0.07	0.03	0.002

[a] All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table for risk group incidence may not sum to the value given for total incidence.

[b] The estimated number of people exposed to ambient concentrations resulting in predicted individual risk levels above the level shown. Population is cumulative (e.g., at baseline 30,000,000 people are exposed to risks greater than or equal to 1 in 1,000,000).

[c] Risks were calculated on a plant-by-plant basis and summed. Persons exposed to emissions from more than one plant were counted for each plant's impact. The effects of double counting on individual and other risk estimates are discussed in Section V of this notice.

[d] This is the estimated annual number of cases of leukemia for the population exposed to each risk level. It is not cumulative (e.g., at baseline there would be 1 case/yr in the population exposed to risk levels greater than or equal to 1 in 1,000,000 but less than 1 in 100,000)

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Application of Alternative Policy Approaches

The consideration of each of the alternative approaches to decisions on the coke by-product plant source category are summarized in this section. A summary of alternative proposed standards under each approach is included in Section XII.

Approach A. Case-by-Case Approach

Decision on Acceptable Risks. As shown on Table X–1, the estimated risk to an individual exposed to the maximum modeled annual average concentration of about 200 ppb for 70 years is 6×10^{-3} at baseline. This risk is above the range generally considered under this approach to be preferred. The estimated annual incidence at baseline is 3 cases/yr; however, about one half of these cases occurs in the large population exposed to predicted lifetime risks in the 10^{-6} range or lower. As noted in Section V, under this approach, incidence estimates at the 10^{-6} and lower risk levels are given less weight because they are generally considered to be small and to have increased uncertainty. In addition, the majority of the estimated incidence (2 out of 3 cases/yr) occurs in the population exposed to risks in the 10^{-5} range and below. This group represents persons who would be exposed to concentrations of less than 4 ppb, which is comparable to average urban background concentrations of about 3 to 6 ppb (see Section IV).

In deciding an acceptable level for coke by-product plants under this approach, the Administrator particularly examined the uncertainties described in Section IV and earlier in this section. The assessment of these factors is summarized here. The overall weight of evidence for benzene carcinogenicity is strong (the URE being based on data from occupational exposure studies). Although the use of alternate dose/response models could produce different URE's for benzene (Docket No. OAQPS 79–3, Part I, Docket Item VIII–A–4), the linear nonthreshold model used by EPA represents the best fit for the available data. The model is judged, however, to be conservative, and, therefore, the URE, as a measure of leukemogenic potency, could be considered to err in favor of the protection of public health. This URE, however, does not include nonleukemia cancer risk because statistical associations with other cancers have been found to date only in animal bioassays.

The dispersion modeling of area sources, such as are found in coke by-product plants, is more uncertain than modeling of stack emission sources. The assumption in the exposure assessment that individuals are exposed continuously to the maximum modeled annual average concentration for 70 years will overestimate the maximum individual lifetime risk for those individuals exposed for significantly less than 70 years. As previously stated, the risk analysis assumes that all existing coke by-product plants operate at full capacity over the modeled 70-year exposure period. It is reasonable to include the cold-idle plants and to assume full capacity when estimating the emissions because they are presently potential sources of emissions; however, this assumption overestimates the actual current emissions. In addition, the decline in the domestic coke market makes it likely that the emission estimate overstates the long-term emissions.

Based on consideration of all the factors concerning exposure, the estimated maximum lifetime risk, and incidence, the Administrator decided under this approach that the estimated baseline benzene emission level from coke by-product recovery plants is acceptable.

Decision on Ample Margin of Safety. For further analysis, the Administrator considered several technical regulatory options. The controls analyzed to determine an ample margin of safety under this approach for each of the many emission points were the same as those analyzed for the June 1984 proposal. For each of these emission sources and controls, the emission reduction, estimated benefits of cocontrol of VOC's, control costs, and the risk reduction were estimated. The controls for individual emission points then were grouped into four regulatory options of varying stringencies for the Administrator's consideration. These options are shown on Table X–2.

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TABLE X-2. CONTROLS INCLUDED IN EACH OPTION

Emission source	Control option/ efficiency (%)	Option 1 furnace/foundry		Option 2 furnace/foundry		Option 3 furnace/foundry		Option 4 furnace/foundry	
Final cooler, cooling tower; naphthalene processing/handling	Tar-bottom final cooler (81)						X	X	X
	Wash-oil final cooler (100)	X	X	X	X	X			
Tar decanter, tar intercepting sump, and flushing-liquor circulation tank	Gas blanketing (98[a])	X	X	X	X	X	X	X	X
Tar storage and tar-dewatering tanks	Gas blanketing (98)	X	X	X	X	X	X		
Light-oil condenser, light-oil decanter, wash-oil decanter, and wash-oil circulation tanks	Wash-oil scrubber (90)								
	Gas blanketing (98)	X	X	X	X	X	X	X	
Excess ammonia-liquor storage tank	Wash-oil scrubber (90)								
	Gas blanketing (98)	X	X	X					
Light-oil and BTX storage tanks	Wash-oil scrubber (90)								
	Gas blanketing (98)	X	X	X					
Benzene storage tanks	Wash-oil scrubber (90)								
	N_2 gas blanketing (98)	X	X	X					
Light-oil sump	Cover (98)	X	X	X	X	X	X	X	
Pumps	Quarterly inspections (71)								
	Monthly inspections (83)			X	X	X	X	X	X
	Dual mechanical seals (100)	X	X						
Valves	Quarterly inspections (63)								
	Monthly inspections (73)			X	X	X	X	X	X
	Sealed-bellows valves (100)	X	X						
Exhausters	Quarterly inspections (55)			X	X	X	X	X	X
	Monthly inspections (64)								
	Degassing reservoir vents (100)	X	X						
Pressure-relief devices	Quarterly inspections (44)								
	Monthly inspections (52)								
	Rupture disc system (100)	X	X	X	X	X	X	X	X
Sampling connection systems	Closed-purge sampling (100)	X	X	X	X	X	X	X	X
Open-ended lines	Cap or plug (100)	X	X	X	X	X	X	X	X
Napthalene processing/ handling[b]	Mixer-settler (100)	X	X	X	X	X	X	X	X

[a] 95-percent efficiency for tar decanter.

[b] The mixer-settler control option for naphthalene processing and handling is shown separately to address a comment on new indirect cooling technology that would not necessarily control naphthalene processing emissions.

Option 1 would require the most stringent controls available on all emission points that were analyzed at furnace and foundry plants. To achieve greater public health risk reduction than estimated for Option 1 may cause the closure of many plants. Options 2, 3, and 4 would require decreasingly stringent controls and would control fewer emission points than Option 1. Many factors were considered in grouping the controls into options. They included benzene emission and leukemia incidence reductions, costs, and, to a lesser extent, the emission reduction of total VOC. In general, the least cost-effective controls were deleted first when departing from Option 1 to develop Options 2 through 4. Also, in constructing Options 2 through 4, the Agency was consistent with the promulgated rules for equipment leaks of benzene and volatile hazardous air pollutants (40 CFR Part 61, Subparts J and V) in cases where the sources in coke by-product plants were similar and could be controlled for similar costs.

The estimated impacts of each of the four options are shown in Table X–3 below. These include the emission reduction, anticipated cocontrol of VOC, annual control cost, cost per Mg of emission reduction, the residual incidence, the population at individual risk of 1×10^{-4} and greater, and the maximum individual lifetime risk. The EPA also anticipates that there may be unquantified reductions in coemitted pollutants with potentially adverse health effects.

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TABLE X-3. IMPACTS OF OPTIONS FOR COKE BY-PRODUCT RECOVERY PLANTS

Option[a]	Annual Cost ($MM/yr) 1984[b]	Emission Reduction (10^3 Mg/yr) Bz/VOC[c]	Average[d] $/Mg Bz/VOC	Incremental[d] $/Mg Bz/VOC	Population Left at Risk $>1 \times 10^{-4}$	Residual[e] Incidence (Percent Reduction)	Maximum Individual Lifetime Risk (MIR)[e]
Option 1 (30)	29	25/169	1,100/200	36,000/25,000	200	0.05 (98)	2×10^{-4}
Option 2 (27,6LS)	21	25/169	800/100	5,100/ 1,300	300	0 08 (97)	2×10^{-4}
Option 3 (24,7LS)	16	24/165	700/100	4,300/ 200	2,000	0 2 (93)	4×10^{-4}
Option 4 (20,8LS)	1	21/101	50/ 10	50/ 10	11,000	0 5 (81)	1×10^{-3}
Baseline	0	0/0[f]	0/ 0	0/ 0	141,000	3(0)	6×10^{-3}

[a] The () shows (number of sources controlled, number of sources with less stringent control than Option 1).

[b] $MM is millions of dollars. The dollar year is 1984.

[c] Bz = benzene, VOC = volatile organic compounds.

[d] "Average" means compared to baseline. "Incremental" numbers compare each option with next less stringent option. They are not the same as the highest incremental value per source type.

[e] Risk estimates are rounded to one significant figure. Note that the total incidence is primarily affected by the large population that is at low risk. For example, at baseline, 2 out of 3 cases/yr occur among the population in the risk level of 1 in 100,000 or less. These risks are associated with exposure to concentrations of less than 4 ppb Average urban ambient (background) concentrations are around 3 ppb.

[f] Baseline emissions are 26,000 Mg/yr of benzene and 171,000 Mg/yr of VOC (including benzene)

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After consideration of the risk characterization, the factors noted above, and the economic impacts, the Administrator decided that under Approach A, Option 3 provides an ample margin of safety. The Administrator's reasons are described below.

Option 3 controls 24 of the 30 emission points; 17 of the 24 emission points are controlled to the maximum feasible control level. It differs from the proposed rule (49 FR 23522, June 6, 1984) for only a few types of emission points. More stringent control would be required for final cooler emissions at furnace plants than proposed originally. The 1984 proposal would have required zero emissions from naphthalene processing for both furnace and foundry plants, based on the use of a tar-bottom final cooler. Under Option 3, a tar-bottom cooler is still the basis for naphthalene processing for foundry plants. For furnace plants, Option 3 would require zero emissions from the final cooler and cooling tower, as well as from naphthalene processing, based on the use of a wash-oil final cooler. No controls would be required for storage tanks for excess ammonia-liquor, benzene, light oil, or BTX mixtures at either furnace or foundry plants. These tanks represent only 3 percent of the baseline benzene emissions from coke by-product plants, and the health risks are comparably small. The originally proposed standard would have required 90-percent control of these storage tanks. With the revised cost estimates, the 90-percent control level generally was more costly for these storage tanks than the gas blanketing control level rejected at proposal. For all other sources, Option 3 is the same as the 1984 proposed standard.

Many factors were considered in selecting Option 3 as the ample margin of safety under this approach. With these controls, the estimated maximum individual lifetime risk is reduced to 4×10^{-4} from the baseline level of 6×10^{-3} (a 93 percent reduction). The population estimated to be exposed to risk in the 10^{-4} range is reduced from about 100,000 to about 2,000 after implementation of Option 3. This option also reduces the estimated incidence from about 3 cases/yr at baseline to about 0.2 case/yr, a reduction of 93 percent. Of the remaining 0.2 case/yr, only 0.03 case/yr is associated with the population exposed to risks of 10^{-5} and higher.

Under Option 3, estimated nationwide benzene emissions would be reduced to approximately 2,000 Mg/yr from the baseline level of 26,000 Mg/yr. Also, estimated VOC emissions from coke by-product plants would be reduced to about 6,000 Mg/yr—a substantial reduction from the baseline level of about 171,000 Mg/yr. Because 80 percent of the plants are in ozone nonattainment areas, this reduction is expected to have a favorable impact in helping affected States meet ozone standards in State implementation plans.

The nationwide annual costs of Option 3 (estimated at $16 million/yr in 1984 dollars) are considered reasonable, particularly when compared to both public health risk reductions and VOC emission reduction benefits. As discussed in Chapter 8 of the Revised Proposal BID, the increase incurred in the price of furnace and foundry coke as a result of this option is estimated to be small, less than 1 percent. The EPA's economic analysis indicates that at baseline, several plants may have marginal costs of operation greater than the price of coke. The analysis predicts that implementation of this option may add one more plant to this group. However, a company decision to actually close a plant would be based on a number of factors that the economic model does not consider, including: The premium a plant is willing to pay for a secure, captive coke supply; requirements for a particular coke quality; age of the batteries, foundry, or steel mill; continued access to profits from steel production; and management's perception regarding their future costs and revenues. The Agency recognizes that implementation of this option could be the factor that would trigger closure decisions at plants that are presently marginal or operating at a loss. The EPA's economic analysis also examined the revised capital costs of control, as discussed in Appendix C of the Revised Proposal BID. The Agency judges that the estimated capital costs are not unduly burdensome when compared with normal annual investment expenditures or cash flow for companies for which data are available.

The Administrator also considered a more stringent option for the ample margin of safety under Approach A. This option would have required both furnace and foundry coke plants to meet a zero emission limit for the final cooler, cooling tower, and naphthalene processing, based on the use of a wash-oil final cooler. Also, this option would have established a standard for storage tanks containing excess ammonia-liquor, light oil, BTX, or benzene at furnace plants, based on the 98-percent control afforded by gas-blanketing systems. This more stringent level of control would decrease emissions by only about 1,000 Mg/yr of benzene and 4,000 Mg/yr of VOC more than Option 3. The estimated maximum individual lifetime risk would be reduced from about 4×10^{-4} to about 2×10^{-4}, and about 300 persons would be exposed to a risk of greater than 1×10^{-4}. The nationwide annual incidence would be reduced by an estimated 0.1 case/yr. However, most (about 80 percent) of this estimated reduction occurs in the population exposed to risks in the 10^{-6} range or lower. Annual costs would be increased by about $5 million/yr. The Administrator decided under this approach that this more restrictive option is not warranted considering the small risk reductions achieved, the small additional VOC reductions, and the greater control costs compared to Option 3.

A less stringent level of control also was considered. Under this option, both furnace and foundry producers would be required to meet a zero emission limit for naphthalene processing, but not for final coolers and final-cooler cooling towers; this would be based on the use of tar-bottom final coolers. No standard for storage of excess ammonia-liquor, light oil, BTX, or benzene would be included for furnace or foundry plants. Also, there would be no required control of tar storage (including dewatering) tanks at furnace or foundry plants. For foundry plants, there would be no standard for control of light-oil condensers, light-oil decanters, wash-oil decanters, wash-oil circulation tanks and light-oil sumps. Selection of this option would have reduced benzene emissions by about 80 percent from the baseline level (a reduction of about 3,000 Mg/yr less than the selected control level), and VOC emissions would have been reduced only by about 60 percent. This VOC emission reduction would be about 64,000 Mg/yr less than would be achieved by the higher level of control. This is particularly significant because 80 percent of the plants are in nonattainment areas where further reductions are needed.

As a result of these greater emissions, the estimated annual incidence within the exposed population would have been about 0.3 case/year more than under the more stringent level of control. These emissions also would result in a shift in the distribution of the population towards more people at higher risks. For example, approximately 11,000 persons would have been exposed to a risk level in the 10^{-4} range or higher. This reflects an increase of about 9,000 more persons in the 10^{-4} range than under Option 3.

The estimated maximum individual lifetime risk remaining after implementation of a standard based on this less stringent option would have been 1×10^{-3}. The nationwide annual costs would be reasonable (about $1 million/yr). Considering the residual benzene and VOC emissions and risk associated with this option and the availability of more stringent controls at reasonable costs, the Agency decided under this approach that this option would not provide an ample margin of safety for the public health.

Approach B. Incidence-Based Approach

Decision on Acceptable Risk. As shown in Table X–1, the total leukemia incidence at baseline for the modeled population of 90,000,000 persons exposed to benzene emissions from coke by-product plants is about 3 cases/yr. Under the criterion of this approach (i.e., 1 case/yr), the Agency would decide that the baseline emission level is not acceptable, and EPA would propose standards to reduce the estimated incidence to 1 case/yr or less.

Decision on Ample Margin of Safety. The Administrator considered the technical regulatory options shown in Table X–2 for supplemental control to ensure protection of the public health with an ample margin of safety. As shown in Table X–3, the residual incidence under each of the options considered would be less than 1 case/yr. Therefore, all of the technical regulatory options would be considered acceptable. After consideration of the risk characterization, the information shown in Tables X–1 and X–3, and the economic impacts, the Administrator decided that under this approach, Option 3 would best protect the public health with an ample margin of safety. The basis for this conclusion is summarized below, and described more fully under Approach A.

As previously discussed, Option 3 differs from the 1984 proposal for only a few emission points (e.g., more stringent control for final cooler emissions at furnace plants and no control of benzene, excess amonia-liquor, BTX mixtures, or light-oil storage tanks). Option 3 would reduce the estimated maximum individual lifetime risk from 6×10^{-3} at baseline to 4×10^{-4}, and the estimated incidence from about 3 cases/yr at baseline to about 0.2 case/yr. These represent 93-percent reductions from both risk measures. Of the remaining 0.2 case/yr, only 0.03 case/yr is associated with the population exposed to risks of 1×10^{-5} and higher. As discussed earlier, these estimates of risk are based on emission estimates that are likely to be overestimated. Therefore, Option 3 would meet the criterion for acceptable risk of this approach (no more than 1 case/yr) and also would provide an ample margin of safety. Other emission, risk, cost, and economic considerations are discussed above under Approach A.

The Administrator considered a more stringent level of control which would reduce annual incidence by an additional 0.1 case/yr. However, as previously discussed, about 80 percent of this estimated reduction would occur in the population exposed to risks in the 10^{-6} range or lower. For the same reasons as discussed under Approach A, the Administrator concluded that controls more restrictive than Option 3 are not warranted considering the small risk reduction achieved, the small additional VOC reduction, and the greater control costs. The Administrator also considered a less restrictive control level which would allow about 0.3 case/yr more than Option 3. However, about 11,000 persons would have been exposed to a risk level in the 10^{-4} range or higher—an increase of about 9,000 more persons than under Option 3. The maximum individual lifetime risk after control would be reduced from 6×10^{-3} to about 1×10^{-3}. Considering the residual incidence and risk associated with this option and the availability of controls at reasonable costs, the Administrator decided that under this approach, this option would not provide an ample margin of safety to protect the public health.

Approach C. 1×10^{-4} or Less Maximum Individual Risk Approach

Decision on Acceptable Risk. As shown on Table X–1, the maximum individual lifetime risk at baseline is 6×10^{-3}, which clearly exceeds 1×10^{-4}, and hence would not be considered acceptable under Approach C. Therefore, under this approach, EPA would propose standards to reduce the maximum individual lifetime risk to no more than 1×10^{-4}.

Decision on Ample Margin of Safety. To ensure that no facility has risks exceeding 1×10^{-4}, emission reductions beyond Option 1 would be required (see Table X–3). As previously discussed in Section VII under Approach D, an emission limit approach has been selected to specify this necessary control. Comments are requested on the emission limit approach to achieving the risk target as well as on the risk target approach itself.

Based on EPA's risk analysis, a plantwide benzene emission limit of 34 kg/day (or 12.5 Mg/yr) applicable to the total of all emission points identified in Table X–2 would ensure than no facility has risks exceeding 1×10^{-4}. This limit was derived by identifying the plant with the highest risk per unit of benzene emissions and then applying that ratio to determine the emissions that correspond to a risk of 10^{-4}.

Different facilities would have to do different things to meet the emission limit of 34 kg/day. Some facilities would have to reduce emissions further than the most stringent technology option, but others would apply substantially less control, and in a few cases, no control. To ensure protection of the public health with an ample margin of safety, EPA also considered additional control requirements for plants able to comply with the emission limit with little or no control. The controls considered were those presented previously in Table X–2. For the same reasons discussed under Approach A, EPA selected Option 3 as the minimum control requirement for all facilities.

Implementation of this plantwide emission limit combined with the minimum control level of Option 3 would reduce nationwide benzene emissions from coke by-product plants from 26,000 Mg/yr at baseline to about 840 Mg/yr; nationwide VOC emissions would be reduced from about 171,000 Mg/yr to about 1,900 Mg/yr. Estimated annual incidence would be reduced from about 3 cases/yr to about 0.07 case/yr. The estimated maximum individual lifetime risk would not exceed 1×10^{-4}, and most of the exposed population would have much lower risk. Therefore, under the criterion of Approach C, the Administrator would consider that these combined requirements provide an ample margin of safety.

Based on the 1984 data and on the assumptions in the analyses, EPA estimates that 9 of the 44 plants would achieve the emission limit by applying Option 3, 5 plants could achieve it by applying Option 2, and 18 plants could achieve it by applying the maximum feasible controls in Option 1. In addition, the Agency estimates that 12 plants would not be able to meet the emission limit even with the most stringent technology option. Of these 12 plants, the Agency estimates that 8 plants may be able to comply by permanently reducing production by an amount that may not be large enough to trigger closure decisions (e.g., by roughly 40 percent or less). This is based on EPA's emission estimates, which are generally proportional to coke production. The cost of applying the technology to these 40 plants is estimated to be $26 million/yr. The cost of lost production could not be estimated at this time. The EPA

estimates that the remaining 4 plants would need to permanently reduce production by roughly 60 percent or more in order to comply. Although EPA has not conducted an economic analysis of this particular approach, the Agency believes that it is likely that this reduction would trigger closure decisions. These 4 plants account for 30 percent of the domestic cokemaking capacity. Including the 8 plants that may be able to comply by reducing production, the total cokemaking production loss under Approach C could be about 40 percent.

The potential economic impacts of closures could include increased unemployment in the affected geographic areas and the health risk associated with long-term unemployment. Based on information on the by-product cokemaking industry prepared after the 1984 proposal, about 7,000 people were employed. Of these 7,000 jobs, roughly 3,000 could be lost with a 40 percent production reduction (assuming employment is reduced in the same proportion as production capacity). In addition to these job losses, other job losses in industries supplying the cokemaking industry could be expected, such as in coal mining, transportation, and with equipment suppliers. The impacts could also include loss of tax revenue from the closed facilities, coke price increases, and substantially greater dependence on imported coke to replace the lost production.

There are two processes that may offer some long-term prospect of replacing conventional by-product cokemaking and, in doing so, eliminate the need for by-product recovery plants. These processes are the manufacture of formcoke (coke briquettes) and direct reduced ironmaking (DRI), which is an ironmaking process requiring no coke. Neither of these processes could be feasible alternatives in the maximum period of 2 years that a source has to comply with a NESHAP; they only may be potential alternatives over the long term.

Formcoking is the general name applied to a number of processes that convert coal into shaped coke pieces in closed process vessels. Formcoking is expected to create less air pollution than conventional by-product cokemaking; wastewater impacts are unknown. However, a complete assessment of any of the processes to confirm the anticipated environmental and health benefits has not been made.

The use of formcoke in a blast furnace as a complete replacement for furnace coke has never been demonstrated and the steel industry is concerned that the mechanical strength of the formcoke may not be adequate for this use. Yet, in order to generate enough fuel to conduct a valid blast-furnace trial, a large formcoke plant would have to be built and formcoke produced for an extensive period of time. Due to these uncertainties, steel firms are reluctant to invest in such a plant without financial assistance. Two steel industry proposals in the early 1980's requested the federal government to invest several hundred million dollars to assist in the design and construction (and assume some risk) of a large formcoke facility that would allow an adequate demonstration of the product coke suitability, and potential environmental and energy-saving benefits. This funding was not provided. Also, successful completion of full-scale blast furnace trials would not necessarily mean formcoke could replace all conventionally made coke. A similar experimental program might be necessary to confirm that foundry coke could likewise be replaced.

The direct reduction of iron ore is an alternative to the production of iron for steelmaking by blast furnaces that use coke for fuel. Since the product of direct reduction is solid iron, it is most suitable for use in combination with electric arc furnace steelmaking by replacing a portion of the scrap charge. None of the reductant processes involve the generation and recovery of benzene or benzene-containing by-products. The different types of reductant processes vary in whether or not polynuclear aromatic hydrocarbons (other potential air pollutants) are formed; afterburners and control devices could potentially limit their emissions. No complete environmental assessment of any reductant processes has been made, however, and it is unknown whether the risks of nonbenzene pollutants would be able to achieve the acceptable criterion of this approach.

There are many more full-scale DRI plants in operation worldwide than formcoke facilities. However, the extensive use of DRI in the U.S. would mean almost complete restructuring of the iron and steel industry away from basic oxygen furnaces to electric arc furnaces. This would necessitate the write-off of existing capital equipment (including blast furnaces and basic oxygen furnaces) and investment in new capital equipment. Substantial cost and economic impacts would result from this.

Approach D. 1×10^{-6} or Less Maximum Individual Risk Approach

Decision on Acceptable Risk. As shown on Table X–1, the maximum individual lifetime risk at baseline is 6×10^{-3}, which clearly exceeds 1×10^{-6}, and would not be considered acceptable under this Approach D. Therefore, under this approach, EPA would propose standards to reduce the maximum individual lifetime risk to no more than 1×10^{-6}.

Decision on Ample Margin of Safety. To ensure that no facility has risks exceeding 1×10^{-6}, emission reductions beyond Option 1 would be required (see Table X–3). An emission limit was developed to specify the 1×10^{-6} control level for the same reasons the emission limit format was selected under Approach C. At the 1×10^{-6} level, the plantwide emission limit would be 0.34 kg/day (125 kg/yr) for the facility, including all the emission points identified in Table X–2. This limit was derived the same way as the limit was derived under Option C. Assuming that facilities might be able to achieve compliance without closing, this emission limit would reduce benzene and VOC emissions to approximately 5.5 Mg/yr and 12.7 Mg/yr, total leukemia incidence to 0.004 cases/yr, and maximum individual lifetime risk to 1×10^{-6}. Most of the exposed population would be at a much lower risk.

As discussed under Approach C, the potential for development of new technology within the next 2 years is doubtful. Achievement of the emission limit without substantial production reductions is unlikely. The EPA estimates that most plants would have to reduce production permanently by 95 percent or more (and all plants by 75 percent or more) as well as applying the controls of Options 1 in order to achieve the emission limit. As discussed in Approach C, these estimates were derived using EPA's emission estimates, which are generally proportional to coke production. The magnitude of these cutbacks would likely cause closure of all plants, thus reducing the emissions and risks from coke by-product recovery plants to zero. The EPA judges that this emission limit would protect the public health with an ample margin of safety.

The EPA can not at present estimate the cost or economic impacts associated with the 0.34 kg/day limit. However, the economic impacts would be severe. Adverse impacts could include increased unemployment in the affected geographical areas and the health risk impacts associated with long-term unemployment in a community, loss of tax revenue, price increases, total dependence on imported coke or a total change in the steelmaking process, and potential trade deficits. Based on employment information discussed under Approach C, closure of all

facilities will result in about 7,000 job losses. In addition to these job losses, other job losses in industries supplying the cokemaking industry could be expected, such as in coal mining, transportation, and with equipment suppliers.

XI. Summary of Major Comments and Responses on 1984 Proposed Standard for Coke By-Product Recovery Plants

The EPA received 20 comment letters on the national emission standards for coke by-product recovery plants originally proposed on June 6, 1984. These comments are available for review in Docket A–79–16. The comments are grouped by topics that include: (1) Safety, operation, and demonstration of emission control technology; (2) impact analyses; and (3) general comments. The following is a summary of EPA's responses to these comments; detailed responses are included in the Revised Proposal BID (EPA–450/3–83–016b).

Safety, Operation, and Demonstration of Emission Control Technology

Comment: Six commenters recommended that gas-blanketing systems, although appropriate and cost effective for some plants, should not be required at all sites because of safety, design, and operational concerns. Some commenters stated that, without redesign of process operations and installation of new equipment, the safety of gas-blanketing systems is in question because leaks from older pieces of equipment present a potential fire or explosive hazard. One of these commenters submitted a qualitative comparative study of the safety of gas blanketing for one of their plants. The report concluded that gas blanketing would involve a significant increase in risk to operating personnel and the surrounding community. Other commenters argued that the presence of electrical equipment and vehicular traffic may present a hazard. Naphthalene clogging in cold climates if power for heated lines were lost also was cited. Four commenters claimed that gas-blanketing controls have not been well-demonstrated. In support, two of these commenters cited closure of one plant that had gas blanketing.

Response: The EPA disagrees with these commenters. Gas-blanketing systems have been demonstrated as safe and effective at a total of five plant sites over a combined operating period of more than 24 years. The closure of one plant has no effect on the successful use of gas blanketing at this site for the 4-year period prior to closure. As discussed in the Proposal BID and in the Revised Proposal BID, gas-blanketing systems currently are in use at four other plant sites.

The safety of recommended control systems should always be considered, and a system considered inherently unsafe would not be selected by EPA as the potential basis of a standard. In direct contradiction to the commenters' statements, EPA considers that well-designed, well-operated, and well-maintained gas-blanketing systems will improve the safety level now found in uncontrolled by-product plants. A detailed response to these concerns is provided in Chapter 5 of the Revised Proposal BID. The Agency's reasons for concluding that gas blanketing will actually improve current safety conditions are summarized below.

One commenter contends that "the low positive pressure of the proposed system is insufficient to alleviate explosive conditions if leaks occur." The standard that would be proposed under Approaches A, B, and C do not dictate an overall pressure level for system operation. The system installed may be positive or negative pressure or a combination of the two. The pressure maintained will vary by necessity according to the type of source and location of the connections to the system (i.e., at the main or the gas holder) and overall process design.

If leaks in the system occur or the positive pressure blanket fails, the possibility of an explosive atmosphere forming is no greater than the possibility under current plant conditions. At most uncontrolled plant sites, explosive conditions are present. Liquid organics float on the surface of open sumps and trenches, and they leak from equipment components and piping systems throughout the plant. Organic vapors also are released from "breathing" tanks as air enters venting systems or holes in the covers. In EPA's judgment, enclosing these sources and ducting the emissions back to the process via a closed positive pressure gas-blanketing system will reduce substantially the explosive hazard that now exists. The Agency does recognize that some sources at existing plants may be in poor condition and require upgrading to accept gas blanketing. The necessary modifications for typical plants, however, have been reflected in the cost estimates.

The EPA reviewed a commenter's submittal of a qualitative assessment of his plant to support the contention that gas blanketing would involve a significant increase in risk to operating personnel and the surrounding community. However, EPA does not believe that such a conclusion can be drawn from the assessment for several reasons. First, the assessment is qualitative; it does not draw quantitative conclusions as to the frequency of a major failure. In the hazard assessment, probability ratings were assigned to various hazards within the plant for present uncontrolled conditions and gas blanketing with various blanketing gases. For example, for explosion potential under current plant conditions, they assigned a probability rating of "D" which means "likely to occur 1 time every 10 years." With coke gas blanketing, the explosion potential was reduced to "C" which means "likely to occur every 100 years." However, with gas blanketing, higher ratings were assigned to the potential for explosion propagation, on-site safety, and financial loss. These types of ratings were assigned to various plant operations and to various control scenarios. The results were weighted and combined to provide a relative qualitative rating that may be used by the firm in evaluating options in terms of economic and safety. However, EPA does not believe the commenter's contention based on the report is warranted for the following reasons: (1) The report did not utilize a gas-blanketing design for the plant on which to base a quantitative comparison; without a specific design, it is not possible to evaluate safety features that could be engineered into the system, (2) the assessment was based on a review of the existing conditions in the plant, without consideration of the substantial upgrading of the process vessels that would be necessary to accommodate installation of a gas-blanketing system, and (3) the report did not provide any basis or criteria for assigning the probability ratings or consequence categories that are reported. After reviewing the assessment, EPA remains convinced that the upgrading of equipment needed to accommodate gas blanketing, together with the installation of the well-designed control system, will improve existing safety conditions at the sites.

The Agency's review of the safety aspects of gas blanketing does not support the contention of some commenters that the presence of electrical equipment and vehicular traffic in gas-blanketed areas aggravates the potential explosive danger. Hydrogen and methane are the major components of coke oven gas, accounting for 69 to 97 percent of the emission stream. According to National Fire Code (NFC) guidelines, these lighter-than-air gases seldom produce hazardous mixtures (i.e., presenting a

fire or explosive danger) in the zones where most electrical connections are made. If special equipment is required, it should already be in place at plants where the NFC or plant safety codes have required its installation. In addition, the NFC guidelines state that, in the experience of the code's authors, it generally has not been necessary to classify as hazardous "locations that are adequately ventilated where flammable substances are contained in suitable, well-maintained, closed piping systems which include only the pipes, valves, fittings, flanges, and meters."

Prior to proposal of the standard in 1984, EPA thoroughly evaluated the safety aspects of gas-blanketing systems. This review included visits to five plant sites where safety and operational problems were discussed with plant personnel. No safety or operational concerns were reported that routine minimal maintenance would not resolve. Since the 1984 proposal additional safety features such as water drains and overflow connections for tar tanks and liquid level sampling/gauging instrumentation with vapor-tight seals also have been added to the cost. Assuming each system is properly operated and maintained after installation, EPA considers that the positive pressure system is a safe and effective control technique and that leaks (if repaired as required) do not present the fire or explosive danger described by the commenters.

The EPA agrees that loss of power for heated lines could cause naphthalene clogging in cold climates. Unless a backup power supply is available for the entire plant, EPA assumes that such a power loss would affect most plant operations and probably would result in a shutdown until power was restored. The EPA is aware if no other reasonable approach for overcoming the effects of cold climates.

Comment: Five commenters believe that negative pressure gas-blanketing systems present a fire or explosive danger because of air infiltration from ineffective sealing of older vessels, operator error, or equipment failure. One commenter also stated that additional monitoring controls are necessary to monitor the explosive hazard, in addition to measures such as automatic nitrogen dilution or enrichment with natural gas to keep the coke oven gas mixture below the lower explosive limit or above the upper explosive limit.

Response: The standard that would be proposed under Approaches A, B, and C (and associated cost) is based on the use of a positive pressure system because comments made by the industry before the 1984 proposal questioned the safety of the negative pressure system recommended initially. Although the use of a negative pressure system is not precluded, EPA encourages companies to install safety and monitoring equipment as necessary in accordance with their historical safety policies and the system's characteristics. The EPA does recommend, however, that firms install the equipment included in the costs for the positive pressure system intended to alleviate many of the operating concerns cited by the commenters. Recommendations for specific equipment and their application are discussed further in the Revised Proposal BID. Regarding the potential danger from equipment failure, EPA considers that a failure of a negative pressure system under the scenario suggested by the commenters presents no more danger than similar situations encountered in the current uncontrolled plant environment.

Comment: Two commenters are concerned that overpressurization of a positive pressure system poses an explosive and occupational hazard because of the carbon monoxide (CO) released. One commenter stated that the presence of CO increases costs for additional monitoring and employee training because CO hazards do not exist currently. Similarly, another commenter believes that additional employees would be necessary for monitoring for explosive conditions or that hydrocarbon detection monitoring should be required on each piece of gas-blanketed equipment.

Response: Coke plant operators have stated that pressure control in the collecting main and gas holder is inherently reliable because large pressure fluctuations can cause serious operating and safety difficulties in battery and plant operation. Collecting-main pressure is controlled by an Askania valve at a few millimeters of water pressure, and the pressure is often watched and adjusted manually if necessary. Similarly, the pressure in the gas holder also is carefully controlled. Overpressurization is prevented by bleeder or pressure relief valves and water seals.

A CO hazard from coke oven gas would not be unique to blanketed vessels. The coke oven gas in handled is many parts of the coke and steel plants. If all of these locations are subject to the stated monitoring by the company, then consistent application of the policy would dictate monitoring of CO and explosive conditions for gas-blanketed vessels. Although the regulation includes costs for semiannual inspections for leaks, no costs are included for monitoring CO or explosive conditions because the existing systems did not have such provisions. Therefore, the monitoring questions on CO and explosive conditions appear to be those of company policy and site-specific conditions.

Comment: Two commenters believe that covering and sealing sumps create a fire or explosive hazard from concentrated fumes because no gas or steam can be used for purging.

Response: Steam purging strips organic compounds from the sump and can be especially efficient at removing volatile compounds such as benzene. Most sumps are installed below grade; consequently, workers and others in the plant can be exposed to high concentrations of these organic compounds at ground level, especially with a purge gas. The current practice of discharging tramp steam to an open sump already poses a hazard if concentrations are high enough to be explosive. Also, the steam purging may create the movement of explosive vapor from the sump to ground level if a surge or slug of organic material enters the sump during purging. An air-tight seal and a vent to the atmosphere are included in the sump cover costs for safety considerations. The operator also may choose other measures to increase safety, such as including a flame arrestor on the vent, installing explosive condition detectors, or replacing the sump with an above-grade closed tank. The solution to the commenters' question will depend on the site's specific conditions and the company's policy.

Comment: Several comments were received that related to the selection of controls for naphthalene processing and final coolers. Environmental groups and State agencies pointed to the significant emissions and risk reduction achievable with more stringent control of the final cooler. Comments from foundry coke producers on emission estimates and from the industry on costs, which are discussed in more detail in other sections of the preamble, influenced the analysis of the impacts of the controls for naphthalene processing and final coolers. Also, the industry commenters submitted plans for final coolers using indirect cooling technology that they believed to be more effective than tar-bottom final coolers and less expensive.

Response: In response to comments received on the 1984 proposal, EPA analyzed the impacts of control alternatives separately for furnace and foundry plants. Also, the costs for both tar-bottom and wash-oil final coolers were revised based on industry's comments. The revised costs for tar-

bottom final coolers were higher than proposed; those for wash-oil final coolers were lower. The revised cost analysis is discussed in Appendix B of the Revised Proposal BID responding to comments on the 1984 proposal.

One of the major reasons that wash-oil final coolers were not selected as the basis of the original proposed standard is that an analysis of the capital costs for a wash-oil final cooler compared to annual net income and investment indicated a potential for an unreasonably adverse economic impact on some firms. The EPA reanalyzed the economic impact of a regulatory option that is slightly more stringent than the revised standard proposed under Approaches A and B and that included wash-oil final coolers. The Agency concluded from the new analysis (Appendix C of the Revised Proposal BID) that the capital costs were not unreasonable when compared with normal annual investment expenditures or cash flow.

The Agency used the revised impacts of both wash-oil final coolers and tar-bottom final coolers when grouping the controls into the regulatory options considered by the Administrator. The selection of the regulatory option under Approaches A, B, and C that includes wash-oil final coolers at furnace plants is explained in Section X of this preamble.

Two industry commenters submitted plans for final coolers using indirect cooling technology that they believed to be more effective than tar-bottom final coolers and less expensive. In addition, an engineering firm that designs emission control systems for by-product plants provided information about certain alternative indirect cooling schemes. As discussed in Chapter 5 of the Revised Proposal BID, EPA based its reconsideration on evaluations of the tar-bottom and wash-oil final coolers because they are installed at several plants and EPA had more reliable design and cost information on them. However, the commenters' technologies could be used if they would achieve the zero emission limit included in the revised proposed standard for naphthalene processing, the final cooler, and associated final-cooler cooling tower at furnace plants or the zero emission limit for naphthalene processing at foundry plants.

One of the commenter's designs eliminated emissions from the final-cooler cooling tower, but provided only partial control of the naphthalene processing operations. Based on EPA's analysis of wash-oil final coolers at furnace plants, EPA concluded that complete control of both the final cooler and naphthalene processing is reasonable. In addition, EPA concluded that control of naphthalene processing alone, based on the use of a tar mixer-settler, is reasonable for foundry plants. Therefore, the design for indirect final cooling could be used to achieve the standard proposed for furnace or foundry plants under Approaches A, B, and C only if it included complete control of naphthalene processing emissions.

Implementation of a wash-oil final cooler, in which the naphthalene is absorbed in wash oil, eliminates the emissions that result from the practice of separating naphthalene from the hot well of a direct-water final cooler. Therefore, the zero emission limit for naphthalene processing that was proposed in 1984 still is appropriate for the revised standard proposed under Approaches A, B, and C for naphthalene processing at furnace and foundry plants. The wash-oil final cooler (or a similar indirect cooling scheme) also would eliminate emissions from the final cooler and associated cooling tower. Consequently, a zero emission limit for the final cooler and final-cooler cooling tower at furnace plants (as well as for naphthalene processing) was selected for the revised standard that would be proposed under Approaches A, B, and C. Wash-oil decanters and wash-oil circulation tanks are associated with wash-oil final-cooler designs. As described in the 1984 proposed standard and in today's proposal, these would be subject to the same gas-blanketing requirements as wash-oil decanters and wash-oil circulation tanks occurring in the light-oil recovery operation.

Under Approaches A, B, and C, if an owner or operator chose to meet the zero emission limit with an indirect cooling scheme in which the naphthalene is absorbed in tar or another medium (such as flushing liquor), then the vessel in which absorption takes place (e.g., the tar mixer-settler) must be gas blanketed. This is consistent with the standard proposed in 1984.

The use of wash-oil final coolers (or other indirect cooling systems) would reduce emissions of hydrogen cyanide (HCN) to the air, but could increase its concentration in the wastewater. The Agency estimates that about 200 grams (g) of HCN/Mg of coke produced could be added to the wastewaters of a medium-sized plant producing 4,000 Mg of coke/day. This increase is not anticipated to cause problems for compliance with effluent regulations.

No testing or monitoring provisions applicable to wash-oil final coolers are included in the revised proposed standard under Approaches A, B, and C because compliance would be achieved with installation of the appropriate equipment. However, any associated gas-blanketed vessels (e.g., wash-oil decanter and circulation tanks or tar mixer-settlers) would be subject to semiannual inspections for leaks using Method 21 in 40 CFR Part 60. These requirements for gas-blanketed vessels are described in this preamble in Section XII for coke by-product plants.

Compliance with the zero emission limit would be assessed through recordkeeping and reporting requirements. The owner or operator must record and keep in a readily available location a description of the control system used to achieve compliance (e.g., schematics), the installation date, and a description of any changes made after installation. In the initial compliance report required by 40 CFR 61.10, the owner or operator would be required to submit a statement notifying EPA that the provisions of the standard are being implemented. For gas-blanketed vessels associated with the final cooling system, the recordkeeping and reporting requirements for gas-blanketed vessels described in the 1984 proposed standard and in today's revised proposed standard under Approaches A, B, and C would be applied.

Impact Analysis

Comment: Two commenters noted the effect of plant closures and reduced battery capacities.

Response: The interim status of the estimated environmental impacts was acknowledged in the preamble to the proposed standard (49 FR 23524). As stated, the impacts were calculated initially from a data base of 55 plants. Data from the U.S. Department of Energy (DOE) received just before proposal indicated that 13 of the 55 plants had been closed. Information was not available, however, to determine whether all reported closures were permanent. Consequently, the preamble presented impacts based on 42 plants and stated that they would be revised after proposal.

After the June 6, 1984, proposal, the information regarding closures, changes in battery capacities, and changes or corrections in site-specific operating processes was updated to November 1984. These data were supplied by individual companies and by two major industry trade associations—the American Iron and Steel Institute (AISI) and the American Coke and Coal Chemicals Institute (ACCCI). As shown in Appendix A of the Revised Proposal

BID. 44 furnace and foundry plants with a combined operating capacity of 50.9 million Mg/yr of coke are included in the data base for the revised proposed standard. Plants on cold-idle in November 1984 are included in the data base because information is insufficient to determine whether these sites will be closed permanently. If these cold-idle plants were deleted from the data base, the operating capacity would be reduced by about 7 million Mg/yr of coke.

Comment: Five commenters stated that fewer emissions are generated from foundry plants compared to furnace plants because of the use of less volatile coal and longer coking cycles.

Response: In response to public comments received on the emission factors for foundry plants, EPA reviewed available information and data to determine whether separate factors were warranted for furnace and foundry plants. In general, EPA agrees with the commenters' assertions that benzene emissions from a foundry coke plant would be expected to be less than the emissions from a furnace coke plant of similar capacity. Foundry coke is produced from a coal mixture that contains less volatile matter than the mixtures used to produce furnace coke. Data supplied by DOE on light-oil yields show that, over a 4-year period, the light-oil yields at merchant plants (mainly foundry coke producers) averaged about 66 percent of those at furnace plants on a per-ton-of-coal-charged basis. These yields, displayed in Table A–11 of the Revised Proposed BID, represent the principal basis for the techniques used to adjust the emission factors for foundry coke plants.

The EPA also agrees with commenters who suggested that the lower coking temperatures associated with foundry coke production compared to furnace coke production (for the same coal) would lead to production of less by-product benzene. Although one merchant plant commenter indicated that the light-oil from coking contains 55 to 60 percent benzene (compared to the 70 percent assumed in the Proposal BID for furnace and foundry plants), the ACCCI provided an average estimate of 63.5 percent for foundry plants based on an informal poll of member companies. For furnace coke production, however, a light-oil content of 70 percent still is considered appropriate.

Separate emission factors for foundry plant sources were developed by applying correction factors to the emission rates initially proposed for furnace and foundry plants; computations of correction factors and the final emission factors are shown in Appendix A of the Revised Proposal BID.

Comment: The Agency received four comments that the risks were overestimated because of: (1) Inclusion of the epidemiologic study by Ott et al. in developing the URE, (2) use of a conservative, linear nonthreshold model for dose/response, and (3) application of conservative assumptions in the HEM, such as assuming exposure for 24 hours/day for 365 days/year over a 70-year lifetime. One commenter felt that the risks were underestimated because the analyses did not reflect updated epidemiological studies that would increase the URE. Also, if EPA had used the ISC model rather than the HEM, the estimated maximum individual lifetime risk would have been higher.

Response: The EPA has responded to comments on the benzene URE on several occasions (see "Response to Public Comments on EPA's Listing of Benzene under Section 112" (EPA–450/5–82–003) and EPA's response to an NRDC petition for reconsideration of the benzene URE based on the review of new scientific reports on benzene carcinogenicity (50 FR 34144, August 23, 1985)). In response to the NRDC petition, EPA reevaluated the benzene URE in light of current scientific literature. The URE was revised from 0.022 to 0.026/ppm, a 17-percent increase in the URE that was reflected in the estimates of risk that accompanied the 1984 proposal. Also since the time of proposal, EPA has revised the modeling radius from 20 km to 50 km around each plant. This reflects the Agency's judgment that the dispersion model yields reasonable estimates of concentrations out to 50 km. When advocating the ISC over the HEM, the commenter cites in support the estimated uncertainty factor of 2 or 3 discussed for the benzene fugitive emissions rulemaking. Comparisons of ISC and HEM do not always result in the ISC yielding higher concentrations. After comparing the two models for the 1984 benzene fugitive emissions rule, EPA concluded that the use of the ISC results would not change the Agency's decision on the standard. Because of this, the Agency decided this additional analysis for coke by-product plants was not warranted.

The EPA recognizes that the assumption of continuous exposure over a 70-year lifetime likely overestimates the cancer risk for individuals exposed for significantly less than 70 years. The uncertainties in the risk estimates are discussed further in Sections IV and X of this preamble.

Comment: Several commenters argue that the capital costs of the standard are significantly higher than estimated at proposal. Other commenters believe that the value for potential product recovery credits was overstated or that the cost for their particular plant would be higher than the model unit costs at proposal.

Response: The cost impact analysis has been revised since proposal to respond to many of the concerns cited by the commenters. The revised analysis, details of which are included in Chapter 7 and Appendix B of the Revised Proposal BID, indicates nationwide capital costs for Option 3 under Approaches A and B of about $84 million (1984 dollars) compared to $24 million (1982 dollars) estimated at proposal. This revised estimate under Approaches A and B includes the use of wash-oil final coolers at furnace coke plants, which were not included in the original proposal. Of the $84 million, approximately $48.5 million (or 58 percent) is for wash-oil final coolers at furnace plants.

In revising the analysis, EPA conducted a detailed review of the estimates and data supplied by commenters. The EPA also secured the assistance of a design and engineering firm/equipment vendor to assist in the development of revised unit costs. Included in the review was a site visit to a plant to resolve questions regarding equipment locations and source applicability, and to obtain examples of site-specific conditions pertinent to the development of the revised unit cost factors. Included in the revised analysis are higher unit costs for most materials based on data received from commenters in addition to the data developed by the design and engineering firm. Costs also have been added for sealing all sources, installing roofs on certain storage tanks, adding more pipe support, installing pressure/vacuum relief values for sealed sources, and making adjustment for work in hazardous areas requiring special safety precautions.

As stated above, costs for wash-oil final coolers also have been revised since proposal. Based on information supplied by industry, the annualized cost of a wash-oil final cooler is estimated at $872,400/yr for a medium-sized furnace plant producing 4,000 Mg of coke/day. The estimated capital cost for this size plant is $2.7 million. Further information on wash-oil final cooler costs appear in Appendix B of the Revised Proposal BID.

The Agency essentially agrees with the two commenters that the value of potential product recovery credits was overestimated at proposal. The

difference in production quantity (reflected in new emission factors for foundry plants) was taken into account in the computation of revised fuel value and light oil recovery credits. Also, the credit for light oil has been decreased from $0.33/kilogram (kg) to $0.27/kg based on DOE information (see Table A–11 of the Revised Proposal BID). The fuel value recovery credit for coke oven gas also was revised from $0.14/kg coke oven gas compared to $0.15/kg estimated at proposal. Credits for recovery of benzene and/or light oil were applied to all plants except those few specifically identified as not being able to benefit from recovery.

The EPA acknowledges that costs for particular plants may be higher or lower than EPA estimates, depending on the site-specific conditions. However, the revised cost analysis addresses the concerns cited by the commenters and the costs are reasonable estimates of the industry-wide cost of controls.

Comment: Commenters from both the furnace and foundry coke segments of the industry state that the economic analysis fails to consider the true condition of the industry at baseline and that the standard will have an adverse effect.

Response: At the time the original analysis for the proposed standard was conducted, the information from published and unpublished sources was current. A reanalysis has been performed since proposal (see Chapter 8 and Appendix C of the Revised Proposal BID) that utilizes data on plants and capacity in existence in November 1984. Financial data and production data used in baseline estimates are from the available published and unpublished sources as of 1984.

The reanalysis also examines the economic impacts of control options in terms of the effects on coke price and production, imports, and employment. These impacts have been examined separately for furnace and foundry producers. Two scenarios were used for foundry producers. Scenario A reflects a constant price in imported coke; Scenario B assumes the maximum effect of import substitution. In all cases, impacts appear to be small. For the standard for foundry plants, under Approach A or B, Scenario A would yield an increase of less than 0.6 percent over baseline for coke prices and production. Under Scenario B, no price impact is estimated; coke production could decrease by about 2 percent from 1984 levels. About a 0.6- and 2-percent decline in employment levels could occur at foundry plants under the Scenario A or B, respectively. For the revised proposed standard for furnace plants proposed under Approach A and B, coke prices could increase by about 0.33 percent from baseline levels, and coke production could decrease by less that 0.5 percent. The level of imported coke could increase by 0.64 percent. Employment levels at furnace coke plants could decrease by less than 0.5 percent as a result of Approach A or B.

The economic analysis also compared the capital costs of compliance to average annual net investment and to the annual cash flow for individual companies. As shown in Appendix C, the capital costs of compliance for the revised regulation proposed under Approaches A and B are up to 5 and 8 percent of the average annual net investments and annual cash flow, respectively, for companies for which data are available.

The revised economic analysis did not include an examination of the emission limits that would be required under Approaches C and D.

General Comments

Comment: One commenter requests that EPA reconsider lowering the definition of an equipment "leak" from 10,000 parts per million volume (ppmv) to 1,000 ppmv or to the highest level at which the EPA can demonstrate, with data, that directed maintenance does not result in net emission reductions.

Response: The Agency's rationale for selecting the 10,000-ppmv leak definition was discussed in the preamble for the original proposal of this rule, and in the rulemakings for equipment leaks of benzene and VOC in synthetic organic chemicals manufacturing plants and petroleum refineries. The issue also is discussed in EPA's response to NRDC's petition for reconsideration of the benzene rulemakings (50 FR 34144, August 23, 1985).

As discussed in Chapter 10 of the Revised Proposal BID, the key criterion for selecting a leak definition is the mass emission reduction demonstrated to be achievable. The EPA has not concluded that a lower leak definition is achievable. A net increase in mass emissions might result if higher concentration levels result from attempts to repair a source with a screening value between 1,000 and 10,000 ppmv. Although many leaks can be repaired successfully at concentrations less than 1,000 ppmv, even one repair failure would offset many successful repairs. Most data on leak repair effectiveness have applied 10,000 ppmv as the leak definition and, therefore, do not indicate the effectiveness of repair for leak definitions between 1,000 and 10,000 ppmv. Although data between these values are available, they are not sufficient to support a leak definition below 10,000 ppmv. Moreover, even though there is some evidence that directed maintenance is more effective, available data are insufficient to serve as a basis for requiring directed maintenance for all sources. In summary, EPA does not disagree with the commenter in that additional emission reductions potentially could be achieved by reducing the leak definition from 10,000 to 1,000 ppmv. However, although EPA has concluded that the 10,000-ppmv level is a demonstrated and effective leak definition (i.e., there are enough emissions that repair can be accomplished with reasonable costs), EPA has not concluded that 1,000 ppmv is a demonstrated definition. Until EPA has adequate data to support a lower level, EPA is selecting the clearly demonstrated leak definition of 10,000 ppmv as the basis of the equipment leak requirements.

Comment: One commenter recommends that the standard permits the use of a 90-percent efficient control device (e.g., a wash-oil scrubber) in lieu of gas blanketing on process vessels, tar storage tanks, and tar-intercepting sumps. The commenter suggests that the control efficiency of blanketing at an older plant may be lower than 98 percent because of leakage and downtime, and a wash-oil scrubber may achieve higher than 90-percent control.

Response: The control efficiency of gas blanketing theoretically is 100 percent. For conservative comparisons with other controls, this efficiency has been reduced to 98 percent to account for leakage. The 98-percent level or higher should be maintained continuously through proper leak detection and repair. Although a wash-oil scrubber may achieve an efficiency higher than 90 percent, the parameters were developed to ensure that all plants using this technique could achieve a 90-percent control continuously. Based on a 90-percent control efficiency, wash-oil scrubbers are less effective than gas blanketing and may be more costly from a nationwide perspective.

XII. Summary of Alternative Proposed Standards

This section summarizes the format and provisions of the standards that are proposed under the four policy approaches described in Section V. The alternative policy approaches result in alternative standards. The rationales for selection of the standards for each source category under each policy approach are contained in Section VII through X of this preamble. In this

section, general provisions applicable to all standards are listed first, followed by a summary of the alternative proposed standards organized by source category.

General Compliance Provisions

Provisions Applicable to all Standards

All of the proposed regulations would require compliance within 90 days of promulgation for existing sources, and at startup for new sources. Methods for determination of compliance are described in each subpart. A waiver of compliance for an existing source could be approved by the Administrator for no more than 2 years from the date of promulgation, as provided in 40 CFR 61.11. The following reports are required by the General Provisions of Part 61:

1. An initial source, report;

2. Notification 30 days prior to any emission test to permit the Administrator to have an observer present; and

3. A written report regarding any emission test within 30 days following the test.

The following records would need to be maintained on site for at least 2 years, and be available for inspection by the Administrator:

1. Any emission test data and calculations used to demonstrate compliance;

2. Monitoring records;

3. A log of startups, shutdowns, and malfunctions; and

4. A log of maintenance and repair of control devices.

Records on control system design and specifications would be maintained as long as a piece of control equipment was in use.

Compliance Procedures for Emission Limit Standards

The following procedures apply to the alternative standards proposed under Approaches C and D for equipment leaks and coke by-product recovery plants, and the standards proposed under Approach D for benzene storage vessels and EB/S process vents.

Compliance with the emission limit would be determined by an emission test, calculation procedures that are described in the applicable subpart, or by an alternative method approved by the Administrator. A report of the results of the emission test shall be submitted within 30 days of the test. If a calculation procedure or alternative method is used to determine compliance, a compliance report shall be submitted with the source report required in § 61.10 or the notification of startup required in § 61.09 of 40 CFR Part 61, whichever is applicable.

An operating and maintenance plan would be required within 90 days of promulgation for existing sources, and within 90 days of startup for new sources. The plan would have to describe any control techniques used to achieve compliance, identify the parameter(s) to be monitored, explain the criteria used in deciding on the parameters, and establish the types and frequency of maintenance necessary. It would also include a schedule for reporting of excess emissions or reporting of other information demonstrating continued compliance with the emission limit. Excess emissions would be indicated by exceedences of the monitored parameter(s) specified in the operating plan. The reporting schedule should be consistent with the compliance, monitoring, and maintenance methods, and would be no more frequent than quarterly. The operating and maintenance plan would be subject to the Administrator's approval.

Standards for EB/S Process Vents

Approach A. Case-by-Case Approach

No standard is proposed for EB/S process vents.

Approach B. Incidence-Based Approach

No standard is proposed for EB/S process vents.

Approach C. 1×10^{-4} or Less Maximum Individual Risk Approach

No standard is proposed for EB/S process vents.

Approach D. 1×10^{-6} or Less Maximum Individual Risk Approach

The proposed standard would limit total benzene emissions from all process vents at any EB/S plant to 5.5 kg/day.

Standards for Benzene Storage Vessels

Approach A. Case-by-Case Approach

The proposed standard would require control of all new and existing storage vessels greater than 38 m^3 (10,000 gallons) used to store benzene with a specific gravity within the range of specific gravities specified for industrial grade benzene in ASTM-D-836-80. It would not apply to storage vessels used for storing benzene at coke by-product recovery facilities because they are considered under the coke by-product plant NESHAP. The proposed standard would require use of certain kinds of equipment on each type of benzene storage vessel. Table XII-1 lists the requirements.

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TABLE XII-1. EQUIPMENT TO BE REQUIRED ON BENZENE STORAGE VESSELS IN STANDARD PROPOSED UNDER APPROACHES A, B, AND C

Tank size and time of construction	Requirements
1. Fixed roof internal floating roof tank	
a. $\geq$ 38 m^3, commenced construction prior to date of proposal, and had no internal floating roof as of proposal.	Internal floating roof with liquid-mounted primary seal and gasketed roof fittings or internal floating roof with liquid-mounted primary seal and a continuous secondary seal.
b $\geq$ 38 m^3, commenced construction prior to date of proposal, and had an internal floating roof as of proposal.	Internal floating roof with any type of seal and gasketed roof fittings[1] or internal floating roof with liquid-mounted primary seal and a continuous secondary seal.
c. $\geq$ 38 m^3, commenced construction after date of proposal.	Internal floating roof with liquid-mounted primary seal and gasketed roof fittings and pipe column with flexible frabic sleeve. or internal floating roof with liquid-mounted primary seal and a continuous secondary seal.
2 External floating roof tank	
a $\geq$ 38 m^3, commenced construction prior to date of proposal.	Liquid-mounted primary seal and a continuous secondary seal.[2,3]
b $\geq$ 38 m^3, commenced construction on or after date of proposal.	Liquid-mounted primary seal and a continuous secondary seal[3]

[1]Gasketing of roof fittings is required the first time tank is degassed.

[2]If external floating roof is already equipped with liquid-mounted primary seal, the secondary seal is required to be added the first time the tank is degassed

[3]Mechanical-shoe primary seal is also allowed, provided that the tank is also equipped with a continuous secondary seal

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The proposed benzene storage vessel standard would require that fixed roof tanks include an internal floating roof. The proposed standard would also require that, when an internal floating roof is added to an existing fixed roof tank after the effective date of the standard, a liquid-mounted rather than a vapor-mounted seal be used with the roof and that fittings on the roof be gasketed. (A mechanical-shoe seal may also be used.) Existing fixed roof tanks that already have internal floating roofs on the effective date would not be required to have their vapor-mounted seals replaced with liquid-mounted seals, although they would be required to have their roof fittings gasketed when the tank is emptied and degassed for other purposes. New fixed roof storage tanks would be required to be constructed with the same controls as are required for existing tanks with no internal roof (i.e., with an internal floating roof, a liquid-mounted primary seal, and controlled roof fittings) and they would also be required to have pipe columns equipped with a flexible fabric sleeve seal. Note that if tanks were equipped with a secondary seal in accordance with the proposed standard, gasketed fittings would not be required; the two control techniques achieve the same emission reduction.

Owners of existing and new external floating roof tanks would have to install liquid-mounted primary seals (or mechanical-shoe seals) and continuous secondary seals meeting certain gap requirements. Existing external floating roof tanks already equipped with a liquid-mounted primary seal, however, would not be required to add the secondary seal until the first degassing of the tank.

The standard would require that each internal floating roof vessel be inspected from inside prior to the filling of the vessel (if it is emptied to install control equipment) and at least once every 10 years. An internal floating roof having defects or a seal having holes or tears would have to be repaired before filling the storage vessel with benzene. The proposed standard would also require that the internal floating roof and its seal be inspected through roof hatches on the fixed roof at least once annually. However, if an internal floating roof were equipped with a primary and secondary seal, the owner or operator could conduct an internal inspection every 5 years rather than perform the annual inspections. Any major defects such as roof sinking or primary seal detachment as viewed through the roof hatches would be required to be repaired within 30 days or the storage vessel would have to be emptied. If repair or emptying within 30 days is not possible, the owner or operator could request an extension of up to 30 additional days.

The proposed standard would also require that, for external floating roof tanks, the primary seal and secondary seal gaps be measured initially and at least once every 5 years for the primary seal and at least once annually for the secondary seal.

Approach B. Incidence-Based Approach

The proposed standard would be the same as that described under the preceding discussion of Approach A.

Approach C. 1×10^{-4} or Less Maximum Individual Risk Approach

The proposed standard would be the same as that described under the preceding discussion of Approach A.

Approach D. 1×10^{-6} or Less Maximum Individual Risk Approach

The proposed standard would limit total combined emissions from all benzene storage vessels at a plant to 0.47 kg/day. To determine compliance, the owner or operator would calculate emissions from each vessel and add these to estimate total facility emissions. One calculation method EPA would approve is use of the equations and procedures in the EPA document "Compilation of Air Pollutant Emission Factors", Volume I, September 1985, EPA Publication No. AP–42. Other methods of demonstrating compliance could also be used after approval by EPA.

Standards for Equipment Leaks

Approach A. Case-by-Case Approach

No new standard is proposed for control of benzene equipment leaks. The standard in 40 CFR Part 61, Subpart J, which was promulgated on June 6, 1984, would remain in effect without revision. The standard applies to equipment components such as valves, pumps, compressors, pressure relief devices, open-ended valves or lines, sample connection systems, and product accumulator vessels. Equipment that contains or contacts a fluid (liquid or gas) that is at least 10 percent benzene is required to follow specific control procedures. Generally, for each type of equipment, Subpart J includes equipment specifications and/or schedules and procedures for monitoring and repair of leaks.

Approach B. Incidence-Based Approach

No new standard is proposed for benzene equipment leaks. The current standard in 40 CFR Part 61, Subpart J, which is summarized in the discussion of Approach A, would remain in effect without revision.

Approach C. 1×10^{-4} or Less Maximum Individual Risk Approach

The proposed standard would require that each facility with equipment subject to Subpart J meet a total facility emission limit of 14 kg/day for the combined emissions from all equipment components located at the facility. In addition, the proposed standard would include the current requirements in Subpart J (i.e., those promulgated on June 6, 1984). Compliance with the emission limit could be determined through the procedures established in the "Protocols for Generating Unit-Specific Estimates for Equipment Leaks of VOC and VHAP—Draft" or through design specifications (i.e., leakless equipment).

Approach D. 1×10^{-6} or Less Maximum Individual Risk Approach

The proposed standard would limit emissions from all equipment components at any facility with equipment in benzene service to 0.14 kg/day. The proposed standard does not retain the exemption for facilities producing or using less than 1,000 Mg/yr that is currently in Subpart J (as promulgated on June 6, 1984). The exemption is not appropriate under this approach because uncontrolled emissions from many facilities using less than 1,000 Mg/yr would exceed the 0.14 kg/day emission limit. The current Subpart J provisions would not be required, because this would be unnecessary since plants would have to use even more stringent controls to comply with the emission limit.

Standards for Coke By-Product Recovery Plants

Approach A. Case-by-Case Approach

There are two major differences between the standard proposed under Approach A and the 1984 proposal. A design standard requiring a 90-percent emission reduction was proposed in 1984 for storage tanks containing light oil, benzene, excess ammonia-liquor, or BTX mixtures. The Approach A proposal would not require that these sources be controlled. Also, the standard proposed for naphthalene processing under this approach would differ from the 1984 proposal by requiring zero emissions from the final cooler and associated cooling tower at furnace plants, as well as from naphthalene processing. The proposed standard for naphthalene processing at

foundry plants is not different from the 1984 proposal.

Under Approach A, an equipment standard would be established for the control of emissions from each tar decanter, tar-intercepting sump, tar dewatering tank, light-oil condenser, light-oil decanter, wash-oil decanter, and wash-oil circulation tank. The rule that would be proposed under Approach A would be identical to that proposed for these sources in 1984. Each of these sources would be required to be totally enclosed with emissions ducted to the gas collection system, gas distribution system, or other enclosed point in the by-product recovery process. Unless otherwise specified, pressure relief devices, vacuum relief devices, access hatches, and sampling ports would be the only openings allowed on each source. Access hatches and sampling ports would have to be equipped with a gasketed cover.

The standard under Approach A could be achieved with a gas-blanketing system. A gas-blanketing system is a closed system operated at positive pressure and is generally composed of piping, connections, and flow-inducing devices (if necessary) that transport emissions from the enclosed source back to the coke-oven battery gas holder, the collecting main, or another point in the by-product recovery process. Dirty or clean coke oven gas, nitrogen, or natural gas are examples of gases that may be used as the gas blanket.

To ensure proper operation and maintenance of the control equipment, the proposed standard would require a semiannual inspection of the connections and seals on each gas-blanketing system for leaks, using EPA method 21 test for no detectable emissions (40 CFR Part 60, Appendix A). Monitoring also would be required at any other time after the control system is repressurized following removal of the cover or opening of the access hatch. An organic chemical concentration would indicate the presence of a leak. The standard also would require a semiannual visual inspection of each source and the piping of the control system for visible defects such as gaps or tears. A first attempt at repair of each leak or visible defect would be required within 5 days of detection, with repair within 15 days. The owner or operator would be required to record the results of the inspections for each source and to include the results in a semiannual report. The revised proposed regulation under Approach A also would require an annual maintenance inspection for abnormalities such as pluggages, sticking valves, and clogged or improperly operating condensate traps. A first attempt at repair would be required within 5 days, with any necessary repairs made within 15 days of the inspection.

An equipment standard would be proposed to require that the surface area of each light-oil sump be completely enclosed. This proposed standard would be based on the use of a tightly fitting permanent or removable cover, with a gasket on the rim of the cover. The standard would allow the use of an access hatch and a vent in the sump cover. However, any access hatch would need to be equipped with a gasket and with a cover or lid, and any vent would need to be equipped with a water leg seal, pressure relief device, or vacuum relief device. Semiannual inspections of the gaskets and seals for detectable emissions would be required; monitoring also would be required at any other time the seal system is disturbed by removal of the cover. The inspection and monitoring requirements would be the same as previously described for gas-blanketed sources. This revised proposed standard would not allow venting of steam or gases from other points in the coke by-product process to the light-oil sump.

The revised proposed standard also would apply to leaks (i.e., fugitive emissions) from new and existing pieces of equipment in benzene service, including pumps, valves, exhausters, pressure relief devices, sampling connections, and open-ended lines, all of which except exhausters comprise those components that contact or contain materials having a benzene concentration of at least 10 percent by weight. Exhausters that contact or contain materials having a benzene concentration of at least 1 percent benzene by weight also are in benzene service. The standard for equipment leaks would be identical to the 1984 proposed standard. Because this standard is the same as requirements in 40 CFR Part 61, Subpart V, for equipment except exhausters, the coke by-product rule would reference Subpart V where appropriate rather than repeating the provisions. Subpart V also would be amended where necessary for clarification of the cross referencing. The specific requirements for exhausters are summarized in detail below, because they are not in Subpart V.

The revised proposed standard would require that all exhausters in benzene service be monitored quarterly for the detection of leaks. If an organic chemical concentration at or above 10,000 ppm were detected, as measured by Method 21, the revised proposed standard would require a first attempt at repair within 5 days, with repair of the leak within 15 days from the date the leak was detected, except when repair would require a process unit shutdown. "Repair" means that the measured concentration is below 10,000 ppm. The standard proposed under Approach A provides three types of alternatives to the leak detection and repair requirements for exhausters. An owner or operator could (1) use "leakless" equipment to achieve a "no detectable emission" limit (i.e., 500 ppm above a background concentration, as measured by Method 21), (2) equip the exhauster with enclosed seal areas vented to a control device designed and operated to achieve a 95-percent benzene control efficiency, or (3) equip the exhausters with seals having a barrier fluid system. The proposed regulation includes specific requirements for each of these three alternatives to the leak detection and repair requirements.

For foundry coke by-product plants, the revised proposed standard under Approach A would allow no emissions from the processing of naphthalene separated from the final cooler water. A foundry coke by-product plant would be defined as a coke by-product recovery plant connected to the coke batteries whose annual coke production is at least 75 percent foundry coke. "Foundry coke" means coke that is produced from raw materials with less than 26 percent volatile material by weight and that is subject to a coking period of 24 hours or more. This emission limit could be achieved by a process modification involving the absorption of naphthalene in tar, wash oil, or an alternative medium (other than water). For example, a mixer-settler could be added to the final cooler, or a direct-water final cooler could be replaced by a tar-bottom or wash-oil final cooler system or another design that allows no emissions from naphthalene processing. If a mixer-settler were used to remove naphthalene from the final cooler water, the mixer-settler must be gas blanketed and would be subject to the same provisions as other gas-blanketed sources.

For furnace coke by-product plants, the revised proposed standard under Approach A for naphthalene-processing operations, final coolers, and the associated cooling towers would require zero emissions from the final cooler and cooling tower, as well as from naphthalene processing. It would be based on the use of a wash-oil final cooler; however, other final cooler designs that achieve zero emission limits could be used.

Compliance with the revised proposed standard under Approach A would be assessed through plant inspections and the review of records and reports that document implementation of the requirements. On a semiannual basis, the owner or operator would be required to report the number of leaks detected and the number of leaks not repaired during the 6-month period. The owner or operator also would be required to submit a signed statement in each semiannual report, indicating whether provisions of the standard have been met for the 6-month period.

Approach B. Incidence-Based Approach

The proposed standard would be the same as that described under the preceding discussion of Approach A.

Approach C. 1×10^{-4} or Less Maximum Individual Risk Approach

The proposed standard would require that total benzene emissions from all emission points listed in Table X–2 not exceed 34 kg/day. In addition, the owner or operator would be required to meet the standards discussed above for Approach A. To determine compliance with the emission limit, the plant owner or operator may calculate emissions from all affected sources based on the emission factors for each unit and submit these calculations with the initial source report. The benzene emission factors for furnace and foundry plants, as revised based on public comments from the 1984 proposal, are included in the regulation for this approach and in the Revised Proposal BID. Alternatively, the owner or operator could choose to perform emission tests to estimate emissions using methods and procedures subject to approval by the Administrator. However, because EPA has not developed and promulgated a test method for determining benzene emissions from process vessels and area sources, the owner or operator would need to provide an appropriate method for review and approval by EPA. For equipment leaks, established procedures can be found in "Protocols for Generating Unit-Specific Estimates for Equipment Leaks of VOC and VHAP—Draft".

Approach D. 1×10^{-6} or Less Maximum Individual Risk Approach

The proposed standard would require that total benzene emissions from all emission points listed in Table X-2 not exceed 0.34 kg/day. To demonstrate compliance with the emission limit, the plant owner or operator would use the methods described above for Approach C.

XIII. Format of Alternative Standards

Section 112 of the CAA requires an emission standard whenever it is feasible. Section 112(e)(1) states that "if in the judgment of the Administrator, it is not feasible to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof * * *". The term "not feasible" is applicable if the emissions cannot be captured and vented through a vent or stack designed for that purpose, or if the application of a measurement methodology is not practicable because of technological or economic limitations. This section presents the rationale for the selected formats for the standards being proposed under the four alternative policy approaches.

Ethylbenzene/Styrene Process Vents

Approach D. 1×10^{-6} or Less Maximum Individual Risk Approach

The proposed standard is expressed as a limit on the mass of benzene emitted per day to ensure that no faclity has risks exceeding 1×10^{-6}. Because EB/S process vents vary widely in concentration and flowrates, it is not possible to ensure that any specific concentration or emission reduction would achieve the target risk. Therefore, a limit was placed on the total mass emitted on a daily basis.

Benzene Storage Vessels

Approach A. Case-by-Case Approach

The standard being proposed under Approach A is based on design, equipment and operational requirements due to the infeasibility of measuring emissions in this case. Internal and external floating roof storage vessels, both before and after the identified controls are installed, do not typically have a conveyance system designed to capture the emissions or a stack or vent through which the emissions pass to the atmosphere.

Equipping each storage vessel with a capture and stack system would require that the vessel vents be sealed and that the emissions be transported to a measurement system. In most cases, the closure of the vessel vents would require the vessel to be blanketed with inert gas to prevent the creation of explosive or flammable mixtures in the vessel or measurement system. This would certainly be economically impracticable, especially considering that the sole purpose of the system would be for emission testing. For this reason the Administrator concluded that requiring emission testing to measure emissions and demonstrate compliance with an emission standard is not feasible for internal floating-roof storage vessels.

External floating-roof storage vessels are open to the atmosphere in that they have no fixed roof. Because of this, it is technologically impossible to equip these vessels with a closed vent system. It is possible to equip these vessels with fixed roofs, in which case they become internal floating-roof vessels. The argument against an emission standard for internal floating-roof vessels presented in the previous paragraph would then hold for them. Therefore, the Administrator has concluded that requiring emission testing to measure emissions and demonstrate compliance with an emission standard for external floating-roof vessels is infeasible.

The possibility of establishing a "design, equipment, work practice, or operational standard, or combination thereof" was then examined. Types of equipment available to limit emissions from fixed roof benzene storage vessels are an internal floating-roof with a liquid-mounted primary seal, or a secondary seal and controlled fittings. Equipment available for external floating roof tanks include continuous secondary seals. Equipment standards can be specified to require installation of these types of controls. Operational and work practice requirements, which consist of inspection and repair requirements, are necessary to ensure the continued integrity of the control equipment. Therefore, the Administrator concluded that the format of the standard for benzene storage vessels should include a combination of design, equipment, work practice, and operational standards.

Another control option allowed under the standards is a vapor control system consisting of two distinct parts: (1) A closed vent system and (2) a control device. The closed vent system collects benzene vapors that have been vented from the storage vessel and transfers them to a control device that then processes the benzene vapors by either recovering them as product, or disposing of them. After reviewing analyses of vapor control systems performed during the development of the previous NSPS for VOL storage vessels and the NESHAP for equipment leaks (40 CFR Part 61, Subpart V) which have provisions for closed vent systems and control devices, the Administrator concluded that the format of the standard for storage vessels equipped with closed vent systems and control devices should also include a

combination of design, equipment, work practice and operational standards.

Approach B. Incidence-Based Approach

The same standard is being proposed under Approach B as under Approach A. Therefore, the same format was selected for the reasons described under Approach A.

Approach C. 1×10^{-4} or Less Maximum Individual Risk Approach

The same standard is being proposed under Approach C as under Approach A. Therefore, the format was selected for the same reasons.

Approach D. 1×10^{-6} or Less Maximum Individual Risk Approach

For the development of this standard, EPA considered establishing additional equipment and design requirements. Because the identified controls (in Option 1 of Table VIII–2) would not achieve 1×10^{-6} at all facilities, it is not possible at this time to use this format to specify the required control level. Therefore, a limit was placed on the total benzene emissions from all storage vessels at a facility.

Equipment Leaks

Approach C. 1×10^{-4} or Less Maximum Individual Risk Approach

For the development of this alternative standard, EPA considered establishing additional equipment and design requirements. (In selecting the format for the current Subpart J, EPA had previously determined that mass, concentration, or percent reduction formats were not feasible or practicable.) Because the additional controls available would not achieve 1×10^{-4} at all facilities, it was not possible to use an equipment and design format to specify the required control. Therefore, the format selected was a daily mass emission limit that would not exceed 1×10^{-4} risk. This emission limit may be achieved through design of the facility to minimize the number of components as well as through use of leakless equipment. Additionally, the standards retain requirements of Subpart J (as promulgated on June 6, 1984), which are expressed as equipment, design, and work practice standards because some small facilities may be able to reduce emissions to below the 14 kg/day emission limit by compliance with these provisions.

Approach D. 1×10^{-6} or Less Maximum Individual Risk Approach

A limit on the mass of emissions per day was chosen for this standard for the same reasons described under Approach C.

Coke By-Product Recovery Plants

Approach A. Case-by-Case Approach

As described in detail for each emission source in the June 6, 1984, proposal, pollutants are not emitted through a conveyance or are not practicable to measure for many of the sources in coke by-product plants. Therefore, the proposed standard under Approach A is a combination of emission limits, equipment, work practice, and operational requirements, depending on the source to be controlled.

Approach B. Incidence-Based Approach

The same standard is being proposed under Approaches A and B. Therefore, the format was selected for the same reasons.

Approach C. 1×10^{-4} or Less Maximum Individual Risk Approach

The emission rate corresponding to the 1×10^{-4} target is 34 kg/day from all emission points listed in Table X–2. Since EPA has not identified any control equipment or procedures that would achieve this emission level at all facilities, it was not possible to specify the standard solely in terms of emission standards for particular equipment, work practice, and operational requirements depending on the source to be controlled. Therefore, a limit was placed on total daily benzene emissions from all affected sources in coke by-product recovery plants. In addition, since some facilities could comply with the 34 kg/day standard using less than the provisions of the proposed standard under Approach A, the standard also specifies minimum control requirements (i.e., the requirement of Approach A) in terms of equipment, design, work practices, and emission limits on particular sources.

Approach D. 1×10^{-6} or Less Maximum Individual Risk Approach

A limit on the mass of emissions released per day from the total of all emission points listed in Table X–2 was chosen for this standard for the same reasons described under Approach C.

XIV. Paperwork Reduction Act

The information collection provisions associated with the proposed rules have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC, 20503, marked "Attention: Desk Officer for EPA", as well as to EPA. Please note on the comments that they apply to ICR Number 1080. The final rules will respond to any OMB or public comments on the information collection requirements.

During the first 3 years that the proposed standards would be in effect, the public reporting burden for collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information is estimated to be:

(1) 4,184 averaged annual hours with an average of 322 hours/yr per respondent for EB/S plants' process vents under Approach D;

(2) 2,134 averaged annual hours with an average of 17 hours/yr per respondent for plants with benzene storage vessels under Approaches A, B, and C;

(3) 126 averaged annual hours with an average of 1 hour/yr per respondent for plants with benzene storage vessels under Approach D;

(4) 1,383 averaged annual hours with an average of 11 hours/yr per respondent for plants with equipment in benzene service (equipment leaks) under Approach C;

(5) 129 averaged annual hours with an average of 1 hour/yr per respondent for plants with equipment in benzene service (equipment leaks) under Approach D;

(6) 7,112 averaged annual hours with an average of 161 hours/yr per respondent for coke by-product recovery plants under Approaches A, B, and C each; and

(7) 44 averaged annual hours with an average of 1 hour/yr per respondent for coke by-product recovery plants under Approach D. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

There are no recordkeeping and reporting requirements for EB/S process vents under Approaches A, B, and C. Also, for equipment leaks under Approaches A and B, the Agency proposes no change in the regulation, therefore, there would be no additional recordkeeping and reporting burden.

XV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires EPA to consider potential impacts of proposed regulations on small "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present RFA guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria:

(1) Compliance increases annual production costs by more than 5 percent;

(2) Compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities;

(3) Capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; and

(4) Regulatory requirements are likely to result in closures of small entities.

For EB/S process vents, no small business would be subject to any proposed EB/S standard. For benzene storage vessels and equipment leaks, very few businesses would be considered small businesses. According to Small Business Administration guidelines, a small business that manufacturers cyclic crudes and cyclic intermediates, pharmaceuticals, and many other chemicals is one that has 750 employees or fewer. Very few of the businesses in the existing industry employ fewer than 750 people. Even if benzene storage facilities owned by small businesses do become subject to a standard under Approaches A, B, or C, none will be adversely affected. In the economic analysis for this standard, the price increase and profitability impacts were estimated for small as well as for larger facilities. The impacts for the small benzene storage facilities were very small (about $800/year). For benzene storage vessels under Approach D and for benzene equipment leaks under Approaches C and D, small businesses will not be more adversely affected than larger businesses.

For coke by-product recovery plants, the EPA has determined under the Small Business Administration guidelines that any coke firm that employs fewer than 1,000 workers is a small business. Six foundry coke firms were identified as being small. For the standard proposed under Approaches A, B, and C, the economic analysis estimates that one plant may exceed criterion (2) above. However, these standards are not subject to the RFA because there is not a substantial number (i.e., 20 percent of the small businesses) that would be adversely affected. For standards proposed under Approach D, the impacts are not expected to be more adverse for small businesses than for large businesses.

XVI. Public Hearing

A public hearing will be held to discuss the proposed actions, in accordance with sections 112(b)(1)(B) and 307(d)(5) of the CAA. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 10 minutes each. Any member of the public may file a written statement before, during, or within 30 days of the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–79–16 for coke by-product recovery plants, Docket No. A–79–27 for benzene equipment leaks, Docket No. OAQPS 79–3 (Part II) for maleic anhydride process vents, Docket No. A–79–49 for EB/S process vents, and Docket No. A–80–14 for benzene storage vessels.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

XVII. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can participate effectively in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A))).

XVIII. Miscellaneous

As prescribed by section 112 of the CAA, as amended, establishment of today's proposed national emissions standards was preceded by the Administrator's listing of benzene as a hazardous air pollutant on June 8, 1977 (42 FR 29332).

The final regulations will be reviewed 5 years from the dates of their promulgation. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and reporting requirements.

In accordance with section 117 of the Act, publication of these actions on benzene was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies to the maximum extent practical.

Under Executive Order 12291, EPA is required to judge whether this regulation is a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that the regulations proposed for benzene storage vessels under Approaches A, B, and C and for coke by-product recovery plants under Approaches A and B will result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." These regulations are not major because: (1) Nationwide annual compliance costs are not as great as the threshold of $100 million; (2) the regulations do not significantly increase prices or production costs; and (3) the regulations do not cause significant, adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets.

The regulations proposed under Approach C for benzene equipment leaks and coke by-product recovery plants and under Approach D for EB/S process vents, benzene storage vessels, equipment leaks and coke by-product plants may be determined to be a "major rule" under Executive Order 12291. The regulations could cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets. As provided by section 8 of the Order, the Agency has not conducted a regulatory impact analysis (RIA) of these proposed regulations because of the time constraint of the judicially-ordered schedule.

All of the proposed regulations presented in this notice were submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any written EPA response to those comments will be included in the dockets listed at the beginning of today's notice under "Dockets". These dockets are available for public inspection at the EPA's Central Docket Section, which is listed in the **ADDRESSES** section of this preamble.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that all the rules proposed under Approaches A and B,

the rules for benzene storage vessels and coke by-product recovery plants proposed under Approach C, and the rules for EB/S process vents proposed under Approach D, if promulgated, will not have a significant economic impact on a substantial number of small entities. I also hereby certify that the rules proposed under Approach C for benzene equipment leaks and under Approach D for benzene storage vessels, equipment leaks, and coke by-product recovery plants will not have a more adverse economic impact on small entities than on large entities.

List of Subjects in 40 CFR Part 61

Asbestos, Benzene, Beryllium, Coke oven emissions, Hazardous substances, Incorporation by reference, Inorganic arsenic, Inter-governmental relations, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride, Volatile hazardous air pollutants.

Date: July 20, 1988.

Lee M. Thomas,

Administrator.

It is proposed to amend Title 40, Chapter I, Part 61 of the Code of Federal Regulations as follows:

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority for 40 CFR Part 61 continues to read as follows:

Authority: Sections 112, 114, 301(a) of the Clean Air Act (CAA), as amended (40 U.S.C. 7412, 7414, 7601(a)).

2. Under *Approach C* as described in the preamble, Subpart J would be revised to read as follows:

Subpart J—National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene

Sec.

61.110 Applicability and designation of sources.
61.111 Definitions.
61.112 Standards.
61.113 Monitoring and compliance.
61.114 Recordkeeping requirements.
61.115 Reporting requirements.
61.116 Delegation of authority.

Subpart J—National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene

§ 61.110 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following sources that are intended to operate in benzene service: Pumps, compressors, pressure relief devices, sampling connections, systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems required by this subpart.

(b) The provisions of this subpart do not apply to sources located in coke by-product plants.

(c)(1) If an owner or operator applies for one of the exemptions in this paragraph, then the owner or operator shall maintain records as required in § 61.114.

(2) Any equipment in benzene service that is located at a plant site designed to produce or use less than 1,000 megagrams of benzene per year is exempt from the requirements of § 61.112.

(3) Any process unit (defined in § 61.241) that has no equipment in benzene service is exempt from the requirements of § 61.112.

(d) While the provisions of this subpart are effective, a source to which this subpart applies that is also subject to the provisions of 40 CFR Part 60 only will be required to comply with the provisions of this subpart.

§ 61.111 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in Subpart A of Part 61, or in Subpart V of Part 61, and the following terms shall have the specific meanings given them:

"In benzene service" means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 10 percent benzene by weight as determined according to the provisions of § 61.245(d). The provisions of § 61.245(d) also specify how to determine that a piece of equipment is not in benzene service.

"Plant" means any combination of process units and equipment used at one site in the production of benzene as an intermediate or final product or in the use of benzene.

"Semiannual" means a 6-month period: The first semiannual period concludes on the last day of the last month during the 180 days following initial startup of new sources; and the first semiannual period concludes on the last day of the last full month during the 180 days after June 6, 1984, for existing sources.

§ 61.112 Standards.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the requirements of Subpart V of this part.

(b) An owner or operator may elect to comply with the requirements of § 61.243–1 and § 61.243–2.

(c) An owner or operator may apply to the Administrator for a determination of an alternative means of emission limitation that achieves a reduction in emissions of benzene at least equivalent to the reduction in emissions of benzene achieved by the controls required in paragraph (a) of this section. In doing so, the owner or operator shall comply with requirements of § 61.244.

(d) In addition to complying with paragraph (a) of this section, no owner or operator of a plant subject to the provisions of this subpart shall cause to be discharged to the atmosphere total benzene emissions from all leaking equipment in the plant exceeding 14 kg/day (5 Mg/yr). Leaking equipment shall include all equipment in benzene service.

§ 61.113 Monitoring and compliance.

(a) Each owner or operator of a source subject to the provisions of § 61.242 shall comply with the test methods and procedures of § 61.245.

(b) Each owner or operator seeking to demonstrate compliance with the annual limit in § 61.112(d) shall measure or calculate emissions according to one of the procedures given in the document "Protocols for Generating Unit-Specific Estimates for Equipment Leaks of VOC and VHAP—Draft;" December 1987; EPA Contract No. 68–02–4338, and apply the emission reduction efficiency of the control program on a component basis.

(c) In lieu of using the procedures referred to in paragraph (b) of this section, an owner or operator may apply to the Administrator for approval of an equivalent method of measuring or calculating emissions.

(d) Each owner or operator subject to the provisions of § 61.112(d) shall submit an operating and maintenance plan to the Administrator for approval within 90 days of the effective date for existing sources, or within 90 days of startup for new sources. The plan shall include the following:

(1) A description of the control techniques by which the owner or operator will comply with the emission limit.

(2) Identification of the parameter(s) to be monitored to ensure that each control device is operated in conformance with its design, and that the emission limit is not exceeded.

(3) An explanation of the criteria used in selecting the monitoring parameter(s).

(4) A description of the types and frequencies of maintenance necessary

(5) A schedule for reporting excess emissions or reporting of other information demonstrating continued compliance with § 61.112(d). The

reporting schedule shall be consistent with the compliance, monitoring, and maintenance methods, and shall be no more frequent than quarterly.

(e) Each owner or operator shall conduct operations, monitor the parameters, and maintain equipment in accordance with the approved operating plan.

§ 61.114 Recordkeeping requirements.

(a) Each owner or operator of a source subject to the provisions of § 61.242 shall comply with the recordkeeping requirements of § 61.246.

(b) Each owner or operator subject to the provisions of § 61.112(d) shall maintain at the plant for a period of at least 2 years, and shall make available to the Administrator upon request, the following:

(1) Records of all data and calculations used to demonstrate compliance with § 61.112(d).

(2) Records of all leaks and repairs to equipment in benzene service.

(3) Records of all malfuctions of each air pollution control device used in controlling benzene emissions.

(4) Records of all maintenance and repairs to each air pollution control device used in controlling benzene emissions.

(5) For each air pollution control device used in the control of benzene emissions, detailed schematics and records of design specifications and instrumentation.

(6) Records of all relevant data and information for any additional methods used to achieve compliance with § 61.112(d) other than the use of air pollution control devices, or leak detection and repair.

(c) A list of identification numbers of all equipment in benzene service at the plant site shall be recorded in a log that is kept in a readily accessible location.

(d) The following information shall be recorded in a log that is kept in a readily accessible location for use in determining exemptions as provided in § 61.110(c)(2) of this subpart:

(1) An analysis demonstrating that the plant site is designed to produce or use less than 1,000 Mg of benzene per year.

(2) Any information and data used in the analysis described in paragraph (1) above.

(e) The following information for use in determining exemptions as provided in § 61.110(c)(3) of this subpart shall be recorded in a log that is kept in a readily accessible location:

(1) An analysis demonstrating that a piece of equipment is not in benzene service.

(2) Any information and data used in the analysis described in paragraph (e)(1).

§ 61.115 Reporting requirements.

(a) Each owner or operator subject to the provisions of § 61.112(d) shall:

(1) Comply with the reporting requirements of § 61.247.

(2) Provide the Administrator 30 days prior notice of any emission test required in § 61.13 to afford the Administrator the opportunity to have an observer present.

(3) Submit to the Administrator a written report of the results of the emission test and associated calculations, as applicable, within 30 days of conducting the test.

(4) Submit to the Administrator a written report of excess emissions at the frequency established in the approved operating and maintenance plan. For the purposes of this paragraph, excess emissions shall be considered to be any exceedence of the monitoring parameters specified in the approved operating and maintenance plan required by § 61.113.

(5) If a calculational procedure is used to demonstrate compliance, a report including the calculations shall be submitted with either the source report required in § 61.10 for existing sources, or the notification of startup required in § 61.09 for new sources.

(b) A report shall be submitted to the Administrator semiannully, starting 6 months after submittal of the intitial operating and maintenance plan required in § 61.113(d). All semiannual reports shall be postmarked by the 30th day following the end of the 6-month report period. This report includes the following information:

(1) Plant identification.

(2) For each month during the period, the number of equipment leaks which occurred, the number of equipment leaks for which repair was attempted, and the number of equipment leaks for which repair was completed.

§ 61.116 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: None.

3. Under *Approach D* as described in the preamble, Subpart J would be revised to read as follows:

Subpart J—National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene

Sec.

61.110 Applicability and designation of sources.
61.111 Definitions.
61.112 Standards.
61.113 Monitoring and compliance.
61.114 Recordkeeping requirements.
61.115 Reporting requirements.
61.116 Delegation of authority.

Subpart J—National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene

§ 61.110 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following sources that are intended to operate in benzene service: Pumps, compressors, pressure relief devices, sampling connections, systems, open-ended values or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems required by this subpart.

(b) The provisions of this subpart do not apply to sources located in coke by-product plants.

(c)(1) If an owner or operator applies for one of the exemptions in this paragraph, then the owner or operator shall maintain records as required in § 61.114.

(2) Any process unit (defined in § 61.241) that has no equipment in benzene service is exempt from the requirements of § 61.112.

(d) While the provisions of this subpart are effective, a source to which this subpart applies that is also subject to the provisions of 40 CFR Part 60 only will be required to comply with the provisions of this subpart.

§ 61.111 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in Subpart A of Part 61, or in Subpart V of Part 61, and the following terms shall have the specific meanings given them:

"In benzene service" means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 10 percent benzene by weight as determined according to the provisions of § 61.245(d). The provisions of § 61.245(d) also specify how to determine that a piece of equipment is not in benzene service.

"Plant" means any combination of process units and equipment used at one site in the production of benzene as an

intermediate or final product or in the use of benzene.

"Semiannual" means a 6-month period: The first semiannual period concludes on the last day of the last month during the 180 days following initial startup of new sources; and the first semiannual period concludes on the last day of the last full month during the 180 days after June 6, 1984, for exisitng sources.

§ 61.112 Standards.

(a) No owner or operator of a plant subject to this subpart shall cause to be discharged to the atmosphere total benzene emissions from all leaking equipment in the plant exceeding 0.14 kg/day (50 kg/yr). Leaking equipment shall include all equipment in benzene service.

§ 61.113 Monitoring and compliance.

(a) Each owner or operator seeking to demonstrate compliance with the annual emission limit in § 61.112(a) shall measure or calculate emissions according to one of the producers given in the document "Protocols for Generating Unit-Specific Estimates for Equipment Leaks of VOC and VHAP-Draft;" December 1987; EPA Contract No. 68–02–4338, and apply the emission reduction efficiency of the control program on a component basis.

(b) In lieu of using the procedures referred to in paragraph (a) of this section, an owner or operator may apply to the Administrator for approval of an equivalent method of measuring or calculating emissions.

(c) Each owner or operator subject to the provisions of § 61.112(a) shall submit an operating and maintenance plan to the Administrator for approval within 90 days of the effective date for existing sources, or within 90 days of startup for new sources. The plan shall include the following:

(1) A description of the control techniques by which the owner or operator will comply with the emission limit.

(2) Identification of the parameter(s) to be monitored to ensure that each control device is operated in conformance with its design, and that the emission limit is not exceeded.

(3) An explanation of the criteria used in selecting the monitoring parameter(s).

(4) A description of the types and frequencies of maintenance necessary.

(5) A schedule for reporting excess emissions or reporting of other information demonstrating continued compliance with § 61.112(d). The reporting schedule shall be consistent with the compliance, monitoring, and maintenance methods, and shall be no more frequent than quarterly.

(d) Each owner or operator shall conduct operations, monitor the parameters, and maintain equipment in accordance with the approved operating plan.

§ 61.114 Recordkeeping requirements.

(a) Each owner or operator subject to the provisions of § 61.112(a) shall maintain at the plant for a period of at least 2 years, and shall make available to the Administrator upon request, the following:

(1) Records of all data and calculations used to demonstrate compliance with § 61.112(a).

(2) Records of all leaks and repairs to equipment in benzene service.

(3) Records of all malfunctions of each air pollution control device used in controlling benzene emissions.

(4) Records of all maintenance and repairs to each air pollution control device used in controlling benzene emissions.

(5) For each air pollution control device used in the control of benzene emissions, detailed schematics and records of design specifications and instrumentation.

(6) Records of all relevant data and information for any additional methods used to achieve compliance with § 61.112(a) other than the use of air pollution control devices, or leak detection and repair.

(b) A list of identification numbers of all equipment in benzene service at the plant site shall be recorded in a log that is kept in a readily accessible location.

§ 61.115 Reporting requirements.

(a) Each owner or operator subject to the provisions of § 61.112(a) shall:

(1) Provide the Administrator 30 days prior notice of any emission test required in § 61.113 to afford the Administrator the opportunity to have an observer present; and

(2) Submit to the Administrator a written report of the results of the emission test and associated calculations, as applicable, within 30 days after conducting the test.

(3) Submit to the Administrator a written report of excess emissions at the frequency established in the approved operating and maintenance plan. For the purposes of this paragraph, excess emissions shall be considered to be any exceedence of the monitoring parameters specified in the approved operating and maintenance plan required by § 61.113.

(4) If a calculational procedure is used to demonstrate compliance, a compliance report including the calculations shall be submitted with either the source report required in § 61.10 for existing sources, or the notification of startup required in § 61.09 for new sources.

(b) A report shall be submitted to the Administrator semiannually starting 6 months after submittal of the initial operating and maintenance plan required in § 61.113(c), that includes the following information:

(1) Plant identification.

(2) For each month during the period, the number of equipment leaks which occurred, the number of equipment leaks for which repair was attempted, and the number of equipment leaks for which repair was completed.

(c) All semiannual reports shall be postmarked by the 30th day following the end of the 6-month report period.

§ 61.116 Delegating of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: None.

4. Under *Approaches A and B*, as described in the preamble, Subpart L would be added to Part 61 of Title 40 as follows:

Subpart L—National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants

Sec.

61.130 Applicability and designation of sources.
61.131 Definitions.
61.132 Standard: Process vessels, tar storage tanks, and tar-intercepting sumps.
61.133 Standard: Light-oil sumps.
61.134 Standard: Naphthalene processing, final coolers, and final-cooler cooling towers.
61.135 Standard: Equipment leaks.
61.136 Compliance provisions and alternative means of emission limitation.
61.137 Test methods and procedures.
61.138 Recordkeeping and reporting amendments.
61.139 Delegation of authority.

Subpart L—National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants

§ 61.130 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following sources at furnace and foundry coke by-product recovery plants: Tar decanters, tar storage tanks, tar-intercepting sumps, flushing-liquor circulation tanks, light-oil

sumps, light-oil condensers, light-oil decanters, wash-oil decanters, wash-oil circulation tanks, and the following equipment that are intended to operate in benzene service: Pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges or other connectors, and control devices or systems required by § 61.135.

(b) The provisions of this subpart also apply to naphthalene processing at foundry coke by-product recovery plants and to naphthalene processing, final coolers, and final-cooler cooling towers at furnace coke by-product recovery plants.

§ 61.131 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in Subpart A of Part 61, in Subpart V of Part 61, and the following terms shall have the specific meanings given them:

"Annual coke production" means the coke produced in the batteries connected to the coke by-product recovery plant over a 12-month period. The first 12-month period concludes on the first December 31 that comes at least 12 months after the effective date or after the date of initial startup if initial startup is after the effective date.

"In benzene service" means a piece of equipment, other than an exhauster, that either contains or contacts a fluid (liquid or gas) that is at least 10 percent benzene by weight or any exhauster that either contains or contacts a fluid (liquid or gas) at least 1 percent benzene by weight as determined by the provisions of § 61.137(b). The provisions of § 61.137(b) also specify how to determine that a piece of equipment is not in benzene service.

"Coke by-product recovery plant" means any plant designed and operated for the separation and recovery of coal tar derivatives (by-products) evolved from coal during the coking process of a coke oven battery.

"Equipment" means each pump, valve, exhauster, pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in benzene service.

"Exhauster" means a fan located between the inlet gas flange and outlet gas flange of the coke oven gas line that provides motive power for coke oven gases.

"Foundary coke" means coke that is produced from raw materials with less than 26 percent volatile material by weight and that is subject to a coking period of 24 hours or more. Percent volatile material of the raw materials (by weight) is the weighted average percent volatile material of all raw materials (by weight) charged to the coke oven per coking cycle.

"Foundry coke by-product recovery plant" means a coke by-product recovery plant connected to coke batteries whose annual coke production is at least 75 percent foundry coke.

"Flushing-liquor circulation tank" means any vessel that functions to store or contain flushing liquor that is separated from the tar in the tar decanter and is recirculated as the cooled liquor to the gas collection system.

"Furnace coke" means coke produced in by-product ovens that is not foundry coke.

"Furnace coke by-product recovery plant" means a coke by-product recovery plant that is not a foundry coke by-product recovery plant.

"Light-oil condenser" means any unit in the light-oil recovery operation that functions to condense benzene-containing vapors.

"Light-oil decanter" means any vessel, tank, or other type of device in the light-oil recovery operation that functions to separate light oil from water downstream of the light-oil condenser. A light-oil decanter also may be known as a light-oil separator.

"Light-oil sump" means any tank, pit, enclosure, or slop tank in light-oil recovery operations that functions as a wastewater separation device for hydrocarbon liquids on the surface of the water.

"Mixer-settler" means a tank that is inserted into the final cooling process that serves to remove naphthalene from final cooler water by means of absorption into tar or another organic liquid.

"Naphthalene processing" means any operations required to recover naphthalene, including the separation, refining, and drying of crude or refined naphthalene.

"Process vessel" means each tar decanter, flushing-liquor circulation tank, light-oil condenser, light-oil decanter, wash-oil decanter, or wash-oil circulation tank.

"Semiannual" means a 6-month period; the first semiannual period concludes on the last day of the last full month during the 180 days following initial startup for new sources; the first semiannual period concludes on the last day of the last full month during the 180 days after the effective date of the regulation for existing sources.

"Tar decanter" means any vessel, tank, or other type of container that functions to separate heavy tar and sludge from flushing liquor by means of gravity, heat, or chemical emulsion breakers. A tar decanter also may be known as a flushing-liquor decanter.

"Tar storage tank" means any vessel, tank, reservoir, or other type of container used to collect or store crude tar or tar-entrained naphthalene, except for tar products obtained by distillation, such as coal tar pitch, creosotes, or carbolic oil. This definition also includes any vessel, tank, reservoir, or other type of container used to reduce the water content of the tar by means of heat, residence time, chemical emulsion breakers, or centrifugal separation. A tar storage tank also may be known as a tar-dewatering tank.

"Tar-intercepting sump" means any tank, pit, or enclosure that serves to separate light tars and aqueous condensate received from the primary cooler. A tar-intercepting sump also may be known as a primary-cooler decanter.

"Wash-oil circulation tank" means any vessel that functions to hold the wash oil used in light-oil recovery operations or the wash oil used in the wash-oil final cooler.

"Wash-oil decanter" means any vessel that functions to separate, by gravity, the condensed water from the wash oil received from a wash-oil final cooler or from a light-oil scrubber.

§ 61.132 Standard: Process vessels, tar storage tanks, and tar-intercepting sumps.

(a)(1) Each owner or operator shall enclose and seal all openings on each process vessel, tar storage tank, and tar-intercepting sump.

(2) The owner or operator shall duct gases from each process vessel, tar storage tank, and tar-intercepting sump to the gas collection system, gas distribution system, or other enclosed point in the by-product recovery process where the benzene in the gas will be recovered or destroyed. This control system shall be designed and operated for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and visual inspections, as determined by the methods specified in § 61.245(c). This system can be designed as a closed, positive pressure, gas-blanketing system.

(i) Except, the owner or operator may elect to install, operate, and maintain a pressure relief device, vacuum relief device, an access hatch, and a sampling port on each process vessel, tar storage tank, and tar-intercepting sump. Each access hatch and sampling port must be equipped with a gasket and a cover, seal, or lid that must be kept in a closed position at all times, unless in actual use.

(ii) The owner or operator may elect to leave open to the atmosphere the portion of the liquid surface in each tar decanter necessary to permit operation of a sludge conveyor. If the owner or operator elects to maintain an opening on part of the liquid surface of the tar decanter, the owner or operator shall install, operate, and maintain a water leg seal on the tar decanter roof near the sludge discharge chute to ensure enclosure of the major portion of liquid surface not necessary for the operation of the sludge conveyor.

(b) Following the installation of any control equipment used to meet the requirements of paragraph (a) of this section, the owner or operator shall monitor the connections and seals on each control system to determine if it is operating with no detectable emissions, using Reference Method 21 (40 CFR Part 60 Appendix A) and procedures specified in § 61.245(c), and shall visually inspect each source (including sealing materials) and the ductwork of the control system for evidence of visible defects such as gaps or tears. This monitoring and inspection shall be conducted on a semi-annual basis and at any other time after the control system is repressurized with blanketing gas following removal of the cover or opening of the access hatch.

(1) If an instrument reading indicates an organic chemical concentration more than 500 ppm above a background concentration, as measured by Reference Method 21, a leak is detected.

(2) If visible defects such as gaps in sealing materials are observed during a visual inspection, a leak is detected.

(3) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected.

(4) A first attempt at repair of any leak or visible defect shall be made no later than 5 calendar days after each leak is detected.

(c) Following the installation of any control system used to meet the requirements of paragraph (a) of this section, the owner or operator shall conduct a maintenance inspection of the control system on an annual basis for evidence of system abnormalities, such as blocked or plugged lines, sticking valves, plugged condensate traps, and other maintenance defects that could result in abnormal system operation. The owner or operator shall make a first attempt at repair within 5 days, with repair within 15 days of detection.

§ 61.133 Standard: Light-oil sumps.

(a) Each owner or operator of a light-oil sump shall enclose and seal the liquid surface in the sump to form a closed system to contain the emissions.

(1) Except, the owner or operator may elect to install, operate, and maintain a vent on the light-oil sump cover. Each vent pipe must be equipped with a water leg seal, a pressure relief device, or vacuum relief device.

(2) Except, the owner or operator may elect to install, operate, and maintain a vent on the light-oil sump cover. Each access hatch must be equipped with a gasket and cover, seal, or lid that must be kept in a closed position at all times, unless in actual use.

(3) The light-oil sump cover may be removed for periodic maintenance but must be replaced (with seal) at completion of the maintenance operation.

(b) The venting of steam or other gases from the by-product process to the light-oil sump is not permitted.

(c) Following the installation of any control equipment used to meet the requirements of paragraph (a) of this section, the owner or operator shall monitor the connections and seals on each control system to determine if it is operating with no detectable emissions, using Reference Method 21 (40 CFR Part 60, Appendix A) and the procedures specified in § 61.245(c), and shall visually inspect each source (including sealing materials) for evidence of visible defects such as gaps or tears. This monitoring and inspection shall be conducted semiannually and at any other time the cover is removed.

(1) If an instrument reading indicates an organic chemical concentration more than 500 ppm above a background concentration, as measured by Reference Method 21, a leak is detected.

(2) If visible defects such as gaps in sealing materials are observed during a visual inspection, a leak is detected.

(3) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected.

(4) A first attempt at repair of any leak or visible defect shall be made no later than 5 calendar days after each leak is detected.

§ 61.134 Standard: Naphthalene processing, final coolers, and final-cooler cooling towers.

(a) No ("zero") emissions are allowed from naphthalene processing at furnace and foundry coke by-product recovery plants.

(b) The emission limit specified in paragraph (a) of this section is not applicable if a mixer-organic liquid.

(c) If a mixer-settler is used to separate naphthalene, the mixer-settler is subject to all requirements specified in § 61.132 for process vessels, including lead detection and repair provisions.

(d) No ("zero") emissions are allowed from final coolers and final-cooler cooling towers at furnace coke by-product recovery plants.

§ 61.135 Standard: Equipment leaks.

(a) Each owner or operator of equipment in benzene service shall comply with the requirements of 40 CFR Part 61, Subpart V, except as provided in this section.

(b) The provisions of §§ 61.242–3 and 61.242–9 of Subpart V do not apply to this subpart.

(c) Each piece of equipment in benzene service to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment in benzene service.

(d) Each exhauster shall be monitored quarterly to detect leaks by the methods specified in § 61.245(b) except as provided in § 61.136(d) and paragraphs (e) through (g) of this section.

(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after it is detected, except as provided in § 61.242–10 (a) and (b). A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) Each exhauster equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluids to the atmosphere is exempt from the requirements of paragraph (d) of this section provided the following requirements are met:

(1) Each exhauster seal system is:

(i) Operated with the barrier fluid at a pressure that is greater than the exhauster stuffing box pressure; or

(ii) Equipped with a barrier fluid system that is connected by a closed vent system to a control device that complies with the requirements of § 61.242–11; or

(iii) Equipped with a system that purges the barrier fluid into a process stream with zero benzene emissions to the atmosphere.

(2) The barrier fluid is not in benzene service.

(3) Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(4)(i) Each sensor as described in paragraph (e)(3) of this section shall be checked daily or shall be equipped with an audible alarm.

(ii) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(5) If the sensor indicates failure of the seal system, the barrier system, or both (based on the criterion determined under paragraph (e)(r)(ii) of this section), a leak is detected.

(6)(i) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 61.242–10.

(ii) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(f) An exhauster is exempt from the requirements of paragraph (d) of this section if it is equipped with a closed vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § 61.242–11 except as provided in paragraph (g) of this section.

(g) Any exhauster that is designated, as described in § 61.246(3) for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraph (d) of this section if the exhauster:

(1) Is demonstrated to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the methods specified in § 61.245(c); and

(2) Is tested for compliance with paragraph (g)(1) of this section initially upon designation, annually, and at other times requested by the Administrator.

(h) Any exhauster that is in vacuum service is excluded from the requirements of this subpart if it is identified as required in § 61.246(e)(5).

§ 61.136 Compliance provisions and alternative means of emission limitation.

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of §§ 61.132 through 61.135 for each new and existing source, except as provided under §§ 61.243–1 and 61.243.2.

(b) Compliance with this subpart shall be determined by a review of records, review of performance test results, inspections, or any combination thereof, using the methods and procedures specified in § 61.137.

(c) On the first January 1 after the first year that a plant's annual coke production is less than 75 percent foundry coke, the coke by-product recovery plant becomes a furnace coke by-product recovery plant and shall comply with § 61.134(d). Once a plant becomes a furnace coke by-product recovery plant, it will continue to be considered a furnace coke by-product recovery plant, regardless of the coke production in subsequent years.

(d)(1) An owner or operator may request permission to use an alternative means of emission limitation to meet the requirements in §§ 61.132, 61.133, and 61.135 of this subpart and §§ 61.242–2, –5, –6, –7, –8, and –11 of Subpart V. Permission to use an alternative means of emission limitation shall be requested as specified in § 61.12(d).

(2) When the Administrator evaluates requests for permission to use alternative means of emission limitation for sources subject to §§ 61.132, 61.133, (except tar decanters), the Administrator shall compare test data for the means of emission limitation to a benzene control efficiency of 98 percent. For tar decanters, the Administrator shall compare test data for the means of emission limitation to a benzene control efficiency of 95 percent.

(3) For any requests for permission to use an alternative to the work practices required under § 61.135, the provisions of § 61.244(c) shall apply.

§ 61.137 Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the requirements in § 61.245 of 40 CFR Part 61, Subpart V.

(b) To determine whether or not a piece of equipment is in benzene service, the methods in § 61.245(d) shall be used, except that, for exhausters, the percent benzene shall be 1 percent by weight (rather than the 10 percent by weight described in § 61.245(d)).

§ 61.138 Recordkeeping and reporting requirements.

(a) The following information pertaining to the design of control equipment installed to comply with §§ 61.132 through 61.134 shall be recorded and kept in a readily accessible location:

(1) Detailed schematics, design specifications, and piping and instrumentation diagrams.

(2) The dates and descriptions of any changes in the design specifications.

(b) The following information pertaining to sources subject to § 61.132, sources subject to § 61.133, and mixer-settlers used to comply with § 61.134(b) shall be recorded and maintained for 2 years following each semiannual (and other) inspection and each annual maintenance inspection:

(1) The date of the inspection and the name of the inspector.

(2) A brief description of each visible defect in the source or control equipment and the method and date of repair of the defect.

(3) The presence of a leak, as measured using the method described in § 61.245(c). The record shall include the date of attempted and actual repair and method of repair of the leak.

(4) A brief description of any system abnormalities found during the annual maintenance inspection, the repairs made, the date of attempted repair, and the date of actual repair.

(c) Each owner or operator of a source subject to § 61.135 shall comply with § 61.246.

(d) For foundry coke by-product recovery plants, the annual coke production of both furnace and foundry coke shall be recorded and maintained for 2 years following each determination.

(e)(1) An owner or operator of any source to which this subpart applies shall submit a statement in writing notifying the Administrator that the requirements of this subpart and 40 CFR Part 61, Subpart V, have been implemented.

(2) In the case of an existing source or a new source that has an initial startup date preceding the effective date, the statement is to be submitted within 90 days of the effective date, unless a waiver of compliance is granted under § 61.11, along with the information required under § 61.10. If a waiver of compliance is granted, the statement is to be submitted on a date scheduled by the Administrator.

(3) In the case of a new source that did not have an initial startup date preceding the effective date, the statement shall be submitted with the application for approval of construction, as described under § 61.07.

(4) The statement is to contain the following information for each source:

(i) Type of source (e.g., a light-oil sump or pump).

(ii) For equipment in benzene service, equipment identification number and process unit identification; percent by weight benzene in the fluid at the equipment; and process fluid state in the equipment (gas/vapor or liquid).

(iii) Method of compliance with the standard (e.g., "gas blanketing," "use of a tar-bottom final cooler," "monthly leak detection and repair," or "equipped with dual mechanical seals"). This includes whether the plant plans to be a furnace or foundry coke by-product recovery plant for the purposes of § 61.134.

(f) A report shall be submitted to the Administrator semiannually starting 6 months after the initial reports required in §§ 61.138(e) and 61.10, which includes the following information:

(1) For sources subject to § 61.132, sources subject to § 61.133, and mixer-settlers used to comply with § 61.134(c),

(i) A brief description of any visible defect in the source or ductwork,

(ii) The number of leaks detected and repaired, and

(iii) A brief description of any system abnormalities found during each annual maintenance inspection that occurred in the reporting period and the repairs made.

(2) For equipment in benzene service subject to § 61.135(a), information required by § 61.247(b).

(3) For each exhauster subject to § 61.135 for each quarter during the semiannual reporting period,

(i) The number of exhausters for which leaks were detected as described in § 61.135(d) and (e)(5),

(ii) The number of exhausters for which leaks were detected as repaired as required in § 61.135(d) and (e)(6),

(iii) The results of performance tests to determine compliance with § 61.135(g) conducted within the semiannual reporting period.

(4) A statement signed by the owner or operator stating whether all provisions of 40 CFR Part 61, Subpart L, have been fulfilled during the semiannual reporting period.

(5) For foundry coke by-product recovery plants, the annual coke production of both furnace and foundry coke, if determined during the reporting period.

(6) Revisions to items reported according to paragraph (e) of this section if changes have occurred since the initial report or subsequent revisions to the initial report.

Note: Compliance with the requirements of § 61.10(c) is not required for revisions documented under this paragraph.

(g) In the first report submitted as required in § 61.138(e), the report shall include a reporting schedule stating the months that semiannual reports shall be submitted. Subsequent reports shall be submitted according to that schedule unless a revised schedule has been submitted in a previous semiannual report.

(h) An owner or operator electing to comply with the provisions of §§ 61.243–1 and 61.243–2 shall notify the Administrator of the alternative standard selected 90 days before implementing either of the provisions.

(i) An application for approval of construction or modification, as required under §§ 61.05(a) and 61.07, will not be required for sources subject to § 61.135 if—

(1) The new source complies with § 61.135.

(2) In the next semiannual report required by § 61.138(f), the information described in § 61.138(e)(4) is reported.

(Approved by OMB under control number _____.)

§ 61.139 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States:

(1) Section 61.136(d).

5. Under *Approach C*, as described in the preamble, Subpart L would be added to Part 61 of Title 40 as follows:

Subpart L—National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants

Sec.

61.130 Applicability and designation of sources.
61.131 Definitions.
61.132 Emission limit.
61.133 Standard: Process vessels, tar storage tanks, and tar-intercepting sumps.
61.134 Standard: Light-oil sumps.
61.135 Standard: Naphthalene processing, final coolers, and final-cooler cooling towers.
61.136 Standard: Equipment leaks.
61.137 Compliance provisions and alternative means of emission limitation.
61.138 Test methods and procedures.
61.139 Recordkeeping and reporting requirements.
61.140 Delegation of authority.

Subpart L—National Emission Standard for Benzene Emission From Coke By-Product Recovery Plants

§ 61.130 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following sources at coke by-product recovery plants: Tar decanters, tar-intercepting sumps, flushing-liquor circulation tanks, light-oil sumps, light-oil condensers, light-oil decanters, wash-oil decanters, wash-oil circulation tanks, naphthalene processing at foundry coke by-product plants, naphthalene processing, final coolers, and final cooler cooling towers at furnace coke by-product plants, tar storage tanks, benzene-toluene-xylene (BTX) storage tanks, light-oil storage tanks, excess ammonia-liquor storage tanks, and the following equipment that are intended to operate in benzene service: Pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges or other connectors, and control devices or systems required by § 61.136.

§ 61.131 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in Subpart A of Part 61, in Subpart V of Part 61, and the following terms shall have the specific meanings given them:

"Benzene storage tank" means any tank, reservoir, or other type container used to collect or store refined benzene.

"BTX storage tank" means any vessel, reservoir, or container used for the storage of benzene-toluene-xylene or other light-oil fractions.

"Excess ammonia-liquor storage tank" means tank, reservoir, or other type container used to collect or store a flushing liquor solution prior to ammonia or phenol recovery.

"Light-oil storage tank" means any vessel, tank, reservoir, or other type container used to collect or store crude or refined light-oil, used for the storage of crude or refined light-oil.

(Remaining definitions identical to § 61.131 of Approach A. Full text would be printed in final rule.)

§ 61.132 Emission limit.

(a) No owner or operator of a plant subject to this subpart shall cause to be discharged to the atmosphere total benzene emissions from all sources listed in § 61.130(a) exceeding 34 kg/day, and

(b) Each owner or operator of a plant subject to this subpart also shall comply with the standards specified in §§ 61.133–61.136.

§ 61.133 Standard: Process vessels, tar storage tanks, and tar-intercepting sumps.

(Identical to § 61.132 of Approach A. Full text would be printed in final rule.)

§ 61.134 Standard: Light-oil sumps.

(Identical to § 61.133 of Approach A. Full text would be printed in final rule.)

§ 61.135 Standard: Naphthalene processing, final coolers, and final-cooler cooling towers.

(Identical to § 61.134 of Approach A. Full text would be printed in final rule.)

§ 61.136 Standard: Equipment leaks.

(Identical to § 61.135 of Approach A. Full text would be printed in final rule.)

§ 61.137 Compliance provisions and alternative means of emission limitation.

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of § 61.132 and §§ 61.133–61.136 for each new and existing source, except as provided under §§ 61.243–1 and 61.243–2.

(b) Compliance with § 61.132(a) of this subpart shall be determined by the procedures specified in § 61.138; compliance with §§ 61.133–61.136 of this subpart shall be determined by a review of records, review of performance test results, inspections, or any combination thereof, using the methods and procedures specified in § 61.138.

(c)–(d) (Identical to § 61.136(c)–(d) of Approach A. Full text would be printed in final rule.)

(e) If the owner or operator of a plant subject to this subpart complies with § 61.132(a) with methods different than those required in § 61.132(b), the owner or operator shall submit an operating and maintenance plan to the Administrator in addition to the semiannual reports required by § 61.139. Each owner or operator shall conduct operations, monitor the parameters, and maintain equipment in accordance with the approved operating plan.

§ 61.138 Test methods and procedures.

(a) Each owner or operator seeking to demonstrate compliance for sources with the emission limit in § 61.132(a) shall calculate total benzene emissions per year from all sources shown on Table 1 by multiplying, for each source, the plant annual production rate by the uncontrolled benzene emission factors from Table 1 and then applying the efficiency of the control system to obtain controlled emissions for each source. For equipment in benzene service, the owner or operator shall calculate emissions using one of the procedures given in the documents, *Protocols for Generating Unit-Specific Estimates for Equipment Leaks of VOC and VHAP—Draft,* November 1987; EPA Contract No. 68–02–4338, and apply the emission reduction efficiency for the control program. If the sum of total emissions from all affected sources divided by 365 is 34 kg/day or less, the plant is in compliance with § 61.132(a).

BILLING CODE 6560–50–M

Table 1. Uncontrolled Benzene Emission Factors
(g benzene/Mg of coke/day)

Source	Furnace Plants	Foundry Plants
Cooling tower		
Direct-water	270	197
Tar-bottom	70	51
Naphthalene separation and processing	107	79
Light-oil condenser vent	89	48
Tar intercepting sump	90	45
Tar dewatering	21	9.9
Tar decanter	77	36
Light-oil sump	15	8.1
Light-oil storage	5.8	3.1
BTX storage	5.8	3.1
Benzene storage	5.8	3.1
Flushing-liquor circulation tank	6.6	9
Excess ammonia-liquor storage	9	6.6
Wash-oil decanter	3.8	6.6

BILLING CODE 6560-50-C

(b) Subject to approval by the Administrator, the owner or operator may determine compliance based on emission testing as described in § 61.13. To demonstrate compliance, the owner or operator shall submit supporting documentation as described in § 61.139.

(c)-(d) (Identical to § 61.137 (a)-(b)] of Approach A. Full text would be printed in final rule.)

§ 61.139 Recordkeeping and reporting requirements.

(a) The following information pertaining to compliance with the emission limit specified in § 61.132(a) shall be recorded and kept in a readily available location:

(1) If compliance is determined by § 61.138(a), all calculations based on annual production rate and benzene emission factors, including documentation of the basis of the efficiency of the control systems applied.

(2) If compliance is determined by § 61.138(b), results of emission tests used to demonstrate compliance and all supporting calculations, including documentation of the basis of the efficiency of the control systems applied.

(b)-(f) (iii) (Identical to §§ 61.138(a)–61.138(e) (iii) of Approach A. Full text would be printed in final rule.)

(g) If an owner or operator is required to submit an operating and maintenance plan as required in § 61.137(e), the plan shall be submitted to the Administrator for approval within 90 days of the effective date, along with the information required by § 61.10. For new sources, the owner or operator shall submit the plan within 90 days after initial startup. The plan shall include the following:

(1) A description of the control techniques by which the owner or operator will comply with the emission limit in § 61.132(a) and the general standards in §§ 61.133–61.136.

(2) Identification of the parameter(s) to be monitored to ensure that each control device is operated in conformance with its design, and that the emission limit is not exceeded.

(3) An explanation of the criteria to be used in selecting the monitoring parameter(s).

(4) A description of the types and frequencies of maintenance necessary.

(5) A schedule reporting of other information demonstrating continued compliance with § 61.132(a). The reporting schedule shall be consistent with the compliance, monitoring, and maintenance methods, and shall be no more frequent than quarterly.

(h) Each owner or operator subject to this subpart shall submit to the Administrator a written report of excess emissions established in the approved operating and maintenance plan. For the purposes of this paragraph, excess emissions shall be considered any exceedence of the monitoring parameters specified in the approved operating and maintenance plan.

(i) Each owner or operator subject to § 61.132(a) that demonstrates compliance using the procedures in § 61.138(b) shall:

(1) Provide the Administrator 30 days notice of any emission test required in § 61.13 to afford the Administrator the opportunity to have an observer present; and

(2) Submit to the Administrator a written report of the results of the emission test and associated calculations, as applicable, within 30 days of conducting the test.

(j) Each owner or operator subject to § 61.132(a) that demonstrates compliance using the procedures in § 61.138(a) shall provide the Administrator a report demonstrating compliance and containing all supporting calculations, including documentation of the basis of the efficiency of the control systems applied. For existing sources, the report shall be submitted to the Administrator within 90 days of the effective date, along with the information required by § 651.10. For new sources, the report shall be submitted to the Administrator along with the notification of startup required by § 61.09.

(k)-(l) (Identical to §§ 61.138 (f)-(i) of Approach A. Full text would be printed in final rule.)

§61.140 Delegation of authority.

(Identical to §61.139 of Approach A. Full text would be printed in final rule.)

6. Under *Approach D*, as described in the preamble, Subpart L would be added to Part 61 of Title 40 as follows:

Subpart L—National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants

Sec.

61.130 Applicability and designation of sources.
61.131 Definitions.
61.132 Emission limit.
61.133 Compliance provisions.
61.134 Recordkeeping and reporting requirements.
61.135 Delegation of authority.

Subpart L—National Emission Standard for Benzene Emission from Coke By-Product Recovery Plants.

§ 61.130 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following sources at coke by-product recovery plants: Tar decanters, tar-intercepting sumps, flushing-liquor circulation tanks, light-oil sumps, light-oil condensers, light-oil decanters, wash-oil decanters, wash-oil circulation tanks, naphthalene processing at foundry coke by-product plants, naphthalene processing, final coolers, and final cooler cooling towers at furnace coke by-product plants, tar storage tanks, benzene-toluene-xylene (BTX) storage tanks, light-oil storage tanks, excess ammonia-liquor storage tanks, and the following equipment that are intended to operate in benzene service: Pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges or other connectors, and control devices or systems for these equipment.

§ 61.131 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in Subpart A of Part 61, in Subpart V of Part 61, and the following terms shall have the specific meanings given them:

"Benzene storage tank" means any tank, reservoir, or other type container used to collect or store refined benzene.

"BTX storage tank" means any vessel, reservoir, or container used for the storage of benzene-toluene-xylene or other light-oil fractions.

"Excess ammonia-liquor storage tank" means tank, reservoir, or other type container used to collect or store a flushing liquor solution prior to ammonia or phenol recovery.

"Light-oil storage tank" means any vessel, tank, reservoir, or other type container used to collect or store crude or refined light-oil, used for the storage of crude or refined light-oil.

(Remaining definitions identical to § 61.131 of Approach A. Full text would be printed in final rule.)

§ 61.132 Emission limit.

(a) No owner or operator of a plant subject to this subpart shall cause to be discharged to the atmosphere total benzene emissions from all sources listed in § 61.130(a) exceeding 0.34 kg/day.

§ 61.133 Compliance provisions.

(a) Each owner or operator subject to the provisions of this subpart shall

demonstrate compliance with the requirements of § 61.132 for each new and existing source.

(b) Each owner or operator seeking to demonstrate compliance for sources with the emission limit in § 61.132 shall calculate total benzene emissions per year from all sources shown in Table 1 by multiplying, for each source, the plant annual production rate by the uncontrolled benzene emission factors from Table 1 and then applying the efficiency of the control system to obtain controlled emissions for each source. For equipment in benzene service, the owner or operator shall calculate emissions using one of the procedures given in the document, "Protocols for Generating Unit-Specific Estimates for Equipment Leaks of VOC and VHAP—Draft," December 1987; EPA Contract No. 68–02–4338, and apply the emission reduction efficiency for the control program. If the sum of total emissions from all affected sources divided by 365 is 0.34 kg/day or less, the plant is in compliance with § 61.132.

BILLING CODE 6560–50–M

Table 1. Uncontrolled Benzene Emission Factors
(g benzene/Mg of coke/day)

Source	Furnace Plants	Foundry Plants
Cooling tower		
Direct-water	270	197
Tar-bottom	70	51
Naphthalene separation and processing	107	79
Light-oil condenser vent	89	48
Tar intercepting sump	90	45
Tar dewatering	21	9.9
Tar decanter	77	36
Light-oil sump	15	8.1
Light-oil storage	5.8	3.1
BTX storage	5.8	3.1
Benzene storage	5.8	3.1
Flushing-liquor circulation tank	6.6	9
Excess ammonia-liquor storage	9	6.6
Wash-oil decanter	3.8	6.6

BILLING CODE 6560-50-C

(c) Subject to approval by the Administrator, the owner or operator may determine compliance based on emission testing as described in § 61.13. To demonstrate compliance, the owner or operator shall submit supporting documentation as described in § 61.134.

§ 61.134 Recordkeeping and reporting requirements.

(a) The following information pertaining to compliance with the emission limit specified in § 61.132 shall be recorded and kept in a readily available location:

(1) If compliance is determined by § 61.133(b), all calculations based on annual production rate and benzene emission factors, including documentation of the basis of the efficiency of the control systems applied.

(2) If compliance is determined by § 61.133(c), results of emission tests used to demonstrate compliance and all supporting calculations, including documentation of the basis of the efficiency of the control systems applied.

(b) Each owner or operator subject to § 61.132 that demonstrates compliance using the procedures in § 61.133(b) shall provide the Administrator a report demonstrating compliance and containing all supporting calculations, including documentation of the basis of the efficiency of the control systems applied. For existing sources, the report shall be submitted to the Administrator within 90 days of the effective date, along with the information required by § 61.10. For new sources, the report shall be submitted to the Administrator along with the notification of startup required by § 61.09.

(c) Each owner or operator subject to § 61.132 that demonstrates compliance using the procedures in § 61.133(c) shall:

(1) Provide the Administrator 30 days notice of any emission test required in § 61.13 to afford the Administrator the opportunity to have an observer present; and

(2) Submit to the Administrator a written report of the results of the emission test and associated calculations, as applicable, within 30 days of conducting the test.

(d) Each owner or operator subject to this subpart shall submit an operating and maintenance plan to the Administrator for approval within 90 days of the effective date, along with the information required by § 61.10. For new sources, the owner or operator shall submit the plan within 90 days after initial startup. Each owner or operator shall conduct operations, monitor the parameters, and maintain equipment in accordance with the approved operating plan. The plan shall contain the following:

(1) A description of the control techniques by which the owner or operator will comply with the emission limit in § 61.132.

(2) Identification of the parameter(s) to be monitored to ensure that each control device is operated in conformance with its design, and that the emission limit is not exceeded.

(3) An explanation of the criteria to be used in selecting the monitoring parameter(s).

(4) A description of the types and frequencies of maintenance necessary.

(5) A schedule for reporting of other information demonstrating continued compliance with § 61.132(a). The reporting schedule shall be consistent with the compliance, monitoring, and maintenance methods, and shall be no more frequent than quarterly.

(e) Each owner or operator subject to this subpart shall submit to the Administrator a written report of excess emissions established in the approved operating and maintenance plan. For the purposes of this paragraph, excess emissions shall be considered any exceedence of the monitoring parameters specified in the approved operating and maintenance plan.

§ 61.135 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: None.

7. Under *Approaches A, B, and C,* as described in the preamble for Coke By-Product Recovery Plants, § 61.241 of 40 CFR Part 61, Subpart V, would be amended by revising the definition of "repaired" and by adding a definition of "stuffing box pressure" as follows:

§ 61.241 Definitions.

* * * * *

"Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak as indicated by one of the following: An instrument reading of 10,000 ppm or greater, detectable emissions as indicated by an instrument reading of 500 ppm or greater above a background concentration, indication of liquids dripping, or indication by a sensor that a seal system or barrier fluid system has failed.

"Stuffing box pressure" means the fluid (liquid or gas) pressure inside the casing or housing of a piece of equipment, on the process side of the inboard seal.

* * * * *

8. Under *Approaches A, B, and C,* as described in the preamble for Coke By-Product Recovery Plants, § 61.245 of 40 CFR Part 61, Subpart V, would be amended by revising introductory paragraph (b), introductory paragraph (c), and paragraph (d)(3) as follows:

§ 61.245 Test methods and procedures.

* * * * *

(b) Monitoring, as required in §§ 61.242, 61.243, 61.244, and 61.135, shall comply with the following requirements:

* * * * *

(c) When equipment is tested for compliance with no detectable emissions, the test shall comply with the following requirements:

* * * * *

(d) * * *

(3) Samples used in determining the percent VHAP content shall be representative, as determined by the Administrator, of the process fluid that is contained in or contacts the equipment or the gas being combusted in the flare.

9. Under *Approaches A, B, and C,* as described in the preamble for Coke By-Product Recovery Plants, § 61.246 of 40 CFR Part 61, Subpart V, would be amended by revising the introductions to paragraphs (b), (c), and (e) and by revising paragraphs (e)(2)(i), (e)(2)(ii), (e)(4)(i), and (h)(1) to read as follows:

§ 61.246 Recordkeeping requirements.

* * * * *

(b) When each leak is detected as specified in §§ 61.242–2, 61.242–3, 61.242–7, 61.242–8, and 61.135, the following requirements apply:

* * * * *

(c) When each leak is detected as specified in §§ 61.242–2, 61.242–3, 61.242–7, 61.242–8, and 61.135, the following information shall be recorded in a log and shall be kept for 2 years in a readily accessible location:

* * * * *

(e) The following information pertaining to all equipment to which a standard applies shall be recorded in a log that is kept in a readily accessible location:

(1) * * *

(2)(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background.

(ii) The designation of this equipment for no detectable emissions shall be signed by the owner or operator.

(3) * * *

(4)(i) The dates of each compliance test required in §§ 61.242–2(e), 61.242–3(i), 61.242–4, 61.242–7(f), and 61.135(g).

* * * * *

(h) * * *

(1) Design criterion required in §§ 61.242–2(d)(5), 61.242–3(e)(2), and 61.135(e)(4) and an explanation of the design criterion; and

* * * * *

10. *Under Approaches A, B, and C,* as described in the preamble for Coke By-Product Recovery Plants, § 61.247 of 40 CFR Part 61, Subpart V, would be amended by revising paragraph (b)(5) to read as follows:

§ 61.247 Reporting requirements.

* * * * *

(b) * * *

(5) The results of all performance tests to determine compliance with no detectable emissions and with §§ 61.243–1 and 61.243–2 conducted within the semiannual reporting period.

* * * * *

11. Under *Approaches A, B, and C* as described in the preamble, Subpart Y would be added to Part 61 of Title 40 as follows:

Subpart Y—National Emission Standard for Benzene Emissions From Benzene Storage Vessels

Sec.

61.270 Applicability and designation of sources.
61.271 Emission standard.
61.272 Compliance provisions.
61.273 Alternative means of emission limitation.
61.274 Initial report.
61.275 Periodic report.
61.276 Recordkeeping.
61.277 Delegation of authority.

Subpart Y—National Emission Standard for Benzene Emissions From Benzene Storage Vessels

§ 61.270 Applicability and designation of sources.

(a) The source to which this subpart applies is each storage vessel that is storing benzene having a specific gravity within the range of specific gravities specified for Industrial Grade Benzene in ASTM–D–836–80 (incorporated by reference as specified in § 61.18). This specification includes Industrial Grade Benzene, Nitration Grade Benzene, and Refined Benzene-535.

(b) Except for paragraph (b) in § 61.276, storage vessels with a design storage capacity less than 38 cubic meters (10,000 gallons) are exempt from the provisions of this subpart.

(c) This subpart does not apply to storage vessels used for storing benzene at coke by-product facilities.

(d) This subpart does not apply to vessels permanently attached to motor vehicles such as trucks, rail cars, barges, or ships.

(e) This subpart does not apply to pressure vessels designed to operate in excess of 204.9 kPa and without emissions to the atmosphere.

(f) A designated source subject to the provisions of this subpart that is also subject to applicable provisions of 40 CFR Part 60, Subparts K, K(a), and K(b) shall be required to comply only with the provisions of this subpart.

§ 61.271 Emission standard.

The owner or operator of a storage vessel with a design storage capacity greater than 38 cubic meters (10,000 gallons) to which this subpart applies shall reduce emissions to the atmosphere by meeting the equipment and procedural requirements in paragraphs (a), (b), or (c) of this section, or equivalent as provided in § 61.273, and paragraph (d) of this section.

(a) Requirements for a permanently affixed roof and internal floating roof.

(1) Each storage vessel shall be equipped with an internal floating roof. An internal floating roof means a cover that rests on the liquid surface (but not necessarily in complete contact with it) inside a storage vessel that has a permanently affixed roof. The internal floating roof shall be floating on the liquid surface at all times, except during initial fill and during those intervals when the storage vessel is completely emptied or subsequently emptied and refilled. When the roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as rapidly as possible.

(2) Each internal floating roof shall be equipped with one of the closure devices listed in paragraphs (a)(2), (i), (ii), or (iii) of this section between the wall of the storage vessel and the edge of the internal floating roof. This requirement does not apply to each existing storage vessel for which construction of an internal floating roof commenced on or before July 28, 1988.

(i) A foam- or liquid-filled seal mounted in contact with the liquid (liquid-mounted seal). A liquid-mounted seal means a foam- or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the tank.

(ii) Two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof. The lower seal may be vapor-mounted, but both must be continuous

(iii) A metallic shoe seal. A metallic shoe seal (also referred to as a mechanical shoe seal) is, but is not limited to, a metal sheet held vertically against the wall of the storage vessel by springs or weighted levers and is connected by braces to the floating roof A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof

(3) Each opening in the internal floating roof, except for automatic bleeder vents, leg sleeves, ladder wells sampled wells, rim space vents, and stub drains, shall be equipped with a cover which is in a closed position at all times (i.e., no visible gap), except when the device is in actual use. If an existing storage vessel had an internal floating roof as of July 28, 1988, this requirement does not have to be met until the first time after the date of promulgation when the vessel is emptied and degassed or 10 years from the date of promulgation, whichever occurs first.

(4) Automatic bleeder vents are to be closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the roof leg supports.

(5) Each internal floating roof shall meet the specifications listed below. If an existing storage vessel had an internal floating roof as of July 28, 1988, the requirements listed below do not have to be met until the first time after the date of promulgation when the vessel is emptied and degassed or 10 years from the date of promulgation, whichever comes first.

(i) Each cover on an opening of an internal floating roof shall be gasketed.

(ii) Covers on each access hatch and each automatic gauge float well shall be bolted when they are not in use.

(iii) Each penetration of the internal floating roof for the purposes of sampling shall be a sample well. Each sample well shall have a slit fabric cover that covers at least 90 percent of the opening.

(iv) Each automatic bleeder vent shall be gasketed.

(v) Rim space vents shall be equipped with a gasket and are to be set to open only when the internal floating roof is not floating or at the manufacturer's recommended setting.

(vi) Each penetration of the internal floating roof that allows for passage of a

ladder shall have a gasketed sliding cover.

(6) A storage vessel with a continuous secondary seal does not have to meet the specifications for internal floating roofs included in paragraph (a)(5) of this section. A continuous secondary seal means the upper of two seals forming a continuous closure except as provided in § 61.272(b)(4) between the wall of the storage vessel and the internal floating roof.

(7) For a storage vessel for which construction commenced after July 28, 1988, each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(8) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(b) Requirements for external floating roof tanks.

(1) Each storage vessel shall have an external floating roof. An external floating roof means a pontoon-type or double-deck-type cover that rests on the liquid surface in a vessel with no fixed roof.

(2) Each external floating roof shall be equipped with a closure device between the wall of the storage vessel and the roof edge. Except as provided in paragraph (b)(5) of this section, the closure device is to consist of two seals, one above the other. The lower seal is referred to as the primary seal and the upper seal is referred to as the secondary seal.

(i) The primary seal shall be either a metallic shoe seal or a liquid-mounted seal. A liquid-mounted seal means a foam- or liquid-filled seal mounted in contact except as provided in § 61.272(b)(4) with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the tank. A metallic shoe seal (which can also be referred to as a mechanical shoe seal) is, but is not limited to, a metal sheet held vertically against the wall of the storage vessel except as provided in § 61.272(b)(4) by springs or weighted levels and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof. Except as provided in § 61.272(b)(4) the primary seal shall completely cover the annular space between the edge of the floating roof and the tank wall.

(ii) The secondary seal shall completely cover the annular space between the external floating roof and the wall of the storage vessel in a continuous fashion except as allowed in § 61.272(b)(4)(ii).

(3) Except for automatic bleeder vents and rim space vents, each opening in the noncontact external floating roof shall provide a projection below the liquid surface. Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof is to be equipped with a gasketed cover, seal or lid which is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. Automatic bleeder vents are to be closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the roof leg supports. Rim vents are to be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting. Automatic bleeder vents and rim space vents are to be gasketed. Each emergency roof drain is to be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(4) The roof shall be floating on the liquid at all times (i.e., off the roof leg supports) except during initial fill until the roof is lifted off leg supports and when the tank is completely emptied and subsequently refilled. The process of emptying and refilling when the roof is resting on the leg supports shall be continuous and shall be accomplished as rapidly as possible.

(5) The requirement for a secondary seal does not apply to each existing storage vessel that was equipped with a liquid-mounted primary seal as of July 28, 1988, until after the first time after the date of promulgation when the vessel is emptied and degassed or 10 years from the date of promulgation, whichever occurs first.

(c) Requirements for closed vent system/control device.

(1) The closed vent system shall be designed to collect all benzene vapors and gases discharged from the storage vessel and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and visual inspections, as determined in Part 61, Subpart V, § 61.242–11.

(2) The control device shall be designed and operated to reduce inlet benzene emissions by 95 percent or greater. If a flare is used as the control device, it shall meet the specifications described in the general control device requirements of 40 CFR 60.18.

(3) The specifications and requirements listed in paragraphs (c)(1) and (c)(2) of this section for closed vent systems/control devices do not apply during periods of routine maintenance. During periods of routine maintenance, the benzene level in the storage vessel(s) serviced by the control device subject to the provisions of § 61.271(c) may be lowered but not raised. Periods of routine maintenance shall not exceed 72 hours as outlined in the maintenance plan required by § 61.272(c)(1)(iii) when approved by the Administrator.

(4) The specifications and requirements listed in paragraphs (c)(1) and (c)(2) of this section for closed vent/control devices do not apply during a control system malfunction. A control system malfunction means any sudden and unavoidable failure of air pollution control equipment. A failure caused entirely or in part by design deficiencies, poor maintenance, careless operation, or other preventable upset condition or equipment breakdown is not considered a malfunction.

(d) The owner or operator of each affected storage vessel shall meet the requirements of paragraph (a), (b), or (c) of this section, as follows:

(1) The owner or operator of each existing benzene storage vessel shall meet the requirements of paragraph (a), (b), or (c) of this section no later than 90 days after the effective date of this regulation with the exceptions noted in paragraphs (a)(3), (a)(5), and (b)(5) unless a waiver of compliance has been approved by the Administrator in accordance with § 61.11.

(2) The owner or operator of each benzene storage vessel upon which construction commenced after the date of promulgation shall meet the requirements of paragraph (a), (b), or (c) of this section prior to filling (i.e., roof is lifted off leg supports) the storage vessel with benzene.

(3) The owner or operator of each benzene storage vessel upon which construction commenced on or after July 28, 1988, and before the date of promulgation shall meet the requirements of paragraph (a), (b), or (c) of this section on the effective date of this regulation.

§ 61.272 Compliance provisions.

The owner or operator of each storage vessel to which this subpart applies shall meet the requirements of paragraphs (a), (b), (c), or (d) of this section for each storage vessel with a design capacity greater than 38 cubic meters (10,000 gallons). The applicable paragraph for a particular storage vessel depends on the control equipment installed to meet the requirements of § 61.271.

(a) After installing the control equipment required to comply with

§ 61.271(a) (permanently affixed roof and internal floating roof) each owner or operator shall:

(1) Visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service), prior to filling the storage vessels with benzene. If there are holes, tears or other openings in the primary seal, the secondary seal, or the seal fabric, or defects in the internal floating roof, the owner or operator shall repair the items before filling the storage vessel.

(2) Visually inspect the internal floating roof and the primary seal or the secondary seal (if one is in service) through manholes and roof hatches on the fixed roof at least once every 12 months after initial fill, except as provided in paragraph (a)(4) of this section.

(i) If the internal floating roof is not resting on the surface of the benzene liquid inside the storage vessel, or there is liquid on the roof, or the seal is detached, or there are holes or tears in the seal fabric, the owner or operator shall repair the items or empty and remove the storage vessel from service within 30 days. If a failure that is detected during inspections required in this paragraph cannot be repaired within 30 days and if the vessel cannot be emptied within 30 days, an extension of up to 30 additional days may be requested from the Administrator in the inspection report required in § 61.275(a). Such a request for an extension must document that alternate storage capacity is unavailable and specify a schedule of actions the company will take that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(ii) If there are holes, tears, or other openings in the primary or secondary seal or seal fabric, the owner or operator shall repair the items the first time the vessel is emptied and degassed.

(3) Visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service) each time the storage vessel is emptied and degassed. In no event shall inspections conducted in accordance with this provision occur at intervals greater than 10 years in the case of vessels conducting the annual visual inspections as specified in paragraph (a)(2) of this section and at intervals greater than 5 years in the case of vessels specified in paragraph (a)(4) of this section.

(i) For all the inspections required by paragraphs (a)(1) and (a)(3) of this section, the owner or operator shall notify the Administrator in writing at least 30 days prior to the refilling of each storage vessel to afford the Administrator the opportunity to have an observer present. If the inspection required by paragraph (a)(3) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the tank, the owner or operator shall notify the Administrator at least 7 days prior to the refilling of the storage vessel. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, the notification including the written documentation may be made in writing and sent by express mail so that it is received by the Administrator at least 7 days prior to refilling.

(ii) If the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, or the gaskets no longer close off the liquid surfaces from the atmosphere, or the slotted membrane has more than 10 percent open area, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before refilling the storage vessel with benzene.

(4) For vessels equipped with a double-seal system as specified in § 61.271(a)(2)(ii):

(i) Visually inspect the vessel as specified in paragraph (a)(3) of this section at least every 5 years; or

(ii) Visually inspect the vessel annually as specified in paragraph (a)(2) of this section.

(b) After installing the control equipment required to comply with § 61.271(b) (external floating roof) the owner or operator shall:

(1) Determine the gap areas and maximum gap widths between the primary seal and the wall of the storage vessel, and the secondary seal and the wall of the storage vessel according to the following frequency.

(i) For an external floating roof tank equipped with primary and secondary seals, measurements of gaps between the tank wall and the primary seal (seal gaps) shall be performed during the hydrostatic testing of the vessel or within 90 days of the initial fill with benzene or within 90 days of the date of promulgation whichever occurs last, and at least once every 5 years thereafter except as provided in paragraph (b)(1)(ii) of this section.

(ii) For an external floating roof tank equipped with only a liquid-mounted primary seal as provided for in § 61.271(b)(5), measurements of gaps between the tank wall and the primary seal (primary seal gaps) shall be performed within 90 days of initial fill with benzene or within 90 days of the date of promulgation whichever occurs last, and at least once per year thereafter. In the event a secondary seal is installed over the primary seal, measurement of primary seal gaps shall be performed within 90 days of installation and at least once every 5 years thereafter.

(iii) For an external floating roof tank equipped with primary and secondary seals, measurements of gaps between the tank wall and the secondary seal shall be performed within 90 days of the initial fill with benzene, within 90 days of installation of the secondary seal, or 90 days of the date of promulgation, whichever occurs last, and at least once per year thereafter.

(iv) If any source ceases to store benzene for a period of 1 year or more, subsequent introduction of benzene into the vessel shall be considered an initial fill for the purposes of paragraphs (b)(1)(ii) and (b)(1)(iii) of this section.

(2) Determine gap widths and areas in the primary and secondary seals individually by the following procedures:

(i) Measure seal gaps, if any, at one or more floating roof levels when the roof is floating off the roof leg supports.

(ii) Measure seal gaps around the entire circumference of the tank in each place where a 0.32 cm (⅛ in.) diameter uniform probe passes freely (without forcing or binding against seal) between the seal and the wall of the storage vessel and measure the circumferential distance of each such location.

(iii) The total surface area of each gap described in paragraph (b)(2)(ii) of this section shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(3) Add the gap surface area of each gap location for the primary seal and the secondary seal individually. Divide the sum for each seal by the nominal distance of the tank and compare each ratio to the respective standards in § 61.272(b)(4) and § 61.272(b)(5).

(4) Repair conditions not meeting requirements listed in paragraphs (b)(2)(i) and (ii) of this section within 30 days of identification in any inspection or empty and remove the storage vessel from service within 30 days:

(i) The accumulated area of gaps between the tank wall and the metallic shoe seal or the liquid-mounted primary seal shall not exceed 212 cm^2 per meter of tank diameter (10.0 $in.^2$ per foot of tank diameter) and the width of any

portion of any gap shall not exceed 3.81 cm (1½ in.).

(A) One end of the metallic shoe is to extend into the stored liquid and the other end is to extend a minimum vertical distance of 61 cm (24 in.) above the stored liquid surface.

(B) There are no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.

(ii) The secondary seal is to meet the following requirements:

(A) The secondary seal is to be installed above the primary seal so that it completely covers the space between the roof edge and the tank wall except as provided in the following paragraphs of this section.

(B) The accumulated area of gaps between the tank wall and the secondary seal shall not exceed 21.2 cm^2 per meter of tank diameter (1.0 $in.^2$ per foot of tank diameter) or the width of any portion of any gap shall exceed 1.27 cm (½ in.). These seal gap requirements may be exceeded during the measurement of primary seal gaps as required by paragraph (b)(1)(i) of this section.

(C) There are to be no holes, tears, or other openings in the seal or seal fabric.

(iii) If a failure that is detected during inspections required in this paragraph cannot be repaired within 30 days and if the vessel cannot be emptied within 30 days, an extension of up to 30 additional days may be requested from the Administrator in the inspection report required in § 61.275(d). Such extension request must include a demonstration of unavailibility of alternate storage capacity and a specification of a schedule that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(5) The owner or operator shall notify the Administrator 30 days in advance of any gap measurement required by paragraph (b)(1) of this section to afford the Administrator the opportunity to have an observer present.

(6) Visually inspect the external floating roof, the primary seal, secondary seal, and fittings each time the vessel is emptied and degassed.

(i) If the external floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before filling or refilling the storage vessel with benzene.

(ii) For all the inspections required by paragraph (b)(6) of this section, the owner or operator shall notify the Administrator in writing at least 30 days prior to filling or refilling of each storage vessel to afford the Administrator the opportunity to inspect the storage vessel prior to refilling. If the inspection required by paragraph (b)(6) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the tank, the owner or operator shall notify the Administrator at least 7 days prior to refilling of the storage vessel. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification including the written documentation may be made in writing and sent by express mail so that it is received by the Administrator at least 7 days prior to refilling.

(c) The owner or operator of each source that is equipped with a closed vent system and control device as required in § 60.271(c) (other than a flare) shall meet the following requirements.

(1) Within 90 days of initial fill or the date of promulgation, whichever comes last, submit for approval by the Administrator, an operating plan containing the information listed below.

(i) Documentation demonstrating that the control device being used achieves the required control efficiency during reasonably expected maximum loading conditions. This documentation is to include a description of the gas stream which enters the control device, including flow and benzene content under varying liquid level conditions (dynamic and static) and manufacturer's design specifications for the control device. If the control device or the closed vent capture system receives vapors, gases or liquids, other than fuels, from sources that are not designated sources under this subpart, the efficiency demonstration is to include consideration of all vapors, gases and liquids received by the closed vent capture system and control device. If an enclosed combustion device with a minimum residence time of 0.75 seconds and a minimum temperature of 816 °C is used to meet the 95 percent requirement, documentation that those conditions exist is sufficient to meet the requirements of this paragraph.

(ii) A description of the parameter or parameters to be monitored to ensure that the control device is operated and maintained in conformance with its design and an explanation of the criteria used for selection of that parameter (or parameters).

(iii) A maintenance plan for the system including the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods for those operations that would require the closed vent system or the control device to be out of compliance with § 61.271(c). The maintenance plan shall require that the system be out of compliance with § 61.271(c) for no more than 72 hours per year.

(2) Operate, monitor the parameters, and maintain the closed vent system and control device in accordance with the operating plan submitted to the Administrator in accordance with paragraph (c)(1) of this section, unless the plan was modified by the Administrator during the approval process. In this case, the modified plan applies.

(d) The owner or operator of each source that is equipped with a closed vent system and a flare to meet the requirements in § 61.271(c) shall meet the requirements as specified in the general control device requirements in § 60.18 (e) and (f).

§ 61.273 Alternative means of emission limitation.

(a) Upon written application from any person, the Administrator may approve the use of alternative means of emission limitation which have been demonstrated to his satisfaction to achieve a reduction in benzene emissions at least equivalent to the reduction in emissions achieved by any requirement in § 61.271 (a), (b), or (c) of this subpart.

(b) Determination of equivalence to the reduction in emissions achieved by the requirements of § 61.271 (a), (b) or (c) will be evaluated using the following information to be included in the written application to the Administrator.

(1) Actual emissions tests that use full-size or scale-model storage vessels that accurately collect and measure all benzene emissions from a given control device, and which accurately simulate wind and account for other emission variables such as temperature and barometric pressure.

(2) An engineering evaluation that the Administrator determines is an accurate method of determining equivalence.

(c) The Administrator may condition approval of equivalency on requirements that may be necessary to ensure operation and maintenance to achieve the same emission reduction as the requirements of § 61.271 (a), (b), or (c).

(d) If, in the Administrator's judgment, an application for equivalence may be approvable, the Administrator will publish a notice of preliminary

determination in the **Federal Register** and provide the opportunity for public hearing. After notice and opportunity for public hearing, the Administrator will determine the equivalence of the alternative means of emission limitation and will publish the final determination in the **Federal Register**.

§ 61.274 Initial report.

(a) The owner or operator of each storage vessel to which this subpart applies and which has a design capacity greater than 38 cubic meters (10,000 gallons) shall submit an initial report describing the controls which will be applied to meet the equipment requirements in § 61.271. For an existing storage vessel or a new storage vessel for which construction and operation commenced prior to the promulgation date of this regulation, this report shall be submitted within 90 days of the effective date of this regulation, and can be combined with the report required by § 61.10. For a new storage vessel for which construction or operation commenced on or after the promulgation date, the report shall be combined with the report required by § 61.07. In the case where the owner or operator seeks to comply with § 61.271(c) with a control device other than a flare, this information may consist of the information required by § 61.272(c)(1).

(b) The owner or operator of each storage vessel seeking to comply with § 61.271 with a flare, shall submit a report containing the measurements required by § 60.18(f) (1), (2), (3), (4), (5), and (6). For the owner or operator of an existing storage vessel not seeking to obtain a waiver or a new storage vessel for which construction and operation commenced prior to the promulgation date, this report shall be combined with the report required by paragraph (a) of this section. For the owner or operator of an existing storage vessel seeking to obtain a waiver, the reporting date will be established in the response to the waiver request. For the owner or operator of a new storage vessel for which construction or operation commenced after the promulgation date, the report shall be submitted within 90 days of the date the vessel is initially filled (or partially filled) with benzene.

§ 61.275 Periodic report.

(a) The owner or operator of each storage vessel to which this subpart applies after installing control equipment in accordance with § 61.271(a) (fixed roof and internal floating roof) shall submit a report describing the results of each inspection conducted in accordance with § 61.272(a). For vessels for which annual inspections are required under § 61.272(a)(2), the first report is to be submitted no more than 12 months after the initial report submitted in accordance with § 61.274.

(1) Each report shall include the date of the inspection of each storage vessel and identify each storage vessel in which:

(i) The internal floating roof is not resting on the surface of the benzene liquid inside the storage vessel, or there is liquid on the roof, or the seal is detached from the internal floating roof, or there are holes or tears in the seal fabric;

(ii) There are visible gaps between the seal and the wall of the storage vessel; or

(iii) There are holes, tears, or other openings in the seal or the seal fabric.

(2) Where an annual report identifies any condition in paragraph (a)(1)(i) of this section the subsequent annual report shall describe the measures used to correct the condition, the date the storage vessel was emptied, and the date the condition was repaired.

(b) The owner or operator of each storage vessel to which this subpart applies after installing control equipment in accordance with § 61.271(a) (fixed roof and internal floating roof) shall submit a report describing the results of each inspection conducted in accordance with § 61.272(a) (3) or (4).

(1) The report is to be submitted within 60 days of conducting each inspection required by § 61.272(a) (3) or (4).

(2) Each report shall identify each storage vessel in which the owner or operator finds that the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal (if one has been installed) has holes, tears, or other openings in the seal or the seal fabric, or the gaskets no longer close off the liquid surfaces from the atmosphere, or the slotted membrane has more than 10 percent open area. The report shall also provide a description of the repairs made to these items.

(c) Any owner or operator of an existing storage vessel which had an internal floating roof as of July 28, 1988, and which seeks to comply with the requirements of §§ 61.271(a)(3) and 61.271(a)(5) during the first time after the date of promulgation when the vessel is emptied and degassed or 10 years from the date of promulgation, shall notify the Administrator 30 days prior to the completion of the installation of such controls, and of the date of refilling of the vessel so the Administrator has an opportunity to have an observer present to inspect the storage vessel before it is refilled. This report can be combined with the one required by § 61.275(b).

(d) The owner or operator of each storage vessel to which this subpart applies after installing control equipment in accordance with § 61.271(b) (external floating roof) shall submit a report describing the results of each seal gap measurement made in accordance with § 61.272(b). The first report is to be submitted no more than 12 months after the initial report submitted in accordance with § 61.274(b). Each report shall include the date of the measurement, the raw data obtained in the measurement, and the calculations described in § 61.272(b) (2) and (3), and shall identify each storage vessel which does not meet the gap specification of § 61.271(b)(4). Where an annual report identifies any vessel not meeting the seal gap specifications of § 61.271(b) the report shall describe the measures used to correct the condition and the date the storage vessel was brought into compliance or the date the storage vessel was emptied.

(e) Excess emission report. (1) The owner or operator of each source seeking to comply with § 61.271(c) (vessels equipped with closed vent systems with control devices) shall submit a quarterly report informing the Administrator of each occurrence that results in excess emissions. Excess emissions are emissions that occur at any time when compliance with the specifications and requirements of § 61.271(c) are not achieved, as evidenced by the parameters being measured in accordance with § 61.272(c)(1)(ii) if a control device other than a flare is used, or by the measurements required in § 61.272(d) and the general control device requirements in § 60.18(f) (1) and (2) if a flare is used.

(2) The owner or operator shall submit the following information as a minimum in the report required by paragraph (e)(1) of this section:

(i) Identify the stack and other emission points where the excess emissions occurred;

(ii) A statement of whether or not the owner or operator believes a control system malfunction has occurred.

(3) If the owner or operator states that a control system malfunction has occurred, the following information as a minimum is also to be included in the report required under paragraph (e)(1) of this section:

(i) Time and duration of the control system malfunction as determined by

continuous monitoring data (if any), or the inspections or monitoring done in accordance with the operating plan required by § 61.272(c).

(ii) Cause of excess emissions.

§ 61.276 Recordkeeping.

(a) Each owner or operator with a storage vessel subject to this subpart shall keep copies of all reports and records required by this subpart for at least 2 years, except as specified in paragraphs (b) and (c)(1) of this section.

(b) Each owner or operator with a storage vessel, including any vessel which has a design storage capacity less than 38 cubic meters (10,000 gallons), shall keep readily accessible records showing the dimensions of the storage vessel and an analysis showing the capacity of the storage vessel. This record shall be kept as long as the source is in operation. Each storage vessel with a design capacity of less than 39 cubic meters (10,000 gallons) is subject to no provisions of this subpart other than those required by this paragraph.

(c) The following information pertaining to closed vent system and control devices shall be kept in a readily accessible location.

(1) A copy of the operating plan. This record shall be kept as long as the closed vent system and control device is in use.

(2) A record of the measured values of the parameters monitored in accordance with §§ 61.272(c)(1)(ii) and 61.272(c)(2).

(3) A record of the maintenance performed in accordance with § 61.272(c)(1)(iii) of the operating plan, including the following:

(i) The duration of each time the closed vent system and capture device does not meet the specification of § 61.271(c) due to maintenance, including the following:

(A) The first time of day and date the requirements of § 61.271(c) were not met at the beginning of maintenance.

(B) The first time of day and date the requirements of § 61.271(c) were met at the conclusion of maintenance.

(C) A continuous record of the liquid level in each tank that the closed vent system and control device receive vapors from during the interval between the times specified by paragraphs (c)(3)(i)(A) and (c)(3)(i)(B) of this section. Pumping records (simultaneous input and output) may be substituted for records of the liquid level.

§ 61.277 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: § 61.273.

12. Under *Approach D* as described in the preamble, Subpart Y would be added to Part 61 of Title 40 as follows:

Subpart Y—National Emission Standard for Benzene Emissions From Benzene Storage Vessels

Sec.

61.270 Applicability and designation of sources.
61.271 Definitions.
61.272 Emission standard.
61.273 Demonstration of compliance.
61.274 Emission monitoring.
61.275 Recordkeeping.
61.276 Reporting requirements.
61.277 Delegation of authority.

Subpart Y—National Emission Standard for Benzene Emissions From Benzene Storage Vessels

§ 61.270 Applicability and designation of sources.

(a) The source to which this subpart applies is each storage vessel that is storing benzene having a specific gravity within the range of specific gravities specified for Industrial Grade Benzene in ASTM–D–836–80 (incorporated by reference as specified in § 61.18). This specification includes Industrial Grade Benzene, Nitration Grade Benzene, and Refined Benzene-535.

§ 61.271 Definitions.

"Plants" means any combination of process units, storage vessels and equipment used at one site in the production of benzene as an intermediate for final product or in the use of benzene.

§ 61.272 Emission standard.

(a) No owner or operator shall cause to be emitted to the atmosphere from all storage vessels subject to this subpart that are located at a plant total benzene emissions exceeding 0.47 kg/day.

§ 61.273 Demonstration of compliance.

(a) To demonstrate compliance with § 61.272, benzene emissions shall be determined using the following procedures:

(1) Calculate benzene emissions from each tank located at a plant using the equations and procedures given in Section 4.3 in the EPA document "Compilation of Air Pollutant Emission Factors"; Volume 1; September 1985; EPA Publication Number AP–42 (incorporated by reference as specified in § 61.18).

(2) Sum benzene emissions for all storage tanks subject to this subpart that are loacted at the plant.

(b) In lieu of using the procedures specified in paragraph (a) of this section, an owner or operator may apply to the Administrator for approval of an equivalent method of measuring or calculating emissions.

§ 61.274 Emission monitoring.

(a) Each owner or operator subject to the provisions of § 61.272(a) shall submit an operating and maintenance plan to the Administrator for approval within 90 days of the effective date for existing sources, or within 90 days of startup for new sources. The plan shall include the following:

(1) A description of each emission source and the control techniques by which the owner or operator will comply with the emission limit in § 61.272(a).

(2) Identification of the parameter or parameters to be monitored to ensure that each control device is operated in conformance with its design, and that the emission limit is not exceeded.

(3) An explanation of the criteria used in selecting the monitoring parameter(s).

(4) A description of the types and frequencies of maintenance necessary.

(5) A schedule for reporting excess emissions or reporting of other information demonstrating continued compliance with § 61.272(a). The reporting schedule shall be consistent with the compliance, monitoring, and maintenance methods, and shall be no more frequent than quarterly.

(b) If control equipment that is the same as equipment specified in 40 CFR Part 60, Subpart Kb is used to comply with the provisions of § 61.272(a), the operating plan shall include the inspection, monitoring, operating and maintenance procedures specified in § 60.113b (a), (b) and (c).

(c) Each owner or operator shall conduct operations, monitor the parameters, and maintain equipment in accordance with the approved operating plan.

§ 61.275 Recordkeeping.

(a) Each owner or operator subject to the provisions of § 61.272(a) shall maintain at the plant for a period of at least 2 years, and make available to the Administrator upon request, the following:

(1) Records of any emission test data and all calculations used to demonstrate compliance with § 61.272(a).

(2) Records of all inspections and monitoring of parameters specified in the approved operating plan required under § 61.274.

(3) Records of all periods where there were excess emissions as indicated by the parameters monitored under § 61.274.

(4) Records of all malfunctions of all air pollution control equipment used to comply with § 61.272(a).

(5) Records of all maintenance and repairs of each storage vessel subject to this subpart and associated air pollution control equipment.

§ 61.276 Reporting requirements.

Each owner or operator of a storage vessel to which this subpart applies shall:

(a) If a calculational procedure is used to demonstrate compliance, a compliance report including the calculations shall be submitted with either the source report required in § 61.10 for existing sources, or the notification of startup required in § 61.09 for new sources.

(b) Submit the operating plan required in § 61.274 within 90 days of the effective date of the regulation for an existing source, or within 90 days of startup for a new source.

(c) Submit to the Administrator a written report of excess emissions at the frequency established in the operating and maintenance plant. For the purposes of this paragraph, excess emissions shall be considered to be any exceedence of monitored parameter(s) established under § 61.274. The report shall include:

(1) Time and duration of excess emissions,

(2) Identification of the emission point where the excess emission occurred,

(3) Description of any malfunction that is believed to have caused the excess emission,

(4) Descriptions of any repairs or actions taken to correct the cause of the excess emissions.

§ 61.277 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: none.

13. Under *Approach D* as described in the preamble, Subpart Z would be added to Part 61 of Title 40 as follows:

Subpart Z—National Emission Standard for Benzene Emission from Ethylbenzene/ Styrene Plants

Sec.

61.280 Applicability and designation of sources.
61.281 Definitions.
61.282 Emission standard.
61.283 Compliance provision.
61.284 Emission monitoring.
61.285 Reporting.
61.296 Reporting requirements.
61.297 Delegation of authority.

Subpart Z—National Emission Standard for Benzene Emissions from Ethylbenzene/ Styrene plants.

§ 61.280 Applicability and designation of sources.

(a) The source to which this subpart applies is each integrated chemical process producing either ethylbenzene from benzene, or styrene from ethylbenzene, and containing any of the following equipment:

(1) Alkylation reactor section;

(2) Ethylbenzene hydroperoxidation reactor; or

(3) Hydrogen separation system.

§ 61.281 Definitions.

The terms used in this subpart are defined in the CAA, in § 61.102, or in this section as follows:

"Alkylation reactor section" means any equipment or combination of equipment in which benzene is reacted with ethylene to produce ethylbenzene, in which the reactor catalyst is neutralized or separated from reaction product or impurities, or in which diethylbenzene and polyethylbenzene are catalytically transformed to ethylbenzene and by-products.

"Atmospheric column" means each distillation unit that operates at atmospheric pressure.

"Boiler" means any enclosed combustion device that extracts useful energy in the form of steam or hot process fluids, including a boiler, process heater, superheater, or reboiler.

"Corrosive vent stream" means any vent stream determined to have a total concentration (by volume) of compounds containing chlorine or other halogens of 20 ppmv (by compound) or greater.

"Dehydrogenation reactor" means a reactor in which ethylbenzene is catalytically dehydrogenated in the presence of steam to produce styrene and by-products.

"Distillation operation" means a continuous or batch operation separating one or more feed stream(s) into two or more product streams, each product stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistrubution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

"Distillation unit" means a device or vessel (e.g., a column) in which distillation operations occur, including all associated internals (e.g., trays or packing) and accessories (e.g., reboiler, condenser), plus any associated recovery system.

"Ethylbenzene hyperoxidation reactor" means any equipment or combination of equipment in which ethylbenzene is oxidized with air or oxygen to produce ethylbenzene hydroperoxide.

"Hydrogen separation system" means the combination of equipment in which the crude styrene, unreacted ethylbenzene, and condensed steam are separated from the hydrogen-rich gas stream exiting the ethylbenzene dehydrogenation reactor.

"Incinerator" means an enclosed combustion device other than a boiler.

"Malfunction" means any sudden and unavoidable failure of process or air pollution control equipment. A failure of process or air pollution control equipment caused entirely or in part by design deficiencies, poor maintenance, careless operation, or other preventable equipment breakdown is not considered to be a malfunction.

"Plant" means any combination of process units and equipment used at one site in the production of ethylbenzene from benzene or stryrene from ethylbenzene.

"Pressure column" means each distillation unit that operates at greater than atmospheric pressure.

"Process vent stream" means each benzene-containing gas stream being released or having the potential of being released to the atmosphere from each of the following equipment:

(1) Alkylation reactor section;

(2) Atmospheric or pressure column;

(3) Hydrogen separation system; or

(4) Vacuum-producing device.

"Shutdown" means the cessation of operation and cooling to ambient temperature of the following:

(1) Entire sources as designated in § 61.280;

(2) Alkylation reactor section; or

(3) Dehydrogenation reactor.

"Startup" means the commencing of operation from ambient temperature of the following:

(1) Entire source as designated in § 61.280;

(2) Alkylation reactor section; or

(3) Dehydrogenation reactor.

"Vacuum-producing device" means each device that produces an absolute pressure less than atmospheric on any distillation unit.

§ 61.282 Emission standard.

No owner or operator of a source to which this subpart applies shall cause to be emitted to the atomosphere from all process vents at the plant total benzene emissions exceeding 5.5 kg/day.

§ 61.283 Compliance provisions.

The owner or operator of each source to which this subpart applies shall meet the requirement of paragraphs (a) and (b) of this section for each source.

(a) To demonstrate compliance with § 61.282, benzene emissions shall be determined and the data reduced using EPA-approved sampling and analysis procedures or using other procedures that EPA has determined to be acceptable.

(b) Unless a waiver of emission testing is obtained under § 61.13, the owner or operator shall demonstrate compliance with § 61.282:

(1) No later than 90 days after the effective date of this subpart for a source that has an initial startup date preceding the effective date; or

(2) No later than 90 days after startup for a source that has an initial startup date after the effective date.

(3) At such other times as may be required by the Administrator under section 114 of the Act.

(4) While the source is operating under such conditions as the Administrator may specify, based on representative performance of the source.

§ 61.284 Emission monitoring.

(a) Each owner or operator subject to the provisions of § 61.282 shall submit an operating and maintenance plan to the Administrator for approval:

(1) No later than 90 days after the effective date of this subpart for a source that has an initial startup date preceding the effective date; or

(2) No later than 90 days after startup for a source that has an initial startup date after the effective date.

(b) The operating and maintenance plan shall include the following:

(1) A description of each emission source and the control devices and techniques by which the owner or operator will comply with the emission limit in § 61.283. The description of any control system shall include its design specifications, performance certification, and maintenance procedures.

(2) Identification of the parameter or parameters to be monitored to ensure that each control device is operated in conformity with its design, and that the emission limit is not exceeded.

(3) An explanation of the criteria used in selecting the monitoring parameter(s).

(4) A description of the types and frequencies of maintenance necessary.

(5) A schedule for reporting excess emissions or reporting of other information demonstrating continued compliance with § 61.282(a). The reporting schedule shall be consistent with the compliance, monitoring, and maintenance methods, and shall be no more frequent than quarterly.

(c) Each owner or operator shall conduct operations, monitor the parameter(s), and maintain equipment in conformance with the approved operating and maintenance plan.

§ 61.285 Recordkeeping.

(a) Each owner or operator subject to the provisions of § 61.282 shall maintain at the plant for a period of at least 2 years, and shall make available to the Administrator upon request, the following:

(1) Records of all data and calculations used to demonstrate compliance with § 61.282.

(2) Records of all repairs to equipment subject to § 61.282.

(3) Records of all monitoring of parameter(s) specified in the approved operating plan required under § 61.284.

(4) Records of all malfunctions of any air pollution control device described in the operating and maintenance plan described in § 61.284.

(5) Records of all maintenance and repair to any air pollution control device described in the operating and maintenance plan described in § 61.284.

(6) Records of all relevant data and information for any additional methods used to achieve compliance with § 61.282.

(b) Detailed schematics and records of design specifications and instrumentation for any air pollution control device described in the operating and maintenance plan described in § 61.284 shall be kept for the life of the control device.

§ 61.286 Reporting requirements.

Each owner or operator of each source to which § 61.282 applies shall:

(a) Submit an initial report describing the control equipment which will be operated, monitored, and maintained in accordance with § 61.284. This report may be combined with the operating and maintenance plan required in § 61.284. This report shall be submitted either:

(1) No later than 90 days after the effective date of this subpart for a source that has an initial startup date preceding the effective date; or

(2) No later than 90 days after startup for a source that has an initial startup date after the effective date.

(b) Provide the Administrator 30 days prior notice of any emission test required in the operating and maintenance plan required in § 61.284, to afford the Administrator the opportunity to have an observer present;

(c) Submit a written report to the Administrator detailing the results of the emission test, and the associated calculations within 30 days after conducting the test.

(d) Submit a written report to the Administrator of any excess emissions at the frequency established in the approved operating and maintenance plan. For the purposes of this paragraph, excess emissions shall be considered to be any exceedences of the monitored parameter(s) established in the operating and maintenance plan required in § 61.284. The report shall include the following:

(1) The magnitude of each excess emission.

(2) Identification of each occurrence of excess emission that results from startups, shutdowns or malfunctions.

(e) If a calculational procedure is used to demonstrate compliance, a compliance report including the calculations shall be submitted with either the source report required in § 61.10 for existing sources, or with the notification of startup required in § 61.09 for new sources.

§ 61.287 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: None.

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Part III

Department of Transportation

Federal Railroad Administration

49 CFR Parts 209, 213-236

Amendments to Railroad Safety Regulations To Increase the Maximum Civil Penalties and Make Civil Penalties Available Against Individuals; Interim Rule and Interim Statements of Policy

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236

[FRA Docket No. RSEP-3, Notice No. 1]

Amendments to Railroad Safety Regulations To Increase the Maximum Civil Penalties and Make Civil Penalties Available Against Individuals

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Interim rule and interim statements of policy.

SUMMARY: FRA issues an interim rule and interim statements of policy to conform its railroad safety regulations to certain provisions of the Rail Safety Improvement Act of 1988 within the 30-day time limit for such issuance set by that statute. Specifically, the interim rule amends the regulations to reflect two basic changes effected by the new statute: (1) Extension of the civil penalty provisions of the federal railroad safety statutes to individuals, which makes them liable for civil penalties for willful violations; and (2) increase of the maximum civil penalty for violation of the rail safety statutes and regulations from $2,500 to $10,000, and, under certain circumstances, up to $20,000. FRA also issues interim statements of policy amending the penalty schedules appended to its regulations to reflect the statutory changes and a general statement of policy explaining its interim policy on exercising its expanded enforcement authority. FRA will subsequently issue final statements of policy making itemized, line-by-line changes to its penalty schedules to reflect the higher maximum penalties now available. To the extent that amendments to the interim rule appear necessary, a final rule making those changes will also be issued at that time. Although notice and public participation are not necessary here, interested parties are welcome to submit comments for inclusion in the docket of this rulemaking. Comments received will be reviewed and considered prior to issuance of the final penalty schedules.

DATES: (1) The interim rule and interim policy statements will become effective August 1, 1988. (2) Written comments must be received no later than September 15, 1988. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

ADDRESSES: Written comments should be submitted to the Docket Clerk (RCC-30), Office of Chief Counsel, FRA, 400 Seventh Street, Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date the comments were received and return the postcard to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel C. Smith, Deputy Assistant Chief Counsel for Safety, FRA, Washington, DC 20590 (Telephone: 202-366-0628); or Edward English, Chief, Maintenance Programs Division, Office of Safety, FRA, Washington, DC 20590 (Telephone: 202-366-9186).

SUPPLEMENTARY INFORMATION: .

Changes Effected By The Rail Safety Improvement Act of 1988

The Rail Safety Improvement Act of 1988 ("RSIA") (Pub. L. No. 100-342), enacted on June 22, 1988, made many basic changes, two of which are pertinent here, to the federal railroad safety statutes. (Those statutes include the Federal Railroad Safety Act of 1970, 45 U.S.C. 421 *et seq.*, and a group of statutes enacted prior to 1970 referred to collectively herein as the "older laws": the Safety Appliance Acts, 45 U.S.C. 1-16; the Locomotive Inspection Act, 45 U.S.C. 22-34; the Accident Reports Act, 45 U.S.C. 38-43; the Hours of Service Act, 45 U.S.C. 61-64a; and the Signal Inspection Act, 49 App. U.S.C. 26.)

The first relevant change brought about by the RSIA was the amendment of the safety statutes to authorize the assessment of civil penalties against individuals who willfully violate the rail safety statutes or regulations, and to permit the Federal Railroad Administration to suspend or disqualify an individual whose violation of the safety laws is shown to make that individual unfit for performance of safety-sensitive functions in the rail industry. (Only the civil penalty aspects of this change are addressed here.)

Second, the RSIA raised the maximum civil penalty that FRA may access under the safety laws. Under the Hours of Service Act, the penalty was changed from a flat $500 to a penalty of "up to $1,000, as the Secretary of Transportation deems reasonable." Under all the other statutes, the maximum penalty was raised from $2,500 to $10,000 per violation, except that, "where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury," a penalty of up to $20,000 per violation may now be assessed.

The Need To Conform The Regulations To The Amended Statutes

Most of the federal railroad safety laws are not self-actuating; rather, they have been implemented through extensive rulemaking. The Hours of Service Act is the major exception; it includes substantive provisions that can be directly violated; accordingly, except for the few areas under that statute that authorize FRA to issue rules, FRA's enforcement of the Hours of Service Act entails assessment of penalties for violations to the statute itself. Thus, the amendments to nearly all the substantive provisions of the Hours of Service Act became enforceable on the date of the RSIA was enacted (i.e., June 22, 1988).

However, under the other safety statutes, which provide broad rulemaking authority, FRA has generally issued implementing regulations that bear the jurisdictional and maximum penalty limitations of the statutes as they existed at the time the regulations were issued. For example, the penalty and responsibility sections of the regulations do not address the liability of individuals. Also, most of the regulations include a schedule of civil penalties that indicates what specific penalty FRA will initially assess for the violation of a particular regulation. Those schedules reflect the $2,500 maximum in existence when they were issued and apply on their face only to railroads.

Arguably, the regulations automatically became applicable to individuals, and the increased maximum penalties immediately became available for use, on the date the RSIA was enacted. However, it is also arguable that, in order to provide adequate notice of duties and liabilities to those subject to the regulations, they should be revised to conform to the amended statutes. FRA believes it is important that the regulations match the new statutory authority before any attempt is made to apply the higher penalties or penalize individuals. Congress recognized the need to amend the regulations and schedules and required that the changes be made promptly. Section 3(b) of the RSIA provides:

Within 30 days after enactment of this Act the Secretary of Transportation * * * shall issue interim rules, regulations, orders, or standards containing penalty schedules applicable to railroads and individuals reflecting the changes made by the amendments in subsection (a). The Seretary shall issue final rules, regulations, orders, or standards with respect to such penalty schedules within six months after such date of enactment.

Thus, in order for FRA to effectively enforce the rail safety regulations and carry out the legislative mandate, it needs to make these technical amendments to the regulations and revise the penalty schedules to conform them to the recent amendments to the statutes under which they were issued. Because these amendments do no more than mirror statutory changes, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(a)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). Given the obvious Congressional intent to require prompt implementation of the RSIA provisions authorizing higher penalties and sanctions against individuals, any delay necessitated by notice and comment procedures would be contrary to the public interest. Moreover, public comment is unnecessary because, in making these technical amendments to give effect to the new statute, FRA is not exercising discretion in a way that could be informed by public comment. That is, FRA's choices here are linguistic, not substantive. Accordingly, FRA proceeds directly to an interim rule. For similar reasons, there is good cause for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). All interested parties have had notice of the relevant provisions of the RSIA since its enactment on June 22, 1988, more than 30 days prior to the effective date of this rule (August 1, 1988).

There is, in addition to the reasons just stated, another reason why notice and comment procedures are also unnecessary with regard to the revisions to the penalty schedules and interim statement of policy issued by this notice. The schedules themselves are statements of agency policy that, like the general statement of policy, are excepted from notice and comment procedure by virtue of 5 U.S.C. 553(b)(3)(A). Moreover, in reporting out the bill that was enacted as the RSIA, the conference committee stated: "The conferees view these penalty schedules as a matter committed to agency discretion by law." H. Rep. No. 100–637, 100th Cong., 2d Sess. at 21 (1988).

Effect of This Interim Rule and Policy Statement

This Notice amends the text of the railroad safety regulations (eighteen separate parts are amended here) to conform them to the RSIA in terms of sanctions against individuals and increased maximum penalties. Currently, the regulations contain sections (variously labeled "Civil penalty," "Prohibited acts," "Application," "Responsibility," or "Definitions") that limit the reach of the regulatory parts in which they appear to railroads and restrict the penalties that may be assessed to the former maximum of $2,500. These regulatory changes are made in the form of an interim rule, as required by section 3(a) of the RSIA. Although notice and opportunity for comment are not required, FRA will review any comments received and, at the time it issues final penalty schedules (see below), issue any necessary changes to its interim rule. Except as modified in response to those comments, this interim rule will become final at that time.

This notice also amends the penalty schedules appended to most of the railroad safety regulations. Those schedules are statements of agency policy that specify the civil penalty that FRA will ordinarily assess for the violation of a particular regulation and reserve FRA's right to assess a penalty up to the statutory maximum where circumstances warrant. The rail safety statutes, of course, authorize FRA to compromise the penalty initially assessed after considering any defenses and a wide variety of mitigating factors. Accordingly, the penalty actually collected may range from the $250 minimum set by the safety statutes to the amount initially assessed (and, where a valid defense is shown to exist during negotiations, no amount at all would be collected). Nevertheless, the schedules provide members of the regulated community with some idea of the amount they are likely to be assessed for a given violation.

Given the complexity of amending the hundreds of individual entries in FRA's penalty schedules, combined with the desire to promptly give effect to the expanded authority granted by the RSIA, Congress required that the penalty schedules be amended in a two-stage process. Section 3(b) of the RSIA requires FRA to issue interim penalty schedules within 30 days of enactment and final penalty schedules within six months of enactment. The changes effected by this notice constitute the interim penalty schedules discussed in section 3(b). These interim schedules simply reserve FRA's right to assess a penalty up to $20,000 in appropriate circumstances, standardize terminology so that all schedules will contain entries for normal and willful violations under each regulation, and make clear that the penalties in the column headed "willful" may be assessed against all persons, including individuals. Thus, under this interim system, the initial penalty assessed for a willful violation would be the same regardless of whether the violator was a railroad or an individual.

Over the next several months, FRA will amend the schedules line by line and issue final schedules within six months of enactment. Notice and comment procedure is not required on such a statement of policy, but interested parties are welcome to submit their views; all comments received prior to publication will be considered. One issue commenters may want to address is whether separate penalty schedules for individuals are appropriate. Commenters should keep in mind that the schedules contain only initial assessment amounts. The final penalty ultimately collected will depend on the defenses or mitigating factors raised by the alleged violator during informal negotiations with FRA (or, if the alleged violator chooses to litigate, on what the court thinks of any defenses or mitigating factors).

Third, this notice issues as an appendix to Part 209 an Interim Statement of Policy that generically addresses what FRA's policy will be in exercising its new authority to collect penalties from individuals and in assessing the higher maximum penalties. This interim statement covers FRA's definition of "willful" and explains the informal procedures FRA will use to assess penalties and negotiate final penalty amounts with individuals. This statement also contains a useful summary of FRA's overall civil penalty enforcement process. All those interested in that process are urged to become familiar with the statement. When FRA issues its final penalty schedules, it will also issue a final statement of policy.

Finally, this notice makes certain editorial changes to the text of regulations that are being amended. For example, in 49 CFR 225.5, the definition of "railroad" is amended to comport with that in the Federal Railroad Safety Act of 1970, which makes clear that self-contained urban rapid transit systems are not included. In Part 228, interim rules on construction of employee sleeping quarters are eliminated; they were replaced by final rules (49 CFR Part 228, Subpart C) issued in 1978 but,

inadvertently, were not removed at that time. These editorial changes have no effect on the substantive authority of the agency.

This notice does not amend the regulations to provide penalties for tampering with certain safety devices, a subject on which section 21 of the RSIA requires FRA to issue rules, as may be necessary, within 90 days of enactment. That subject will be dealt with in a separate proceeding. Nor does this notice issue procedural regulations for exercise of the authority, provided by section 3(a) of the RSIA, to suspend or disqualify an individual from safety-sensitive functions. In another proceeding, FRA will amend Part 209 of 49 CFR to include such procedures. Until final publication of those procedures, FRA will not act to suspend or disqualify an individual unless circumstances warrant use of its emergency order authority under 45 U.S.C. 432.

Public Participation

For the reasons discussed above, notice and public participation are not required here. However, the public is invited to submit comments by September 15, 1988. All comments received by that date will be considered in drafting FRA's final rule, penalty schedules, and general statement of policy. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This interim rule and policy statement have been evaluated in accordance with existing policies and procedures. They are considered to be non-major under Executive Order 12291. Because of the substantial public interest associated with issuance of this interim rule, it is considered significant under the DOT policies and procedures. (44 FR 11034; February 26, 1979.)

This rule will not have any direct or indirect economic impact because it does not alter any existing substantive or procedural regulation in such a way as to impose additional burdens. The cost of complying with existing substantive regulations is not being increased. The rule merely contains a regulatory formulation of FRA's amended statutory authority and a statement of its enforcement policy in the event of noncompliance. Accordingly, preparation of a regulatory evaluation is not warranted.

Regulatory Flexibility Act

FRA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. State rail agencies remain free to participate in the administration of FRA's rules but are not required to do so.

Paperwork Reduction Act

There are no information collection requirements contained in this interim rule and policy statement.

Environmental Impact

FRA has evaluated this interim rule and policy statement in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This interim rule and statement of policy will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Parts 209, 213–236

Railroad safety, Penalties.

Therefore, in consideration of the foregoing, Parts 209 and 213 through 236, Title 49, Code of Federal Regulations are amended as follows:

PART 209—[AMENDED]

1. Part 209 is amended as follows:

A. The authority citation for Part 209 is revised to read as follows:

Authority: 45 U.S.C. 6 and 13, as amended; 45 U.S.C. 34, as amended; 45 U.S.C. 43, as amended; 45 U.S.C. 64a, as amended; 45 U.S.C. 431, 437, and 438, as amended; 49 App. U.S.C. 26(h), as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c), (d), (f), (g), and (m).

Subparts B and C also issued under 49 App. U.S.C. 1802, 1804, 1808 and 1809; and 49 CFR 1.49(s).

B. Appendix A is revised to read as follows:

Appendix A—Interim Statement of Agency Policy Concerning Civil Penalties Assessed Under the Federal Railroad Safety Laws

The Rail Safety Improvement Act of 1988 (Pub. L. No. 100–342, enacted June 22, 1988) ("RSIA") raised the maximum civil penalties available under the railroad safety laws and made individuals liable for willful violations of those laws. Those statutes include the Federal Railroad Safety Act of 1970 ("Safety Act"), 45 U.S.C. 421 *et seq.*, and a group of statutes enacted prior to 1970 referred to collectively herein as the "older laws": The Safety Appliance Acts, 45 U.S.C. 1–16; the Locomotive Inspection Act, 45 U.S.C. 22–34; the Accident Reports Act, 45 U.S.C. 38–43; the Hours of Service Act, 45 U.S.C. 61–64a; and the Signal Inspection Act, 49 App. U.S.C. 26. Regulations implementing those statutes are found at 49 CFR Parts 213 through 236.

Especially because of the introduction of penalties against individuals, FRA's enforcement of the rail safety laws has entered a new era. The changes are so significant that FRA believes it is necessary to set forth the manner in which it intends to exercise the new authority.

The Civil Penalty Process

Understanding how FRA has exercised its civil penalty authority up to this point is helpful in understanding how it intends to implement its new authority. The front lines in the civil penalty process are the FRA safety inspectors: FRA employs 325 inspectors, and their work is supplemented by approximately 100 inspectors from states participating in enforcement of the federal rail safety laws. These inspectors routinely inspect the equipment, track, and signal systems and observe the operations of the nation's railroads. They also investigate hundreds of complaints filed annually by those alleging noncompliance with the laws. When inspection or complaint investigation reveals noncompliance with the laws, each noncomplying condition or action is listed on an inspection report. Where the inspector determines that the best method of promoting compliance is to assess a civil penalty, he or she prepares a violation report, which is essentially a recommendation to the FRA Office of Chief Counsel to assess a penalty based on the evidence provided in or with the report. In determining which instances of noncompliance merit penalty recommendations, the inspector looks at such factors as the inherent seriousness of the condition or action and the railroad's general history of compliance with the set of regulations involved, especially at the specific location or division of the railroad involved. The exercise of this discretion at the field level is a vital part of the enforcement process, ensuring that the exacting and time consuming civil penalty process is used to address those situations most in need of the deterrent effect of penalties. FRA intends to exercise that discretion with regard to individual violators in the same manner it has with respect to railroads.

The Office of Chief Counsel's Safety Division reviews each violation report for legal sufficiency and assesses penalties based on those allegations that survive that review. Historically, the Division has returned less than five percent of the reports submitted in a given year, often with a request for further work and resubmission.

Penalties are assessed by issuance of a penalty demand letter that summarizes the claims, encloses the violation report with a copy of all evidence on which FRA is relying in making its initial charge, and explains that the railroad may pay in full or submit, orally or in writing, information concerning any defenses or mitigating factors. The railroad safety statutes, in conjunction with the Federal Claims Collection Act, authorize FRA to compromise the initial penalty claims based on a wide variety of mitigating factors. This system permits the efficient collection of civil penalties in amounts that fit the actual offense without resort to time-consuming and expensive litigation. Over its history, FRA has had to request that the Attorney General bring suit to collect a penalty on only a very few occasions.

Once penalties have been assessed, the railroad is given a reasonble amount of time to investigate the charges. Larger railroads usually make their case before FRA in an informal settlement conference covering a number of case files that have been issued and investigated since the previous conference. Thus, in terms of the negotiating time of both sides, economies of scale are achieved that would be impossible if each case were negotiated separately. The settlement conferences, held either in Washington or another mutually agreed on location, include technical experts from both FRA and the railroad as well as lawyers for both parties. In addition to allowing the two sides to make their cases for the relative merits of the various claims, these conferences also provide a forum for addressing current compliance problems. Smaller railroads usually prefer to handle negotiations through the mail or over the phone, often on a single case at a time. Once the two sides have agreed to a compromise amount on each case, that agreement is put in writing and a check is submitted to FRA's accounting division covering the full amount agreed on.

Cases brought under the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 *et seq.*, are, due to certain statutory requirements, handled under more formal administrative procedures. *See* 49 CFR Part 209, Subpart B.

Civil Penalties Against Individuals

The RSIA amended the penalty provisions of the railroad safety statutes to make them applicable to any "person (including a railroad and any manager, supervisor, official, or agent of a railroad)" who fails to comply with the regulations or statutes. *E.g.*, section 3 of the RSIA, amending section 209 of the Safety Act. However, the RSIA also provided that civil penalties may be assessed against individuals "only for willful violations."

Thus, any individual meeting the statutory description of "person" is liable for a civil penalty for a willful violation of the safety statutes or regulations. As the regulations are generally written to impose requirements on railroads, they are being amended simultaneously with the issuance of this statement to make clear that any individual who willfully violates the regulatory requirements, or who willfully causes the violation of those requirements, may be held liable for a civil penalty. Of course, as has traditionally been the case with respect to acts of noncompliance by railroads, the FRA field inspector will exercise discretion in deciding which situations call for a civil penalty assessment as the best method of ensuring compliance. The inspector has a range of options, including an informal warning, a more formal warning letter issued by the Safety Division of the Office of Chief Counsel, recommendation of a civil penalty assessment, recommendation of disqualification or suspension from safety-sensitive service, or, under the most extreme circumstances, recommendation of emergency action.

The threshold question in any alleged violation by an individual will be whether that violation was "willful." (Note that section 3(a) of the RSIA, which authorizes suspension or disqualification of a person whose violation of the safety laws has shown him or her to be unfit for safety-sensitive service, does not require a showing of willfulness. Separate regulations implementing that provision will be issued by FRA). FRA proposed this standard of liability when, in 1987, it originally proposed a statutory revision authorizing civil penalties against individuals. FRA believed then and still believes that it would be too harsh a system to collect fines from individuals on a strict liability basis, as the safety statutes permit FRA to do with respect to railroads. FRA also believed that even a negligence standard (*e.g.*, the Hazardous Materials Transportation Act's standard for civil penalty liability, 49 U.S.C. 1809(a)) would subject individuals to civil penalties in more situations than the current record warrants. Instead, FRA wanted the authority to penalize those who violate the safety laws through a purposeful act of free will rather than a mere failure to exercise reasonable care.

Thus, FRA will consider a "willful" violation to be one that is an intentional, voluntary act committed either with knowledge of the relevant law or reckless disregard for whether the act violated the requirements of the law. Accordingly, neither a showing of evil purpose (as is sometimes required in certain criminal cases) nor actual knowledge of the law is necessary to prove a willful violation, but a level of culpability higher than negligence must be demonstrated. *See Trans World Airlines, Inc.* v. *Thurston*, 469 U.S. 111 (1985); *Brock* v. *Morello Bros. Constr., Inc.*, 809 F.2d 161 (1st Cir. 1987); and *Donovan* v. *Williams Enterprises, Inc.*, 744 F.2d 170 (D.C. Cir. 1984). A willful violation entails knowledge of the facts constituting the violation, but actual, subjective knowledge need not be demonstrated. It will suffice to show objectively what the alleged violator must have known of the facts based on reasonable inferences drawn from the circumstances. For example, a person shown to have been responsible for performing an initial terminal air brake test that was not in fact performed would not be able to defend against a charge of a willful violation simply by claiming subjective ignorance of the fact that the test was not performed. If the facts, taken as a whole, demonstrated that the person was responsible for doing the test and had no reason to believe it was performed by others, and if that person was shown to have acted with actual knowledge of or reckless disregard for the law requiring such a test, he or she would be subject to a cviil penalty.

This definition of "willful" fits squarely within the parameters for willful acts laid out by Congress in the RSIA and its legislative history. Section 3(a) of the RSIA amends the Safety Act to provide:

> For purposes of this section, an individual shall be deemed not to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor, under protest communicated to the supervisor. Such individual shall have the right to document such protest.

As FRA made clear when it recommended individual penalty authority, a railroad employee should not have to choose between liability for a civil penalty or insubordination charges by the railroad. Where an employee (or even a supervisor) violates the law under a direct order from a supervisor, he or she does not do so of his or her free will. Thus, the act is not a voluntary one and, therefore, not willful under FRA's definition of the word. Instead, the action of the person who has directly ordered the commission of the violation is itself a willful violation subjecting that person to a civil penalty. As one of the primary sponsors of the RSIA said on the Senate floor:

> This amendment also seeks to clarify that the purpose of imposing civil penalties against individuals is to deter those who, of their free will, decide to violate the safety laws. The purpose is not to penalize those who are ordered to commit violations by those above them in the railroad chain of command. Rather, in such cases, the railroad official or supervisor who orders the others to violate the law would be liable for any violations his order caused to occur. One example is the movement of railroad cars or locomotives that are actually known to contain certain defective conditions. A train crew member who was ordered to move such equipment would not be liable for a civil penalty, and his participation in such movements could not be used against him in any disqualification proceeding brought by FRA.

133 Cong. Rec. S.15899 (daily ed. Nov. 5, 1987) (remarks of Senator Exon).

It should be noted that FRA will apply the same definition of "willful" to corporate acts as is set out here with regard to individual violations. Although railroads are strictly liable for violations of the railroad safety laws and deemed to have knowledge of those laws, FRA's penalty schedules contain, for each regulation, a separate amount earmarked as the initial assessment for

willful violations. Where FRA seeks such an extraordinary penalty from a railroad, it will apply the definition of "willful" set forth above. In such cases—as in all civil penalty cases brought by FRA—the aggregate knowledge and actions of the railroad's managers, supervisors, employees, and other agents will be imputed to the railroad. Thus, in situations that FRA decides warrant a civil penalty based on a willful violation, FRA will have the option of citing the railroad and/or one or more of the individuals involved. In cases against railroads other than those in which FRA alleges willfulness, the principles of strict liability and presumed knowledge of the law will continue to apply.

The RSIA gives individuals the right to protest a direct order to violate the law and to document the protest. FRA will consider such protests and supporting documentation in deciding whether and against whom to cite civil penalties in a particular situation. Where such a protest is shown to have been communicated to the supervisor, the person or persons communicating it will have demonstrated their lack of willfulness.

However, the absence of such a protest will not be viewed as warranting a presumption of willfulness on the part of the employee who might have communicated it. The statute says that a person who communicates such a protest shall be deemed not to have acted willfully; it does not say that a person who does not communicate such a protest will be deemed to have acted willfully. FRA would have to prove from all the pertinent facts that the employee willfully violated the law. Moreover, the absence of a protest would not be dispositive with regard to the willfulness of a supervisor who issued a direct order to violate the law. That is, the supervisor who allegedly issued an order to violate will not be able to rely on the employee's failure to protest the order as a complete defense. Rather, the issue will be whether, in view of all pertinent facts, the supervisor intentionally and voluntarily ordered the employee to commit an act that the supervisor knew would violate the law or acted with reckless disregard for whether it violated the law.

FRA intends to exercise the civil penalty authority over individuals through informal procedures very similar to those used with respect to railroad violations. However, FRA will vary those procedures somewhat to account for differences that may exist between the railroad's ability to defend itself against a civil penalty charge and an individual's ability to do so. First, when the field inspector decides that an individual's actions warrant a civil penalty recommendation and drafts a violation report, the inspector will inform the individual in writing of his or her intention to seek assessment of a civil penalty and the fact that a violation report has been transmitted to the Office of Chief Counsel. This will ensure that the individual has the opportunity to seek counsel, preserve documents, or take any other necessary steps to aid his or her defense at the earliest possible time.

Second, if the Office of Chief Counsel concludes that the case is meritorious and issues a penalty demand letter, that letter will make clear that FRA encourages discussion, through the mail, over the phone or in person, of any defenses or mitigating factors the individual may wish to raise. That letter will also advise the individual that he or she may wish to obtain representation by an attorney and/or labor representative. During the negotiation stage, FRA will consider each case individually on its merits and give due weight to whatever information the alleged violater provides.

Finally, in the unlikely event that a compromise cannot be reached, FRA will send the individual a letter warning of its intention to request that the Attorney General sue for the initially proposed amount and giving the person a sufficient interval (e.g., 30 to 90 days) to decide if that is the only alternative.

FRA believes that the intent of Congress would be violated if individuals who agree to pay a civil penalty or are ordered to do so by a court are indemnified for that penalty by the railroad or another institution (such as a labor organization). Congress intended that the penalties have a deterrent effect on individual behavior that would be lessened, if not eliminated, by such indemnification.

Although informal, face-to-face meetings are encouraged during the negotiation of a civil penalty charge, the RSIA does not require that FRA give individuals or railroads the opportunity for a formal, trial-type administrative hearing as part of the civil penalty process. FRA does not intend to provide that opportunity because such administrative hearings would be likely to add significantly to the costs an individual would have to bear in defense of a safety claim (and also to FRA's enforcement expenses) without shedding any more light on what resolution of the matter is fair than would the informal procedures set forth here. Of course, should an individual or railroad decide to litigate FRA's charges, that person would be entitled to a trial *de novo* in the appropriate United States district court.

Assessment of Maximum Penalties

As recommended by the Department of Transportation in its initial proposal for rail safety legislative revisions in 1987, the RSIA raised the maximum civil penalties for violations of the safety regulations. Under the Hours of Service Act, the penalty was changed from a flat $500 to a penalty of "up to $1,000, as the Secretary of Transportation deems reasonable." Under all the other statutes, the maximum penalty was raised from $2,500 to $10,000 per violation, except that, "where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury," a penalty of up to $20,000 per violation may now be assessed.

FRA's traditional practice has been to issue penalty schedules assigning to each particular regulation specific dollar amounts for initial penalty assessments. For each regulation, the schedule shows two amounts in separate columns, the first for ordinary violations and the second for intentional or hazardous violations. Under each of the schedules, however, FRA has reserved the right, usually in a footnote, to assess the statutory maximum penalty for any especially serious violation regardless of the fact that a lesser amount might be shown in both columns of the schedule. For example, the penalty schedule for the Track Safety Standards has, for many years, listed a penalty of $750 for an ordinary violation of § 213.53 (track gage), a penalty of $1,500 for a hazardous violation of that section, and reserved the right to assess the maximum penalty.

Thus, the schedule amounts are meant to provide guidance as to FRA's policy in ordinary situations, not to bind FRA from using the full range of penalty authority where extraordinary circumstances warrant. FRA will use this same principle in implementing the higher penalties provided for by the RSIA, as Congress intended. The Senate report on the bill that became the RSIA stated:

"It is expected that the Secretary would act expeditiously to set penalty levels commensurate with the severity of the violations, with imposition of the maximum penalty reserved for violation of any regulation where warranted by exceptional circumstances."

S. Rep. No. 100–153, 100th Cong., 2d Sess. 8 (1987).

FRA will amend its penalty schedules to list initial assessment amounts within the range of $250 to $10,000. In the meantime, however, FRA expressly reserves the right to assess a penalty of up to $10,000 for any particular violation where warranted by exceptional circumstances. Moreover, although FRA will not amend its schedules to show any penalty amount above $10,000, it also reserves the right to assess a penalty of up to $20,000 per violation where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury. This authority to assess a penalty for a single violation above $10,000 and up to $20,000 is expected to be used only in very exceptional cases to penalize egregious behavior.

Thus, although FRA is not amending the hundreds of line items in its penalty schedules at this time, it reserves the right to use the new maximum penalties provided for by the RSIA from the effective date of this policy statement (August 1, 1988). Where FRA avails itself of this right to use the higher penalties in place of the schedule amount it will so indicate in its penalty demand letter.

PART 213—[AMENDED]

2. Part 213 is amended as follows:

A. The authority citation for Part 213 is revised to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 213.15(a) is revised to read as follows:

§ 213.15 Civil penalty.

(a) Any person (including a railroad, any manager, supervisor, official, or

other employee or agent of a railroad, any owner of track on which a railroad operates, or any person held by the Federal Railroad Administrator to be responsible under § 213.5(d)) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

* * * * *

Appendix B—[Amended]

C. Appendix B is amended by (1) revising the title to read "Appendix B—Schedule of Civil Penalties [1]"; (2) removing the word "Hazardous" and the footnote reference "1" from the heading of the right-hand column and inserting in place of "Hazardous" the word "Willful"; and (3) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 215—[AMENDED]

3. Part 215 is amended as follows:

A. The authority citation for Part 215 is revised to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 215.7 is revised to read as follows:

§ 215.7 Prohibited acts.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

Appendix B—[Amended]

C. Appendix B is amended by (1) removing the word "Intentional" and the footnote reference "2" from heading of the right-hand column and inserting in place of "Intentional" the word "Willful"; (2) revising the "Note on multiple violations" by removing "$2,500" and inserting "$10,000" and by removing the second sentence; (3) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

and (4) by removing footnote 2 and renumbering footnotes 3 and 4 as footnotes 2 and 3, respectively.

PART 216—[AMENDED]

4. Part 216 is amended as follows:

A. The authority citation for Part 216 is revised to read as follows:

Authority: 45 U.S.C. 431, 432, and 438, as amended; 45 U.S.C. 21–34, as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (m).

B. Section 216.7 is revised to read as follows:

§ 216.7 Penalties.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See 49 CFR Part 209, Appendix A.

PART 217—[AMENDED]

5. Part 217 is amended as follows:

A. The authority citation for Part 217 is revised to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 217.5 is revised to read as follows:

§ 217.5 Penalty.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

Appendix A—[Amended]

C. Appendix A is amended by (1) revising the title to read "Appendix A—Schedule of Civil Penalties [1]"; (2) removing the word "Intentional" and the footnote reference "1" from the right-hand column and inserting in place of "Intentional" the word "Willful"; and (3) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 218—[AMENDED]

6. Part 218 is amended as follows:

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

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 218.3(b)(2) is revised to read as follows:

§ 218.3 Application.

* * * * *

(b) * * *

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

C. Section 218.9 is revised to read as follows:

§ 218.9 Civil penalty.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day

a violation continues shall constitute a separate offense.

Appendix A—[Amended]

D. Appendix A is amended by (1) adding the footnote reference "1" at the end of the title; (2) removing the word "Intentional" and the footnote reference "1" from the heading of the right-hand column and inserting in place of "Intentional" the word "Willful"; and (3) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 219—[AMENDED]

7. Part 219 is amended as follows:

A. The authority citation for Part 219 is revised to read as follows:

Authority: 45 U.S.C. 431, 437 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

§ 219.3 [Amended]

B. Section 219.3(a)(2) is amended by inserting a period after the parenthetical and removing the remainder of the sentence.

C. Section 219.9 is amended by adding a new paragraph (d) to read as follows:

§ 219.9 Responsibility for compliance.

* * * * *

(d) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved, as provided in paragraph (a) of this section. Each day a violation continues shall constitute a separate offense.

Appendix A—[Amended]

D. Appendix A is amended by (1) removing the word "Intentional" and the footnote reference "2" from the heading of the right-hand column and inserting in place of "Intentional" the word "Willful"; (2) inserting after the word "Employee" in the schedule entry for § 219.101 the words "violates prohibition or is"; and (3) removing footnote 2 and revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 220—[AMENDED]

8. Part 220 is amended as follows:

A. The authority citation for Part 220 is revised to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 220.3(b)(2) is revised to read as follows:

§ 220.3 Application.

* * * * *

(b) * * *

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

C. Section 220.7 is revised to read as follows:

§ 220.7 Penalty.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

Appendix C—[Amended]

D. Appendix C is amended by (1) removing the phrase "Intentional [2] or hazardous [3] " from the heading of the righthand column and inserting in its place the word "Willful"; (2) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

and (3) removing footnotes 2 and 3.

PART 221—[AMENDED]

9. Part 221 is amended as follows:

A. The authority citation for Part 221 is revised to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 221.3(b)(3) is revised to read as follows:

§ 221.3 Application.

* * * * *

(b) * * *

(3) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

* * * * *

C. Section 221.7 is revised to read as follows:

§ 221.7 Civil penalty.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

D. Appendix C is amended by (1) adding the footnote reference "1" at the end of the title; (2) striking the word "Intentional" and the footnote reference "1" from the heading of the right-hand column and inserting in place of "Intentional" the word "Willful"; and (3) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209 Appendix A.

PART 223—[AMENDED]

10. Part 223 is amended as follows:

A. The authority citation for Part 223 is revised to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 223.3(b)(2) is revised to read as follows:

§ 223.3 Application.

* * * * *

(b) * * *

(2) Rapid transit operations in an urban area that are not connected with

the general railroad system of transportation.

* * * * *

C. Section 223.7 is revised to read as follows:

§ 223.7 Responsibility.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

Appendix B—[Amended]

D. Appendix B is amended by (1) amending the "Note on multiple violations" by removing "$2,500" and inserting in its place "$10,000"; (2) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

and (3) removing footnote 2.

PART 225—[AMENDED]

11. Part 225 is amended as follows:

A. The authority citation for Part 225 is revised to read as follows:

Authority: 45 U.S.C. 38, 42 and 43, as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (m).

§ 225.1 [Amended]

B. Section 225.1 is amended by removing the fifth sentence.

C. Section 225.5(a) is revised to read as follows:

§ 225.5 Definitions.

* * * * *

(a) "Railroad" means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

* * * * *

D. Section 225.29 is revised to read as follows:

§ 225.29 Penalties.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. A railroad may also be subject to the criminal penalties prescribed in 45 U.S.C. 39.

Appendix B—[Amended]

E. Appendix B is amended by (1) inserting the footnote reference "1" at the end of the title; (2) removing the word "Intentional" and the number "1" from the heading of the righthand column and inserting in place of "Intentional" the word "Willful"; and (3) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 228—[AMENDED]

12. Part 228 is amended as follows:

A. The authority citation for Part 228 is revised to read as follows:

Authority: 49 App. U.S.C. 12, 20 (now recodified at 49 App. U.S.C. 501(b)(2), 502(b)(3), 504 (b)(1)(a), (c)(2) (a), and (d)); 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 61–64b, as amended; 45 U.S.C. 437, as amended; Pub. L. 100–342; and 49 CFR 1.49 (d), (m) and (g).

Construction or Reconstruction of Employee Sleeping Quarters: Interim Rules on Determination of "Immediate Vicinity" [Removed]

B. The interim rules entitled "Construction or Reconstruction of Employee Sleeping Quarters: Interim Rules on Determination of 'Immediate Vicinity' " are removed.

Appendix A—[Amended]

C. Appendix A is amended as follows:

1. At the end of the second sentence, add: "and by the Rail Safety Improvement Act of 1988, Pub. L. 100–342".

2. In the third paragraph, remove the first sentence and insert in its place: "The act applies to any railroad, as that term is defined in 45 U.S.C. 431(e)."

3. Under the heading of "General Provisions," the two paragraphs beginning with the subheading of "Penalty" are revised to read as follows:

Penalty. As amended by the Rail Safety Improvement Act of 1988, the penalty provisions of the law apply to any "person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad)," except that a penalty may be assessed against an individual only for a willful violation. See 49 CFR Part 209, Appendix A. A person who violates the Act is liable for a penalty of up to $1,000 per violation, as the Secretary of Transportation deems reasonable.

Each employee who is required or permitted to be on duty for a longer period than prescribed by law or who does not receive a required period of rest represents a separate and distinct violation and subjects the railroad to a penalty of up to $1,000.

PART 229—[AMENDED]

13. Part 229 is amended as follows:

A. The authority citation for Part 229 is revised to read as follows:

Authority: 45 U.S.C. 22–34, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (g).

B. Section 229.7(b) is revised to read as follows:

§ 229.7 Prohibited acts.

* * * * *

(b) Any person (including a railroad subject to this part and any manager, supervisor, official, or other employee or agent of such a railroad) who violates any requirement of this part or of the Locomotive Inspection Act or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

Appendix B—[Amended]

C. Appendix B is amended by (1) removing "Intentional [2]" from the heading of the right-hand column and

inserting in its place the word "Willful"; (2) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

and (3) removing footnote 2 and renumbering footnotes 3 and 4 as footnotes 2 and 3, respectively.

PART 230—[AMENDED]

14. Part 230 is amended as follows:

A. The authority citation for Part 230 is revised to read as follows:

Authority: 45 U.S.C. 22–34, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (g).

B. Section 230.0(a) is revised to read as follows:

§ 230.0 Steam powered locomotives.

(a) Any person (including a railroad subject to this part and any manager, supervisor, official, or other employee or agent of such a railroad) who violates any requirement of 49 CFR Part 230, Subpart A (§§ 230.1 to 230.55) or Subpart B (§§ 230.101 to 230.162) as in effect on October 1, 1978, or of the Locomotive Inspection Act, or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

* * * * *

PART 231—[AMENDED]

15. Part 231 is amended as follows:

A. The authority citation for Part 231 is revised to read as follows:

Authority: 45 U.S.C. 2, 4, 6, 8, 10, and 11–16, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (g).

B. A new § 231.0 is added to read as follows:

§ 231.0 Applicability and penalties.

Any person (including a railroad subject to this part and any manager, supervisor, official, or other employee or agent of such a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

C. A new Appendix A is added to Part 231 to read as follows:

Appendix A—Schedule of Civil Penalties

For violations of this part or related provisions of the Safety Appliance Acts, 45 U.S.C. 1–16, the Federal Railroad Administration will follow these guidelines:

(1) For ordinary violations, FRA will assess a penalty of $1,000.

(2) For willful violations, FRA will assess a penalty of $2,000.

A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 232—[AMENDED]

16. Part 232 is amended as follows:

A. The authority citation for Part 232 is revised to read as follows:

Authority: 45 U.S.C. 1, 3, 5, 6, 8–12, 15, and 16, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (g).

B. A new § 232.0 is added to read as follows:

§ 232.0 Applicability and penalties.

Any person (including a railroad subject to this part and any manager, supervisor, official, or other employee or agent of such a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

C. The current appendix is designated as Appendix B and a new Appendix A is added to read as follows:

Appendix A—Schedule of Civil Penalties

For violations of this part or related provisions of the Safety Appliance Acts, 45 U.S.C. 1–16, the Federal Railroad Administration will follow these guidelines:

(1) For ordinary violations, FRA will assess a penalty of $1,000.

(2) For willful violations, FRA will assess a penalty of $2,000.

(3) For failure to perform an initial terminal air brake test adequately and fully, FRA will assess a penalty of $2,500.

A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 233—[AMENDED]

17. Part 233 is amended as follows:

A. The authority citation for Part 233 is revised to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (f), (g), and (m).

B. Section 233.11 is revised to read as follows:

§ 233.11 Civil penalty.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of $2,500 except that: Penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See 49 CFR Part 209, Appendix A.

PART 235—[AMENDED]

18. Part 235 is amended as follows:

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

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (f), (g), and (m).

B. Section 235.9 is revised to read as follows:

§ 235.9 Civil penalty.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of $2,500 except that: Penalties may be assessed against individuals only for willful violations, and where a grossly

negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See 49 CFR Appendix A.

PART 236—[AMENDED]

19. Part 236 is amended as follows:

A. The authority citation for part 236 is revised to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (f), (g), and (m).

B. Appendix A is revised to read as follows:

Appendix A—Civil Penalties

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of $1,000 except that: A penalty of $2,000 will be assessed for a willful violation; penalties may be assessed against individuals only for willful violations; and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See 49 CFR Part 209, Appendix A.

Issued in Washington, DC on July 22, 1988.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 88–16926 Filed 7–27–88; 8:45 am]

BILLING CODE 4910-06-M

federal register

Thursday
July 28, 1988

Part IV

Department of Agriculture

Forest Service

Fee Schedule for Communication Uses; Notice and Request for Public Comment

DEPARTMENT OF AGRICULTURE

Forest Service

Northern Region; Fee Schedule for Communication Uses

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy; request for comment.

SUMMARY: The Forest Service hereby gives notice that a rental fee schedule for communication uses on National Forest System (NFS) lands in the Northern Region previously proposed on September 18, 1987 (52 FR 35293) is withdrawn and a new schedule is proposed.

The new proposal is the result of further study and consideration of market information developed in conjunction with other Forest Service Regions and the application of appropriate administrative adjustments in recognition of populations serviced by communication uses situated on National Forest System (NFS) lands in the Northern Region. Annual fee adjustments are indexed according to the Consumer Price Index—Urban (CPI–U) rather than the Implicit Price Deflector (IPD) as formerly adopted. There are other minor changes designed to provide greater consistency with fee schedules proposed by other Forest Service Regions.

DATE: Comments must be received in writing by September 26, 1988.

ADDRESSES: Send written comments to John W. Mumma, Regional Forester, Northern Region, USDA Forest Service, Federal Building, P.O. Box 7660, Missoula, MT 59807.

The public may inspect the comments received on this proposed policy in the office of the Director of Recreation, Wilderness and Lands, East Wing of the third floor, Federal Building, 200 East Broadway, Missoula, MT betwen the hours of 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jim Schoenbaum (406–329–3601) or Jim Hathaway (406–329–3110) of the Lands Staff.

SUPPLEMENTARY INFORMATION:

Background

In response to National direction, the Regional Forester, Northern Region, conducted an analysis of market data of similar communication uses in Montana, North Dakota, North Idaho and adjoining states. The formerly proposed communication use fee schedule was developed and offered for public comment by publication in the **Federal Register** on Thursday, April 30, 1987 (52 FR 15740) and direct notice to Northern Region communication use permit holders and other interested parties.

The Northern Region received 228 written responses to the initially proposed fee schedule. The comments were analyzed, summarized, and considered in developing a final communication use fee schedule. A summary of the comments and final fee schedule was published in the **Federal Register** on Friday, September 18, 1987 (52 FR 35293). That final fee schedule is hereby withdrawn and set aside.

As other Regions continued work on communication use fee schedules it appeared that additional information was developing which could relate to communication use fees in the Northern Region. The Forest Service also recognized that permit holders and the public would benefit through a more uniform approach to terminology, definitions, annual adjustment index and similar matters among the Regions. In order to provide an opportunity to coordinate more closely, provide for greater consistency in communication use fee management, and afford existing permit holders an additional 1-year opportunity to adjust their operations and budgets to a new fee schedule, the Regional Forester for the Northern Region deferred implementation of the new communication use fee schedule until calendar year 1989. That deferral is also withdrawn and set aside.

Withdrawal of Existing Communication Use Fee Schedule and Proposal of Communication Use Fee Schedule

Several coordination meetings were held with Forest Service appraisers and administrators from other Regions and Bureau of Land Management (BLM) staff.

Market data and analyses developed by the other Forest Service Regions and several BLM state offices were reviewed in depth during the past several months. Some of the information was not available in completed form at the time the final Northern Region fee schedule was published.

Further review concludes that it is appropriate to withdraw the Northern Region communication use fee schedule, as published in the **Federal Register** on September 18, 1987 (52 FR 35293), and propose a new fee schedule for communciation uses. The proposed fee policy and fee schedule follows:

Definitions

Comparison of the Northern Region fee schedule and **Federal Register** Notice (52 FR 35293) with further information obtained from other Regions indicated some differences in communication use definitions. Although this did not appear serious, such differences tend to be confusing, especially to permit holders operating in more than one Forest Service Region.

In coordination with other Regions and the BLM, we adopt the following terminology to define the various types of communication use:

Common Carrier Microwave Relay Use. This group typically includes longline carriers who relay intra and interstate telephone, television, information, and data transmissions using point-to-point microwave networks or systems. These users are regulated by state public utility commissions and must provide service to any consumer with the ability to pay according to published rate schedules.

Broadcast Translator Use. This category of use consists of picking up a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another booster or translator. This category of use includes translators associated with public telecommunications service.

Internal Two-Way Radio Repeater Use. These are users who operate two-way radio repeaters for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communication service is not sold and is limited to the user.

Industrial Microwave Use. This group includes entities who are not in the communications business, but have their own internal microwave communications systems or networks. Users in this group may include pipeline and power companies, railroads and land resource management agencies or firms. The communication service is not sold and is limited to the user.

Passive Reflector Use. Passive reflectors include various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

Amateur Radio Use. Repeaters used by individuals or groups who are licensed by FCC as amateur radio operators.

Cellular Telephones. This use is a specialized service provided by commercial communicators which involves a mobile (vehicular) UHF radio telephone system.

A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

Personal/Private "Receive Only" Use. These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes, recreation residences. These facilities are personally owned and not operated for profit.

Radio Broadcast Use. This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include commercial radio stations which generate revenues from advertising and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators. Ancillary activities authorized under this use relate to microwave and/or two-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

Television Broadcast Use. This category includes FCC authorized facilities that broadcast UHF and VHF audio and video signals for general public reception. Users include commercial television stations (major and independent networks) who generate income through advertisement and public television stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators. Ancillary activities authorized under this use relate to microwave and/or two-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

Cable and Subscription Television Use. This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

Commercial Communicator. This use includes entities whose primary business is providing radio communications service to others. The commercial communicator holds an FCC license; may own the building or vault and lease space to others, or may lease the same from others (unregulated commercial communicators are not regulated by public utility commissions and therefore may choose their clients and charge whatever their clients will pay for the services offered). The commercial communicator may also be a facilities manager. Examples of commercial communicator services are: VHF, UHF and microwave radio communication systems leased and sold.

Multiple Occupancies

Shared Space Provider

(a) *Multiple Permits.* An entity whose business is rental of space to customers who must hold an FCC license and provide their own equipment. Typically the shared space provider holds an FCC license for the purpose of conducting his primary communications business. Each occupant is under a separate permit.

(b) *Single Permit.* Same as above except all occupants are under a single permit.

AMENDED FEE SCHEDULE—NORTHERN REGION

Use category	Annual fair market rent
Radio or Television Broadcast	$3,000
Commercial Communicators and shared space providers under single permit: When customer use is internal two-way radio:	
First licensed frequency, when this is the highest fee use	700
and/or per each additional licensed frequency, or for the first licensed frequency when this use is not the highest fee use in a shared space situation	200
When customer use is other than internal two-way radio:	
Fees and procedures in Fees for Shared Space Users will apply.	
Common Carrier Microwave Relay	1,500
Passive Reflector	500
TV or Radio Broadcast Translators, Service Area Population:	
0 to 1,000	[1] 75
1,001 to 2,000	150
2,001 to 3,000	225
3,001 to 4,000	300
4,001 to 5,000	375
5,001 to 6,000	450
6,001 to 14,000	700
14,001 to 50,000	900
Over 50,000	1,200
Cable and Subscription Television, Population Served:	
Under 10,000	250
10,000 to 60,000	1,200
Over 60,000	2,150
Industrial Microwave	1,000
Internal Two-Way Radio or Repeater	500
Miscellaneous Communication Uses	75
Examples:	
Personal/Private Receive Only	75
Amateur Radio Service	75
Natural Resource and Environmental Monitoring	75

[1] Translator facility fees are premised on the building and equipment owned by one holder. Market data for small community and private translator associations serving populations of fewer than 6,000 people was inconclusive; however, an interpolation of available data was extended to these use groups and fee increments of $75 per 1,000 people served resulted.

Communication Uses Not Listed in the Fee Schedule

The field of electronics is expanding rapidly. Some specific uses, such as cellular telephone, are not yet located in the Northern Region. Other communication uses are in developmental stages. The Northern Region fee schedule is not intended to include these new and developing uses. These fees will be established on the basis of appraisal, sound business management principles, and/or negotiation when such uses become operational in the Northern Region.

Fees for Shared Space Users

When shared facility occupancy is authorized under separate (single user) permits, the fee shall be 100 percent of the schedule fee for each use authorized.

To improve administration of communication sites, Forest Service policy, **Federal Register** Notice (50, FR 40574, October 4, 1985) provides for authorizing shared facility occupancies under a single (multiple user) authorization. By the terms and conditions of these authorizations holders, rather than the Forest Service, authorize and administer the use of their facilities by others. Collection of Forest Service fees and performing certain administrative duties required under this type of authorization are burdens of the holder.

Except for commercial communicator fees, the authorized officer may, when determined beneficial to do so, negotiate appropriate fee discounts for multiple user authorizations based on an objective estimate of the benefits received by the Forest Service. Benefits may consider costs incurred by the holder to administer the uses plus a reasonable profit. Negotiated fees will be based on 100 percent of the scheduled fee for the highest value use allowed under the multiple user authorization plus a percentage of the

scheduled fee for each additional authorized use.

Multiple user permit fees are subject to annual review and adjustment to reflect the current highest value use and total use situation.

Consolidating facilities and reducing encumbrances on a site may meet the objectives of the Forest Service. In these cases, the authorized officer may negotiate short-term fee discounts in recognition of holder costs and to encourage consolidation. Fee discounts cannot exceed each holder's cost attributable to the consolidation. In no case will fees be discounted for cost incurred by the holder to meet the conditions of the authorization (maintenance, safety requirements, etc.).

We recognize those situations where individual holders have formed associations and converted from individual permits to multiple user authorizations. We acknowledge the benefits holder associations afford both the Forest Service and users. In recognition of existing communication site association permits, and to encourage continued implementation of multiple user authorizations to associations, authorized officers may make adjustments to association fees, subject to the Regional Forester's approval, on a case-by-case basis.

The shared space adjustment does not apply to holders occupying Forest Service facilities; for other than site managing associations full fees are charged for these situations. In addition to prescribed fees, authorized officers will require users occupying Forest Service facilities to perform or share in the costs of building or facility maintenance and repair, as provided by Section 7, Act of April 24, 1950 (Granger-Thye) and FSM 2711.7.

Under multiple user permits, except for those established by prospectus-bid processes, primary users (site managers or associations) will pay the Forest Service the appropriate shared space fee for each of their tenants/users and are free to negotiate a reasonable charge with their tenants.

Appurtenant Use

Except for commercial communicators, appurtenant uses will not be assessed additional fees. Subsidiary firms are considered autonomous and do not qualify for appurtenant use fee exemption.

Fee Waivers and Exemptions

Numerous comments on the earlier proposal urged the Chief or the Regional Forester to establish National or Regional waivers for certain categories of use. The decision to apply fee waivers is delegated to the Forest Officer who authorizes the use. We believe the determination of whether a fee waiver is equitable and in the public interest can be best made at the local level.

As provided by the Secretary of Agriculture's Regulations 36 CFR 251.57b and current Forest Service policy, all or part of the fees may be waived. These procedures are not affected by the proposed fee schedule. It is the responsibility of the holder to submit a request with justification for fee waiver to the authorized officer. Fees will not be waived below $75 for communication uses.

No rental fee will be charged to Federal agencies. Reciprocal agreements between state or local governments and Federal agencies will be honored. However, in situations of space rental, the building owner may charge Federal agencies for use of the facility.

Under Pub. L. 98–300 and current Forest Service policy, facilities and extensions from facilities financed pursuant to the Rural Electrification Act of 1936 are exempt from the payment of fees.

Annual Fee Schedule Adjustment

All categories of communication uses are subject to an annual fee adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year, will be divided by the CPI–U for July of the previous year to yield a CPI–U multiplier which will be used to annually update the Communication Fee Schedule.

Periodic Review of Fee Schedule

The Forest Service recognizes the need for granting reasonable security to its permit holders and of protecting the public's interest by providing for the adjustment of fees when the value of the use authorized or the operations of the holder clearly indicate that a fee change is justified. The ensure this mutual protection, the Northern Region shall, by August 1, 1993, review this schedule to determine whether market conditions and business practices have changed sufficiently to warrant a fee schedule revision. Holders will be given an opportunity to provide data which might have a bearing on that review. Any fee schedule adjustments will be announced to holders at least 90 days before becoming effective on January 1, 1994.

Phase-in of Fee Increases

So that holders may adjust their operations to the fee schedule, that portion of the new fee that exceeds a 100-percent increase with a fee increase of less than $2,000 will be phased in by equal increments, plus annual adjustment, over a 3-year period beginning with C.Y. 1989 fees. If the increase in annual rental exceeds 100 percent and the fee increase is more than $2,000, the amount of the new rental in excess of the 100 percent increase will be phased in by equal increments, plus annual adjustments, over a 5-year period.

Other Methods of Establishing Fees

A fee schedule is an appropriate cost-effective method to use to assess fees for most communication sites. This schedule is intended to cover the majority of the existing and proposed sites in the Northern Region. However, fees for unique sites or sites servicing high populations are not covered by this schedule but are to be determined on an individual case basis. At this time there are no such sites on National Forest System lands in the Northern Region.

The authorized officer may use site-specific appraisals, sound business management principles, and/or rental analysis as coordinated with the Regional Reviewing Appraiser to determine fees for individual sites when market evidence such as leases for similarly used sites demonstrate the inapplicability of the fees schedule.

Appraisals provided by the holder or other group may be used to determine fees if the Regional Reviewing Appraiser establishes that the appraisal meets Forest Service standards and the fee represents fair market value.

Competitive bidding may be used to establish fees for new sites.

Proposed Implementation

After review of public comments and publication of a final notice in the **Federal Register**, a fee schedule would be implemented for all Northern Region Commmunication special-use authorizations effective January 1, 1989, and reflected in billings for calendar year 1989 fees.

Applicability

Fees proposed according to this schedule would apply to each electronic use on National Forest System lands in the Northern Region.

Under certain qualifying circumstances, as provided by Secretary of Agriculture's Regulations 36 CFR 251.57b and current Forest Service policy, fees may be waived or reduced. Such waiver is discretionary rather than mandatory. These procedures are not affected by the proposed fee schedule.

Copies of this notice and the proposed fee schedule are being mailed to holders of existing communication site authorizations and will also be sent to

anyone requesting copies from the contacts listed in this notice. The rental fee study and schedule are also available for review at the Regional Office and Forest Supervisors' offices in Montana and north Idaho.

Dated: July 11, 1988.

John M. Hughes,

Deputy Regional Forester.

[FR Doc. 88-17031 Filed 7-27-88; 8:45 am]

BILLING CODE 3410-11-M

Rocky Mountain Region; Fee Schedule for Communication Uses

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Regional Forester for the Rocky Mountain Region is revising procedures governing the determination of rental fees for communication uses on National Forest System lands in the States of Colorado, Kansas, Nebraska, South Dakota and Wyoming. Comments from interested individuals and users are welcome.

DATE: Comments must be received in writing by September 26, 1988.

ADDRESSES: Send written comments to Gary E. Cargill, Regional Forester, Rocky Mountain Region, 11177 W. 8th Ave., Box 25127, Lakewood, CO 80255.

The public may inspect comments received on this proposed policy in the Office of the Director of Lands and Recreation, 3rd Floor, 11177 W. 8th Ave., Lakewood, CO between the hours of 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Eugene F. Ecker, Recreation Lands Staff, (303) 236-9512.

SUPPLEMENTARY INFORMATION:

Background

Forest Officers currently administer approximately 600 communication use authorizations on 150 sites within the Rocky Mountain Region.

The Federal Land Policy and Management Act of 1976 (FLPMA) states that "The Secretary of Agriculture, with respect to lands within the National Forest System, is authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for systems for the transmission or reception of radio, television, telephone, telegraph, and other electronic signals and other means of communications" provided that "the holder of such right-of-way shall pay annually in advance the fair market value of such right-of-way as determined by the Secretary."

Regulations promulgated to implement FLPMA state at 36 CFR 251.57 that "The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles." A revised policy (50 FR 40574, October 4, 1985) broadens the method of determining annual land use rental fees for communication uses and states that "The Chief or Regional Foresters will determine which of three methods (site specific appraisal, competitive bidding, or Regional Fee Schedule) is appropriate for particular geographic areas."

In keeping with this direction the Regional Forester for the Rocky Mountain Region has determined that:

(1) A fee schedule would be an appropriate cost-effective method to use to assess fees for most communication uses. This schedule is intended to cover the majority of uses on existing and proposed sites in the Rocky Mountain Region; however, fees for unique uses or sites serving high population densities may not be adequately covered by this schedule. In developing this fee schedule, we did not consider data from any major front-range metropolitan areas.

(2) The authorized officer may use site specific appraisals, sound business management principles, and/or rental analysis to determine fees for individual sites when market evidence demonstrates the inapplicability of the fee schedule.

Appraisals provided by users or other groups may be used to determine fees if the Regional Review Appraiser affirms that the appraisal meets Forest Service standards and the fees represent fair market value.

(3) Competitive bidding may be used to establish fees for new sites/facilities.

Proposed Fee Schedule

This proposal is based on a market analysis completed in CY 1988. The schedule proposes annual rental fees by defined use categories. Fees for miscellaneous and new uses not described, will be determined by appraisal, sound business management principles, and/or negotiation as described in the "revised policy" summarized in the "background" section of this Notice.

COMMUNICATION USE FEE SCHEDULE, JULY 1988, ROCKY MOUNTAIN REGION, FOREST SERVICE—USDA

Use category	Annual fair market rent[1]
Television Broadcast	$2,000
Radio Broadcast	2,000
Commercial Communicator:	
First Licensed Frequency	700
Each Additional Licensed Frequency	200
Common Carrier Microwave Relay	1,500
Passive Reflector	500
Broadcast Translator, Service Area Population:	
0 to 1,000	75
1,001 to 2,000	150
2,001 to 3,000	225
3,001 to 4,000	300
4,001 to 5,000	375
5,001 to 6,000	450
6,001 to 14,000	700
14,001 to 50,000	900
Over 50,000	1,200
Cable and Subscription TV, Population Served:	
Under 10,000	250
10,000 to 60,000	1,200
Over 60,000	2,150
Internal Microwave	1,000
Internal Two-Way Radio or Repeater	1,000
Personal/Private Receive Only Antennas	75
Amateur Radio Service	75
Natural Resource and Environmental Monitoring	75

[1] Except for the commercial communicator category, the annual fair market rent shall be assessed for each authorized use.

Definitions

Television Broadcast. This category includes FCC authorized facilities that broadcast UHF and VHF audio/video signals for public reception. Uses include broadcast of network, independent and public telecommunication signals. User revenues are typically derived from subscriptions, grants and donations or from commercial advertising. Broadcast areas may overlap state boundaries. This use includes only primary transmitters and not rebroadcast systems such as translators. Ancillary activities authorized in conjunction with this use include microwave and/or two-way radio links from a permitted site to a studio or other fixed or mobile units directly related to the broadcast activity.

Radio Broadcast. This category includes FCC authorized facilities that broadcast AM and FM audio signals for public reception. Users include commercial radio stations which generate revenues from advertising and public telecommunication service stations whose revenues are derived from subscriptions, grants and donations. Broadcast areas often overlap state boundaries. The use

includes only primary transmitters and not rebroadcast systems such as translators. Ancillary activities authorized under this use include microwave and/or two-way radio links from a permitted site to a studio or other fixed or mobile units directly related to the broadcast activity.

Commercial Communicator. This category includes users whose primary business is providing communications service to others. The user typically holds an FCC license and may own a building or vault and lease space to others or may lease building and vault space from others. Typically the use is also a facility manager.

Common Carrier Microwave Relay. This use typically includes longline carriers who relay intra and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. The users are regulated by state Public Utility Commissions and must provide service to any consumer with the ability to pay according to a published rate schedule.

Passive Reflector. This use includes various types of nonpowered reflectors used to bend or ricochet electronic signals between active relay stations or between an active station and terminal. Passive reflectors require point-to-point line-of-sight linking with connecting network stations. Maintenance is minimal and reflector sites seldom require visitation.

Broadcast Translator. This use includes users who receive a TV or FM radio braodcast signal and retransmit it on a different channel or frequency for reception by another booster or translator or by the general public. This category includes public telecommunications service translators.

Cable and Subscription Television. This category includes TV and FM headend antenna or satellite dish receivers that receive programs and signals for redistribution, by cable or other means, to multiple subscribers within a community who pay to receive the signal.

Internal Microwave. This use includes users who are not primarily in the communications business but who maintain internal microwave systems or networks. The communication service is not sold. Users include pipeline and power companies, railroads, land and resource management agencies, etc.

Internal Two-Way Radio or Repeater. This use includes two-way radio repeaters used for internal communications in support of business, community or other organizational objectives. The communication service is not sold and is limited to the user.

Personal/Private "Receive Only" Antennas. This use includes radio and TV receiving antennas, satellite dishes and other equipment designed for the receiption of electronic signals serving private homes and recreation residences. The equipment is personally owned; not operated for profit.

Amateur Radio Service. Repeaters used by individuals or groups who are licensed by the FCC as amateur radio operators.

Natural Resource and Environmental Monitoring. This use includes the transmission of telemetry data from a remote site to a central receiving station.

Appurtenant Use

Except for commercial communicators, appurtenant uses will not be assessed an additional fee. Subsidiary firms are considered autonomous and do not qualify for appurtenant use fee exemption.

Fee Formula Options for Multiple Occupancies

To improve the administration of communication sites. Forest Service policy (50 FR 40574, October 4, 1985) provides for authorizing shared facilities under a single authorization. Under these authorizations, holders, rather than the Forest Service, authorize the use of their facility by others and assume responsibility for the collection of schedule fees and the performance of certain administrative duties.

The Authorized Officer (AO) may, if it is in the public interest, discount multiple occupancy schedule fees at a rate based on an objective estimate of the benefits received by the Forest Service. This discount rate shall consider costs incurred by the holder to administer all authorized uses plus a reasonable profit. Multiple occupancy schedule fees shall in no case be less than 100% of the schedule fee for the highest use permitted under the holders authorization plus the discounted schedule fee for each additional use allowed under the holders authorization.

In no case will fees be discounted for costs incurred by the holder to meet the conditions of the authorization (maintenance, safety requirements, etc.).

Fee Waivers

Numerous comments on earlier proposals urged the Chief of Regional Foresters to establish National or Regional waivers for certain categories of use. The decision to grant a fee waiver is delegated to the Forest Officer who authorizes the use. We believe the determination of whether a fee waiver is equitable and in the public interest can be best made at the local level.

As provided by the Secretary of Agriculture's Regulation 36 CFR 251.57b and current Forest Service policy, all or part of a fee may be waived to qualified holders. Fee waiver procedures are not affected by this proposed fee schedule. It is the responsibility of the holder to submit a request with justification for fee waiver to the authorized officer. Fees will not be waived below $75 for communication uses.

No rental fee will be charged to Federal agencies. Reciprocal agreements between state or local governments and Federal agencies will be honored; however, in situations of space rental the building owner may charge for use of the facility.

Annual Fee Schedule Adjustment

All categories of use are subject to an annual fee adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year will be divided by the CPI–U for July of the previous year to yield a CPI–U multiplyer which will be used to annually update the Communication Use Fee Schedule.

Periodic Review of Fee Schedule

The Forest Service recognizes the need for granting reasonable security to its permit holders and of protecting the public's interest by providing for the adjustment of fees when the value of the use authorized of the operations of the holder clearly indicate that a fee change is justified. To insure this mutual protection, the Region shall, by September 1, 1994, review the existing schedule to determine whether market conditions and business practices have changed sufficiently to warrant a schedule revision. Permit holders will be given an opportunity to provide data which might have a bearing on that review. Fee adjustments, if appropriate, will be announced to permit holders at least 90 days before becoming effective on January 1, 1995.

Phase-In of Fees

That portion of the new fee that exceeds the current fee by 100%, but less than $2,000, will be phased-in over a three year period. That portion of the new fee that exceeds the current fee by 100% and by more than $2,000, will be phased-in over a five year period. Fees phased-in will be subject to the CPI-U annual fee adjustment.

Implementation

The fee schedule would be effective January 1, 1989 and include all existing authorizations.

Dated: July 12, 1988.

S.H. Hanks,

Deputy Regional Forester.

[FR Doc. 88-17032 Filed 7-27-88; 8:45 am]

BILLING CODE 3410-11-M

Southwestern Region; Fee Schedule for Communication Uses

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Regional Forester for the Southwestern Region is revising procedures governing the determination of rental fees for communication uses on National Forest System lands in the States of Arizona, New Mexico, and portions of Texas, and Oklahoma. Comments from interested individuals and users are welcome.

DATE: Comments must be in writing by September 26, 1988.

ADDRESSES: Send written comments to Sotero Muniz, Regional Forester, Southwestern Region, 517 Gold Avenue SW., Albuquerque, NM 87102. The public may inspect comments received on this proposed policy in the Office of the Director of Recreation, room 5315, Federal Building, 517 Gold Avenue SW., Albuquerque, NM between the hours of 7:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Arthur S. Maynard, Recreation Staff, telephone (505) 842-3444.

SUPPLEMENTAL INFORMATION:

Background

Forest Officers currently administer approximately 725 communication use authorizations on 121 sites within the Southwestern Region.

Current fees are calculated at two-tenths of one percent (0.2%) of the permit holders total investment in facilities and equipment plus 5 percent of rental income received from building tenants and/or equipment users served by the holder. Fees for many holders currently range from $0 to $2,500 annually, while private communication use rentals range from $0 to $250,000 per year.

The Federal Land Policy and Management Act of 1976 (FLPMA) states that "The Secretary of Agriculture, with respect to lands within the National Forest System, is authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for systems for the transmission or reception of radio, television, telephone, telegraph, and other electronic signals and other means of communications" provided that "the holder of such right-of-way shall pay annually in advance the fair market value of such right-of-way as determined by the Secretary."

Regulations promulgated to implement FLPMA state at 36 CFR 251.57 that "The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles." A revised policy (50 FR 40574, October 4, 1985) that broadens the method of determining annual land use rental fees for communication uses states that "The Chief or Regional Foresters will determine which of three methods (site specific appraisal, competitive bidding, or Regional Fee Schedule) is appropriate for particular geographic areas."

In keeping with this direction the Regional Forester for the Southwestern Region has determined that:

(1) A fee schedule would be an appropriate cost effective method to use to assess fees for most communication sites. This notification covers all sites within the Region, with the exception of value zone 1 in New Mexico (Sandia Crest and Peralta Ridge) and the Catalina Mountain zone in the Arizona market analysis.

(2) The authorized officer may use site specific appraisals, sound business management practices, and/or rental analysis to determine fees for individual sites when market evidence such as leases for similar uses demonstrate the inapplicability of the schedule.

Appraisals provided by the holder or other group may be used to determine fees if the Regional Valuation Officer establishes that the appraisal meets Forest Service standards and the fee represents fair market value.

(3) Competitive bidding may be used to establish fees for new sites.

All communication site holders in the Southwestern Region were initially informed by mail that the Forest Service was conducting market studies to establish fee schedules for electronic site uses in late 1985.

In the Southwestern Region, separate market studies were completed by Forest Service appraisers for Arizona and New Mexico. Initial findings of the market analyses were documented in two reports accepted by the Regional Forester in August 1987, and subject to industry review and comment. In their market analyses, the appraisers used transaction data from Bureau of Land Management appraisal personnel, private fee appraisers, communication specialists, private communication transactions, courthouse records, National Forest communication site holders and other sources. The private sites referenced in the transaction data were examined for comparison with National Forest sites.

The market studies established initial leasehold fair market value estimates for nine categories of use for 121 communication sites on the National Forests in Arizona and New Mexico. The market studies summarize private leases and comparative National Forest sites by value zones. The value within zones reflects logical market classifications for various site features such as accessibility, physical characteristics, availability of commercial power, location, and coverage that affect pricing. There are five value zones in New Mexico and four in Arizona.

The proposed communication site fee schedules were introduced to the telecommunications industry through individual mailings in October and November of 1987. Open house meetings were held throughout the states of Arizona and New Mexico, during the week of November 16-20, 1987, to allow interested parties the opportunity to question the Forest Service officials responsible for developing and implementing the proposed fee schedules, and to comment on the proposed fee schedules and provide additional transaction data. Followup meetings were also held with ad hoc user groups and industry representatives during the months of December 1987 and January 1988 to provide additional forums to voice concerns. FM and TV broadcasters, and commercial communicator users in both states were provided this opportunity.

A Public Comment and Forest Service Response document which addresses all written or verbal comments received following the public comment period during the late fall of 1987 and early winter of 1988 is being provided to all Southwestern Region communication use authorization holders.

Revised Fee Schedules and Summary of Changes

Adjustments in the proposed fees for many communication site use categories have been made after careful review of comments and additional information submitted by industry representatives. The revised fee schedules are responsive to industry concerns and fully supported by the market data that has been reviewed to date.

This section provides a brief explanation of the significant changes made in the proposed fees, and displays the revised fee schedules for Arizona and New Mexico.

Arizona

1. Annual rental fees for commercial communications are now primarily based on the number of transmitting frequencies in use. In all value zones, fees are based on a charge of $200 per transmitter, subject to a minimum which increases in increments from $500 in the Rural Zone to $1,200 in the Mt. Ord and Elden Zones. Industry comments overwhelmingly support using the number of transmitting frequencies as the basis for the fee and lowering the minimum fee for each value zone to avoid discriminating against the smaller operator. This approach requires the holder to pay an increasingly larger fee as the business expands and more transmitting frequencies are added.

2. Reductions have been made in the proposed fees for radio broadcast in the higher value zones based on new information provided by the New Mexico Public Broadcasting Association.

3. Reductions have been made in the proposed fees for all types of television broadcast in the Intermediate Zone based on updated information.

4. At the time the market analysis was prepared, there was insufficient data from within the State of Arizona on which to base a value conclusion for broadcast translators. The proposed fees in the initial fee schedule were based on a percentage of the fee for cable television, as indicated by a comparison of the two categories of use in New Mexico. New information provided by representatives of the television broadcast industry and use of sound business management practices has been used to develop fees for this category of use for all value zones.

The original fee schedule in the market analysis combined television and FM translators in the same category. Information provided by industry representatives indicates that these translators serve two different technical purposes and these differences are reflected in FCC licenses. Comparisons based on new transaction evidence suggest that rental rates for FM broadcast are about half of the rental rates for television broadcast sites.

5. The ninth category of communication site use has been expanded to specifically include amateur radio uses.

New Mexico

1. Based on additional information relating to the quality of the sites and the populations they serve, value zone adjustments have been made for the following National Forest communication sites in New Mexico.

Number	National Forest	Site Name	Value Zone Change
74	Lincoln	Boy Scout Mountain	From Zone 3 to Zone 4.
78	Lincoln	Summit Peak	From Zone 3 to Zone 4.
82	Santa Fe	Coyote	From Zone 4 to Zone 5.

2. Based on a review of the market data, downward adjustments have been made in the proposed fees for FM radio broadcast in all value zones.

3. Internal Communications—the original fee schedule was based on leases that indicated most users in this category had systems including both microwave and two-way radio communications on the same site. The Arizona private leases indicated the private rental rates were about the same for either two-way radio repeaters, base stations, or microwaves or any combination thereof. The schedule has been expanded to clarify this breakdown. If the two-way radios are located in or are moved into a commercial communicator facility under a separate permit, the fee will fall under the rate per frequency schedule.

4. Fees for television and FM translators have been substantially revised. The new fee schedule establishes fees for television translators based on the population served by the installation. Fees for FM translators are set at 50 percent of the television translator rate.

5. Like the Arizona communication site fee schedule, fees for commercial communications are based on the number of transmitting frequencies in use. In all value zones, fees are based on a charge of $200 per transmitted frequency, subject to a minimum which increases in increments from $400 in the low value zone to $1000 in the highest value zone. Holders of authorizations who are sublessees of commercial communicators must agree to forfeit their authorizations in order to qualify for a fee of $200/frequency. This fee would be collected by the commercial communicator permittee and paid to the Forest Service.

If the holder of an existing authorization does not agree to relinquish his authorization, the holders will be charged the full fee schedule established for the communication use authorized.

The market study indicates that some commercial communicators in New Mexico utilize microwave to link their communication system. Some of the systems operate under a common carrier designation and others that provide a somewhat similar service do not. The study shows that there is also some variation in the capacity of licensed microwave systems in use for this purpose. However, as a sound business management principle and in the interest of Regional consistency, the Regional Forester has decided to not implement the appraiser's recommendation to charge a separate fee for the use of microwave by commercial communicators.

6. Annual rental fees for small cable and subscription television systems serving less than 200 subscribers have been established based on the potential for similar systems to develop for the numerous isolated residential areas within the National Forests in New Mexico.

7. The original user category entitled "Antenna/Satellite Dish/Remote Sensing" has been replaced by Personal/Private "Receive Only" Use and Natural Resource Monitoring. Amateur radio use is also grouped under this category since the annual rental fee for all of these uses has been set at $75.

Proposed Fee Schedule

This proposal is based on a market analysis completed originally in 1987 and supplemented in calendar year 1988. The schedule proposes annual rental fees by type of use as defined herein. Fees for miscellaneous and new uses not herein described, will be determined by appraisal, sound business management principles, and/or negotiation as described in the "revised policy" summarized in the "background" section of this Notice. Fees for the use of Forest Service owned facilities will be in accordance with FSM 2711.7, I.D. No. 59 dated 7/17/87. Fees for the use of Value Zone 1 as displayed in the New Mexico market analysis and the fees for the Catalina Mountain Value Zone of the Arizona market analysis will be announced by the Regional Forester in a separate decision notice.

COMMUNICATION USE FEE SCHEDULE, APRIL 1988, SOUTHWESTERN REGION, FOREST SERVICE—USDA

Categories of Use	Value Zone 2	Value Zone 3	Value Zone 4	Zone 5
New Mexico: [1]				
Television Broadcast:				
Network				
Independent				
Low Power	$1,500	$600		
Radio Broadcast: FM	3,500	1,800	1,000	
Common Carrier MW	4,500	2,300	1,600	$1,600
Internal Communications (Two-way Radio, Industrial Microwave Or Any Combination)	2,000	1,500	1,000	750
Cellular (CTS)	3,500			
Commercial Communicator: Two-way Radio [2]	$200/freq	$200/freq	$200/freq	$200/freq
Minimum for CC Use	1,000	800	600	400
Passive MW Reflector			475	475
Personal/Private "Receive Only" Use, Natural Resource Monitoring, Amateur Radio	75	75	75	75
	1,500 or More Subscribers (Franchise Area 5,000+pop.)	1,500 or 500 Subscribers (Franchise Area 2,500 to 5,000 pop.)	500 to 200 Subscribers (Franchise Area Less than 2,500 pop.)	Less than 200 Subscribers
Cable and subscription television	$2,000	$1,350	750	$400

[1] Zone maps may be found within the market analysis for each State. Copies of these market analyses may be viewed at any Ranger District or Forest Supervisor's office, or in the Lands and Minerals or Recreation Staff in the Southwestern Regional Office.

[2] The fee will be calculated on the basis of the applicable rate for each licensed radio transmitting frequency (channel) which is used: (a) By a single user, (b) shared or community repeater, (c) trunked system or specialized mobile radio system, (d) pager system, etc., subject however to the applicable minimum.

Note: Leaders indicates there are no known authorizations for the category in this Value Zone. If a new application is received or an existing authorization has been overlooked a fee will be established using authorized procedures.

Population Served	Television	FM radio
Broadcast translators [1]		
0 to 1,000	$75	$75
1,001 to 2,000	150	75
2,001 to 3,000	225	110
3,001 to 4,000	300	150
4,001 to 5,000	375	185
5,001 to 6,000	450	225
6,001 to 14,000	525	260
14,001 to 50,000	600	300
50,001 to 200,000	900	450
200,001 to 600,000	1,500	750

[1] A translator site operated by a single FCC licensee is considered one use.

Value Zones

Categories of use	Rural	Intermediate	Ord & Elden
Arizona [1]			
Internal Communication: Two-Way Radio Repeater, Industrial Microwave or, any combination	$1,200	$1,600	$2,500
Commercial communication: $200/trans. freq. in all value zones subject to following min. fees	$500	$600	$1,200
Common Carrier Microwave	$2,000	$2,400	$4,500
Radio Broadcast [2]	$2,000	$2,500	$3,500

Value Zones—Continued

Categories of use	Rural	Intermediate	Ord & Elden
Television Broadcast	N/A	$2,500	N/A
Cable Television	$1,200	$1,600	$2,800
Broadcast Translator [3]			
(a) Television	$300	$450	$600
(b) FM Radio	$150	$225	$300
Passive Reflector	$400	$500	$2,750
Other: Personal/ Private "Receive Only", Amateur Radio, Natural Resource and Environ. Monitoring	$75	$75	$75

[1] Zone maps may be found within the market analysis for each State. Copies of these market analyses may be viewed at any Ranger District or Forest Supervisor's office, or in the Lands and Minerals or Recreation Staffs in the Southwestern Regional Office

[2] For AM broadcast, when permit area is larger than one acre, the minimum fee is shown above, or five percent of the land value, whichever is greater.

[3] When it is determined that a smaller fee is appropriate, fees for translators serving communities of 6,000 people or less in any value zone will be based on the population according to the most recent U.S. Census. Population up to 1,000–$75; 1 to 2,000–$150; 2 to 3,000–$225; 3 to 4,000–$300; 4 to 5,000–$375 and; 5 to 6,000–$450. A translator site operated by a single FCC licensee is considered one use.

Definitions

Common Carrier Microwave Relay: This group typically includes long line carriers who relay intra and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. These users are regulated by state public utility commissions and must provide service to any consumer with the ability to pay according to published rate schedules.

Broadcast Translator: This category of use consists of picking up a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another booster or translator. This category of use includes translators associated with public telecommunications service.

Internal Two-Way Radio Repeater: These are users who operate two-way radio repeaters for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communication service is not sold and is limited to the user.

Industrial Microwave: This group includes entities who are not in the communications business, but have their own internal microwave communications systems or networks. Users in this group may include pipeline

and power companies, railroads and land resource management agencies or firms. The communication service is not sold and is limited to the user.

Passive Reflector: Passive reflectors include various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-site with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

Amateur Radio: Repeaters used by individuals or groups who are licensed by FCC as amateur radio operators.

Cellular telephone: This is a specialized service provided by commercial communicators which involves a mobile (vehiclar) UHF radio telephone system. A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

Personal/Private "Receive Only": These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes, including recreation residences. These facilities are personally owned and not operated for profit.

Radio Broadcast: This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations which generate revenue from commercial advertising and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators. Ancillary activities authorized under this use relate to microwave and/or two-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

Television Broadcast: This category includes FCC authorized facilities that broadcast UHF and VHF audio and video signals for general public reception. Users include television stations (major and independent networks) who generate income through commercial advertisement and public television stations whose operations are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators. Ancillary activities authorized under this use relate to microwave and/or two-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

Cable and Subscription Television: This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

Commercial Communicators

An entity whose primary business is providing radio communications service to others. The commercial communicator holds an FCC license; may own the building or vault and lease space either to others, or may lease the same from others. (Unregulated commercial communicators are not regulated by public utility commissions and therefore may choose their clients and charge whatever their client will pay for the services offered). Typically, the commercial communicator is also a facilities manager. Examples of commercial communicator services are: VHF, UHF, and microwave radio communication systems leased and sold.

Appurtenant Use

Except for commercial communicators, appurtenant uses will be assessed additional fees. Subsidiary firms are considered autonomous and do not qualify for appurtenant use fee exemption.

Fee Formula for Multiple Occupancies.

To imporve administration of communication sites, Forest Service policy (59 FR 40574, October 4, 1985) provides for authorizing shared facilities under a single authorization. Under the conditions of these authorizations, holders rather than the Forest Service authorize the use of facilities by others. Collection of Forest Service fees and performing certain administrative duties required under this type of authorization are burdens of the holder.

The Authorized Officer may, when determined beneficial to do so, negotiate a fee discount based on an objective estimate of the benefits received by the Forest Service. Benefits may consider costs incurred by the holder to administer the uses plus a reasonable profit. Negotiated fees will be based on 100% of the scheduled fee for the highest value use allowed under the holders authorizations plus a percentage of the scheduled fee for each additional use allowed under the holders authorization.

Consolidation of facilities on a site may meet the objectives of the Forest Service. In these cases, the Authorized Officer may negotiate a temporary discount in fees to encourage consolidation. Fee discounts cannot exceed the holders' cost to consolidate the facilities. In no case will fees be discounted for cost incurred by the holder to meet the conditions of the authorization (maintenance, safety requirements, etc.)

When shared facility occupancy is authorized under separate permits, the fee shall be 100% of the schedule fee for each use authorized.

Fee Waivers

Numerous comments on the earlier proposal urged the Chief or the Regional Forester to establish National or Regional waivers for certain categories of use. The discision to apply fee waivers is delegated to the Forest Officer who authorizes the use. We believe the determination of whether a fee waiver is equitable and in the public interest can be best made at the local level.

As provided by the Secretary of Agriculture's Regulations 36 CFR 251.75b and current Forest Service policy, all or part of the fees may be waived. These procedures are not affected by the proposed fee schedule. It is the responsibility of the holder to submit a request with justification for fee waiver to the authorized officer. Fees will not be waived below $75 for communication uses.

No rental fee will be charged to Federal agencies. Reciprocal agreements between State or local governments and Federal agencies will be honored. However, in situations of space rental, the building owned may charge for use of the facility.

Annual Fee Schedule Adjustment

All categories of use are subject to an annual fee adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year will be divided by the CPI–U for July of the previous year to yield a CPI–U multiplier which will be used to annually update the Communication Fee Schedule.

Periodic Review of Fee Schedule

The Forest Service recognizes the need for granting reasonable security to its permittees and of protecting the public's interest by providing for the adjustment of fees when the value of the use authorized or the operations of the

holder clearly indicate that a fee change is justified. To insure this mutual protection, the Region shall, by September 1, 1994, review the existing schedule to determine whether market conditions and business practices have changed sufficiently to warrant a schedule revision. Holders will be given an opportunity to provide data which might have a bearing on that review and fee adjustments, if appropriate, will be announced to holders at least 90 days before becoming effective on January 1, 1995.

Phase-In

For existing authorizations phase-in will only cover the portion of the increase exceeding 100% of the current fee as follows:

If the Schedule Fee *increase* is less than twice the Pre-schedule Fee, there will be no phase-in.

If the schedule fee increase is greater than twice the pre-schedule fee, phase-in will be allowed by the following methods:

A. If the schedule fee *increase* is less than Two Thousand Dollars ($2000), that portion of the schedule fee in excess of the 100% increase shall be phased in over a three (3) year period.

B. If the schedule fee *increase* is more than Two Thousand Dollars ($2000), that portion of the schedule fee in excess of the 100% increase shall be phased over a (5) year period.

Fees phased-in will be subject to the CPI–U annual fee adjustment.

Implementation

The fee schedule would be effective January 1, 1989, and include all existing authorizations.

Sotero Muniz,

Regional Forester.

July 14, 1988.

[FR Doc. 88–17033 Filed 7–27–88; 8:45 am]

BILLING CODE 3410–11–M

Intermountain Region; Fee Schedule for Communication Uses

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed fee schedule; request for public comment.

SUMMARY: The Regional Forester for the Intermountain Region is revising procedures governing the determination of rental fees for communication uses on National Forest System lands in the States of Nevada, Utah, and portions of California, Colorado, Idaho, and Wyoming. Public review and comment on the proposal were previously solicited through a notice in the **Federal Register**, Vol. 52, No. 199, Thursday, October 15, 1987.

As a result of widespread interest and comment on the proposal, it has been modified and revised, particularly in the areas of: (1) Annual indexing to adjust for changes in the economy; (2) phasing in the larger fee increases to recognize the substantial impact of implementing the new system; (3) identifying and recognizing the role of amateur radio repeater systems; (4) further refining the fee schedule for TV and FM radio translators serving very small rural communities; and, (5) identifying that FCC licensees, not licenses or "boxes", will be the basis for TV translator fees.

The proposal is now being resubmitted for comment. Comments on the original publication will be further considered prior to any decision and need not be resubmitted.

This proposal is based on a market study conducted by the Region during the spring and summer of 1987. The market study is available for review and comment.

DATE: Comments must be received, in writing, by September 26, 1988.

ADDRESS: Send comments on the current proposal to J. S. Tixier, Regional Forester, Intermountain Region, 324 25th Street, Ogden, UT 84401. Comments received in response to this notice may be reviewed in the office of the Director of Recreation and Lands, Room 6025, Federal Building, 324 25th Street, Odgen, UT during normal business hours.

FOR FURTHER INFORMATION CONTACT: Frank Elder (801) 625–5150 or Lynn Bidlack (801) 625–5141, Recreation and Lands Staff.

Background

The Forest Service administers approximately 1,031 communication authorizations within the Intermountain Region. The existing policy for determining annual land use rental fees is a mixture of schedule and formula. Fees are based on 0.2 percent of the authorization holder's total investment value for communication facilities and equipment plus 5 percent of the rental income from building tenants and/or equipment user served by the holder.

Federal Land Policy and Management Act of 1976 (FLPMA) states that "The Secretary of Agriculture, with respect to lands within the National Forest System, is authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for systems for the transmission or reception of radio, television, telephone, telegraph, and other electronic signals and other means of communications" provided that "the holder of such right-of-way shall pay annually in advance the fair market value of such right-of-way as determined by the Secretary."

Secretary of Agriculture Regulations 36 CFR 251.57 promulgated to implement FLPMA state that "The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles." It has been determined that the fee system which has been in use does not satisfy this requirement. A new policy was developed on October 4, 1985 (50 FR 40574) which broadened the methods of determining annual land use rental fees for communication uses and allowed the Chief or Regional Foresters to determine which of three methods (site specific appraisal, competitive bidding, or Regional fee schedule) is appropriate for particular geographic areas.

In keeping with this direction the Regional Forester for the Intermountain Region has determined that:

1. A fee schedule would be an appropriate cost effective method to use to assess fees for most communication uses. This schedule is intended to cover the majority of uses on existing and proposed sites in the Intermountain Region.

2. Fees for atypical or unique sites/uses or sites/uses serving high population are not covered by this schedule. The authorized officer may use site specific appraisals, sound business management principles, and/or rental analysis to determine fees for individual sites/uses when market evidence, such as leases for similar uses, demonstrates the inapplicability of the schedule. Examples of sites which may fit these situations are Shafer Butte and Deer Point in Idaho and Slid Mountain in Nevada.

Appraisals provided by the holder or other users may be used to determine fees if the Regional Review Appraiser establishes that the appraisal meets Forest Service standards and the fee represents fair market value.

3. Competitive bidding may be used to establish fees for new sites or undeveloped portions of existing sites.

Summary of Comments on October 15, 1987, Proposal

In addition to publication in the October 15, 1987, **Federal Register**, copies of the proposal were mailed to all holders, and other interested parties such as key state and Federal officials, and the news media. News releases were provided throughout the Intermountain Region. These contacts

were for the purpose of inviting comments on the proposal.

There were 326 written responses received. The majority came from addresses in Utah (41 percent) and Idaho (39 percent). Respondents fit into three categories of use: amateur radio users comprised 37 percent of the responses; commercial communicators, their clients, and other 2-way radio repeater users comprised 33 percent of the responses; and TV translators comprised 26 percent of the responses.

While virtually all responses were opposed to the fee schedule proposal, many agreed that a change in the fee system was needed and that increases were inevitable. The primary reason for opposing the fee schedule was that respondents felt the market survey was biased which resulted in proposed fee levels which appeared higher than fair market value. As a result of the public comment, we reviewed the initial study data, and compared it with additional data provided by neighboring Forest Service Regions. We also investigated data provided by several users. Unfortunately, transaction information provided by users was often difficult to compare with an annual fee because it involved donations, purchases, and barter, rather than leases/rentals.

Numerous respondents, predominantly commercial communicators and those in the broadcast industry, questioned whether the data and resultant fee schedule proposal reflected investments by the lessees in site development, such as road access and electrical power. Our market survey analyzed factors such as investments by the lessee and concluded that they were not fee-determining in the private market. Reasons for this are not absolute, but perhaps other factors (elevation, topography, population served) influence the value of the site, and development costs are absorbed with other operations costs (buildings, equipment) as an initial capital expense.

We believe that the proposed fee schedule is proper, fair, and equitable. It is based on a comprehensive market survey utilizing the best data available. The fee schedule represents the market value for various uses today. However, we recognize that it would not be a sound business decision to immediately require full payment when a change in fee structure results in large increases. Therefore, we propose a phase-in under the following conditions: (1) Where the new fee schedule results in a fee increase of more than 100 percent, but less than $2,000, the increase in excess of 100 percent will be phased in over a 3-year period; or (2) Where the increase exceeds 100 percent and $2,000, the increase in excess of 100 percent will be phased in over a 5-year period.

There were some objections to the proposal to make annual adjustments by use of an index, and some objected to the Implicit Price Deflator (IPD) as the index of choice. Annual indexing is common in the private market as a means of staying current with the economy. We disagree with those who commented that indexing itself causes inflation and we continue to propose the annual indexing provision. However, we have changed the index to the Consumer Price Index-Urban (CPI-U) because our review indicates it is the most commonly used index for communication site leases in the private market.

Many respondents urged that the fees, if otherwise properly established and calculated, should not be imposed on certain types of use. The majority of respondents claimed that their type of use is in the public interest, provides a valuable public benefit, and therefore should be exempt from fees. These included amateur ("ham") radio operators and organizations; public radio and television broadcasters (PBS); Federal, state, county, and municipal government agencies; and a variety of non-profit organizations. The relationship of this fee schedule to the provisions for waiver of fees is discussed in the "Fee Waivers" section of this announcement.

Amateur radio operators also claimed it was unfair to include them in a broad category covering all 2-way radio use. We have reviewed our market survey, discussed license procedures with the Federal Communications Commission (FCC), and determined that amateur radio use is an independent category. The market survey indicates that this category of use is not refined and a fee cannot be determined using this procedure. Therefore, other sound business management principles indicate that an annual rental fee of $75 is appropriate when no other specific market data is available. This takes into consideration that there is some minimum benefit or value for the use of public land, and that such minimum value represents the cost to the Forest Service for authorizing and administering the use.

Input from viewers and broadcasters alike (26 percent of responses) opposed the proposed rate structure for TV translators. Most objected that TV service to isolated rural communities would be threatened. Broadcasters asserted that the limited viewing audiences served by most of these translators do not affect advertising rates and resultant revenues; therefore, it would not be economical to continue service if the proposed fee schedule were applied. Nonprofit community TV translator associations argued that some sparsely populated areas claimed they operate on such limited budgets that the proposed schedule would effectively double their costs and thus curtail the operation. County-operated translator groups and systems in Utah argued the need to continue providing TV reception as a necessary public service, and that the proposed fees, especially if applied to each translator in use, would severely threaten the continuation of this traditionally "free" use of the National Forest communication sites.

We have reviewed our data for TV translators and determined that there is no basis to charge a separate fee for each translator at a given site owned and operated by a single FCC licensee. Translators owned and operated by a single FCC licensee is an authorized facility will be assessed a single fee for the operations. Additionally, expanding on the principle that the value of this type of use is related to the population served by it, we have extended and interpolated the analysis of available data to the population category of 0–6000. This results in fee increments of $75 per 1000 people in the under-6000 population category.

In addition to the publication, mailing, and news releases concerning the proposal, and the 326 written responses that resulted, numerous meetings have been held with communication industry representatives and interests. Their input and recommendations have been considered.

In summary, based on the information and responses received during the public comment period, we have made significant changes and adjustments from our October 1987 proposal. These include: (1) Use of the Consumer Price Index-Urban (CPI–U) rather than the Implicit Price Deflator (IPD) as the index upon which to base annual adjustments; (2) use of a 3- or 5-year fee phase-in period, based on the amount of fee increase; (3) establishment of the fee for amateur radio repeaters at $75.00; (4) considering all TV translators at a given site operated by the same FCC licensee a single use; and (5) refining the fee for the low population bracket of TV translator operations into smaller increments, at $75 per 1,000 people.

Additionally, in response to questions and comments indicating confusion as to how the proposed fee schedule would be applied to certain situations, we have expanded the definitions and discussions of types of uses, and

otherwise attempted to clarify and explain the proposal.

Proposed Rental Fee Schedule

The proposed rental fee schedule has been prepared based on: (1) Analysis of market data of similar uses in Arizona, California, Colorado, Idaho, Montana, North Dakota, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming, and (2) sound business management principles. The proposed rental fee schedule for the Intermountain Region appears at the end of this notice. The proposed schedule establishes annual rental fees by type of communication use (as listed in the "Discussion of Communication Use Types" section of this notice) and by population categories for the Intermountain Region.

Shared space

To improve administration of communication sites, Forest Service policy (50 FR 40574, October 4, 1985) provides for authorizing shared facilities under a single authorization. Under the conditions of these authorizations, holders, rather than the Forest Service, authorize the use of their facilities by others. Payment of Forest Service fees and performance of certain administrative duties required under this type of authorization are responsibilities of the holder.

The Authorized Officer may, when determined beneficial to do so, negotiate a fee discount based on an objective estimate of the benefits received by the Forest Service. Benefits may consider costs incurred by the holder to administer the uses plus a reasonable profit. Negotiated fees will be based on 100 percent of the scheduled fee for the highest value use allowed under the holder's authorization, plus at least 50 percent of the scheduled fee for each additional use allowed under the holder's authorization. Consolidation of facilities on a site may meet the objectives of the Forest Service. In these cases, the Authorized Officer may negotiate a temporary discount in fees to encourage consolidation. Fee discounts cannot exceed the holder's cost to consolidate the facilities. In no case will fees be discounted for costs incurred by the holder to meet the conditions of the authorization (maintenance, safety requirements, etc.).

Miscellaneous Communication Uses

A review of Forest Service records discloses a number of authorized communication uses for which the market analysis provided insufficient information on market rent. Many of these are for personal/private uses and involve "receive only" equipment, such as TV and radio receiving antennas, satellite dishes, and other equipment or structures designed solely for the reception of electromagnetic signals. Some uses may be "transmit only", such as natural resource or environmental monitoring telemetry. Some miscellaneous uses may invlove both transmitting and receiving equipment and structures.

There are comparatively few of these installations in the Intermountain Region. Fair market value can be established through sound business management principles as provided in Secretary of Agriculture's Regulation 36 CFR 251.57a. The Intermountain Region has reviewed available information and the market analysis for other communication uses as listed in the proposed rental fee schedule and concluded that an appropriate annual fee for the various miscellaneous communication uses not otherwise identified in the proposed fee schedule is $75 per year per unit. A unit is defined as one receiving antenna, one transmit/receive antenna combination serving one radio, one satellite dish, etc.

The field of communications is expanding rapidly. Many communication uses are in developmental stages. The Intermountain Region's proposed rental fee schedule is not intended to include these new and developing uses. Fees will be established on the basis of appraisal, sound business management principles, and/or negotiation when these new and developing uses become operational in the Intermountain Region.

Fee Waivers

Under certain qualifying circumstances, as provided by Secretary of Agriculture's Regulations 36 CFR 251.57b and current Forest Service policy, fees may be fully or partially waived. These procedures are not affected by the proposed fee schedule.

Numerous comments on the earlier proposal urged the Chief or the Regional Forester to establish a "blanket" waiver throughout the Service or Region for certain categories of uses. The decision to authorize fee waivers is delegated to the Forest Officer who issues the special use authorization. We believe the determination of whether a fee waiver in a given situation is equitable and in the public interest can best be made at the local level.

In no case, except for a use by another Federal agency, or cases involving a reciprocal agreement with a State or local government agency, should a fee waiver result in less than $75 for a communication use.

Annual Fee Schedule Adjustment

All categories of use are subject to an annual fee adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year will be divided by the CPI–U for July of the previous year to yield a CPI–U multiplier which will be used to annually update the Communication Fee Schedule.

Periodic Review of Fee Schedule

The Forest Service recognizes the need for granting reasonable security to its holders and for protecting the public's interest by providing for the adjustment of fees when the value of the use authorized or the operations of the holders clearly indicate that a fee change is justified. To ensure this mutual protection, the Region shall, by September 1, 1994, review the existing schedule to determine whether market conditions and business practices have changed sufficiently to warrant a schedule revision. Holders will be given an opportunity to provide data which will be considered during the review. Fee adjustments, if appropriate, will be announced to holders at least 90 days before becoming effective on January 1, 1995.

Proposed Implementation, With Phase-In

Fees proposed according to this schedule will apply to each communication use on National Forest System lands in the Intermountain Region upon adoption of the final schedule and publication in the **Federal Register**. The new fees would be effective beginning January 1, 1989. Provisions for phase-in of fee increases follow:

1. If the increase in the annual rental is less than 100 percent, there will be no phase-in.

2. If the increase in the annual rental exceeds 100 percent, but the *fee increase is less than $2,000,* the amount of the new rental in excess of the 100 percent increase would be phased-in by equal increments, plus the annual adjustment, over a 3-year period.

3. If the increase in annual rental exceeds 100 percent and the *fee increase is more than $2,000,* the amount of the new rental in excess of the 100 percent increase would be phased-in by equal increments, plus the annual adjustment, over a 5-year period.

Copies of this notice and the proposed fee schedule are being mailed to holders of existing communication site authorizations and to anyone requesting copies from the contacts listed in this notice. The market study and proposed

rental fee schedule are also available for review at Forest Supervisor's Offices.

Discussion of Communication Use Types

Appurtenant Uses. Except for Commercial Communicators, appurtenant uses will not be assessed additional fees. Subsidiary firms are considered autonomous and do not qualify for an appurtenant use fee exemption.

Passive Reflector. This use includes various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active station and terminal. Passive reflectors require point-to-point, line-of-sight linking with connecting relay stations, but do not require electric power. Maintenance is minimal and reflector sites seldom require visitation. An annual rental fee rate of $600 is proposed.

Broadcast Translator. This use consists of receiving a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another booster or translator. This category of use includes translators associated with public telecommunications service. Market data for small community and individual translators was inconclusive for populations below 6,000; therefore, we extended and interpolated the analysis of available data to small populations, resulting in fee increments of $75 per 1,000 people served. Multiple translators operated by a single FCC licensee at a site are considered as one use. Nine population-dependent annual rental fee rates are proposed.

Internal 2-Way Radio Repeater. This use includes two-way radio repeaters for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communication service is not sold and is limited to the user. Fees for this category will be based on the nubmer of frequencies licensed by the Federal Communications Commission (FCC) or the number of installed transceivers, whichever is least. Three population-dependent annual rental rates are proposed.

Industrial Microwave. This use includes entities who are not in the communications business, but have their own internal microwave communications systems or networks. Users in this group may include pipeline and power companies, railroads, and land resource management agencies or firms. The communication service is not sold and is limited to the user. Fees for this category will be based on the number of frequencies licensed by the Federal Communications Commission (FCC) or the number of installed transceivers, whichever is least. Two population-dependent annual rental rates are proposed.

Cable and Subscription Television. This use includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area. Three population-dependent annual rental fee rates are proposed.

Common Carrier Microwave Relay. This use typically includes longline carriers who relay intra- and interstate telephone, television, information, and data transmissions using point-to-point microwave networks or systems. The users are regulated by State Public Utility Commissions and must provide service to any consumer with the ability to pay according to a published rate schedule. Fees for this category will be based on the number of frequencies licensed by the Federal Communications Commission (FCC) or the number of installed transceivers, whichever is least. Two population-dependent annual rental rates are proposed.

Commercial Communicator. This category includes users whose primary business ir providing communications services to others. The user holds an FCC license and may own a building or vault and lease space to others or may lease building and vault space from others. Typically the user is also a facility manager. Examples of such use include 800-trunking and Special Mobile Radios (SMR's). Fees for this category will be based on transmit frequencies. A rate proposal of $700 for the first transmit frequency is proposed, plus $200 for each additional transmit frequency. Tenants of commercial communicators will be considered separately under other fee schedule categories.

Radio Broadcast. This use includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations which generate revenues from commercial advertising, and public radio stations whose revenues are supported by subscriptions, grants, donations, and appropriations. It relates only to primary transmitters and not any rebroadcast systems such as translators. Appurtenant uses authorized under this use relate to microwave and/or 2-way radio links from a permitted site to studio or other fixed or mot ile units directly related to the broadcast activity. Four population-dependent rates are proposed.

Television Broadcast. This category includes FCC authorized facilities that broadcast VHF and UHF audio and video signals for general public reception. Users include television stations (major and independent networks) that generate revenues from commercial advertising, and public television stations whose revenues are supported by subscriptions, grants, donations, or appropriations. It relates only to primary transmitters and not any rebroadcast systems such as translators. Appurtenant uses authorized under this use relate to microwave and/or 2-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity. Four population-dependent rates are proposed.

Personal/Private "Receive Only." This use includes radio and TV receiving antennas, satellite dishes, and other equipment/facilities designed for the reception of electromagnetic signals serving private homes and recreation residences. The equipment is personally owned; not operated for profit. As one of the miscellaneous electronic uses discussed earlier, a flat rate of $75 is established based on sound business management principles and is not subject to waiver.

Amateur Radio Service. This use includes repeaters used by individuals or groups who are licensed by the FCC as amateur radio operators. Private market leases are inconclusive. Therefore, a flat rate of $75 is established based on sound business management principles and is not subject to waiver.

Natural Resource and Environmental Monitoring. This use includes the trnasmission of telemetry data from a remote site to a central receiving station. As one of the miscellaneous electronic uses discussed earlier, a flat rate of $75 is established based on sound business management principles and is not subject to waiver.

Dated: July 6, 1988.

T.A. Roederer,

Deputy Regional Forester Resources.

INTERMOUNTAIN REGION PROPOSED RENTAL FEE SCHEDULE

Population Category	Communication facility							
	Passive Reflector	Broadcast Translators	Internal 2-Way Radio Repeater	Industrial Microwave	Cable Television	Common Carrier Microwave	Commercial Communicator [1]	TV & Radio Broadcast
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
0 to 6,000	600	([2])	600	1,100	700	1,600	700 + 200/frequency	2,700
6 to 14,000	600	700	800	1,100	1,400	1,600	700 + 200/frequency	2,700
14 to 50,000	600	900	1,100	1,100	1,400	1,600	700 + 200/frequency	3,000
50 to 100,000	600	1,200	1,100	1,500	2,400	2,000	700 + 200/frequency	3,300
100,000+[3]	600	1,200	1,100	1,500	2,400	2,000	700 + 200/frequency	4,000

[1] The $700 base fee includes the first transit frequency; additional transmit frequencies are $200 each.

[2] Broadcast Translator:

Service Area Population:

0 to 1,000	$75
1,001 to 2,000	150
2,001 to 3,000	225
3,001 to 4,000	300
4,001 to 5,000	375
5,001 to 6,000	450

[3] Our market survey evaluated a population category of 250,000+, but with the leveling off effect, found no meaningful increase in fees over the 100,000–250,000 group.

[FR Doc. 88–17037 Filed 7–27–88; 8:45 am]
BILLING CODE 3410–11–M

Pacific Southwest Region; Fee Schedule for Communication Uses

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy: request for comments.

SUMMARY: The Regional Forester for the Pacific Southwest Region is revising procedures governing the determination of rental fees for communication uses on National Forest System lands in the State of California and a portion of the State of Nevada bordering on California. Comments from interested individuals and holders are welcome.

DATE: Comments must be received in writing by September 26, 1988.

ADDRESSES: Send written comments to Paul F. Barker, Regional Forester, Pacific Southwest Region, 630 Sansome St., San Francisco, CA 94111.

The public may inspect comments received on this proposed policy in the office of the Director of Lands, Rm 1016, 630 Sansome St., San Francisco, CA between the hours of 8:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Adele H. Goss (415) 556–3415, Land Uses Group Leader.

SUPPLEMENTARY INFORMATION:

Background

Forest Officers currently administer approximately 1625 communication use authorizations on 200 sites within the Pacific Southwest Region.

Current fees are calculated at two-tenths of one percent (0.2%) of the holders total investment in facilities and equipment plus 5 percent of rental income received from building tenants and/or equipment users served by the holder.

The Federal Land Policy and Management Act of 1976 (FLPMA) states that "The Secretary of Agriculture, with respect to lands within the National Forest System, is authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for systems for the transmission or reception of radio, television, telephone, telegraph, and other electronic signals and other means of communications" provided that "the holder of such right-of-way shall pay annually in advance the fair market value of such right-of-way as determined by the Secretary."

Regulations promulgated to implement FLPMA state at 36 CFR 251.57 that "The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles." A revised policy (50 FR 40574, October 4, 1985) that broadens the method of determining annual land use rental fees for communication uses states that "The Chief or Regional Foresters will determine which of three methods (site specific appraisal, competitive bidding, or Regional Fee Schedule) is appropriate for particular geographic areas."

In keeping with this direction the Regional Forester for the Pacific Southwest Region has determined that:

(1) A fee schedule would be an appropriate cost-effective method to assess fees for most communication sites and associated uses. This schedule is intended to cover the majority of the existing and proposed sites in the Pacific Southwest Region. However, fees for unique sites or sites servicing high populations, such as Mt. Wilson and Santa Anita Ridge which service the Los Angeles area, are not covered by this schedule.

(2) The authorized officer may use site specific appraisals, sound business management principles, and/or rental analysis to determine fees for individual sites when market evidence such as leases for similar uses demonstrate the inapplicability of the schedule.

Appraisals provided by the holder or other groups may be used to determine fees if the Regional Review Appraiser establishes that the appraisal meets Forest Service standards and the fee represents fair market value.

(3) Competitive bidding may be used to establish fees for new sites.

Proposed Fee Schedule

This proposal is based on a market analysis completed by the Pacific Southwest Region in FY 1987. The schedule proposes annual rental fees according to category of use by zone. Fees for categories not described, will be determined by appraisal, sound business management principles, and/or negotiation.

COMMUNICATION USE FEE SCHEDULE, APRIL 1988, PACIFIC SOUTHWEST REGION, FOREST SERVICE—USDA

Use category	Annual Fair Market Rent—Zone [1]		
	South	Central	North
Television Broadcast	$9,600	$6,000	$2,000
Radio Broadcast	9,600	6,000	2,000
Repeater: [2]			
Commercial Communicator	5,000	4,000	1,000
Internal Two Way	1,200	800	500
Microwave Relay:			
Common Carrier	6,500	5,500	3,500
Industrial	3,600	4,000	1,500
Passive Reflector	500	500	500
Broadcast Translator,*			
Service Area Population: [3]			
0 to 1,000	75	75	75
1,001 to 2,000	150	150	150
2,001 to 3,000	225	225	225
3,001 to 4,000	300	300	300
4,001 to 5,000	375	375	375
5,001 to 6,000	450	450	450
6,001 to 14,000	700	700	700
14,001 to 50,000	900	900	900
50,001*	1,200	1,200	1,200
Cable and Subscription Television, Population Served:			
0 to 10,000	600	600	600
10,001 to 50,000	1,500	1,500	1,500
50,001 to plus	3,000	3,000	3,000
Cellular Telephone	6,000	6,000	6,000
Personal/Private Receive Only	75	75	75
Amateur Radio Service	75	75	75

[1] Three zones developed from the market analysis and the counties therein are as follows: *Northern Zone*—Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen (portion), Tehama, Plumas (portion), Mendocino, Butte, Glenn, Colusa, Lake, and Yuba (that portion of the Plumas NF). *Central Zone*—Sonoma, Napa, Sacramento, Sutter, Yuba (portion) Sierra, Nevada, Placer, Eldorado, Amador, Solano, Stanislaus, San Francisco, San Mateo, Santa Cruz, Santa Clara, Alameda, Contra Costa, San Joaquin, Calaveras, Alpine, Mono, Tuolumne, Monterey, San Benito, Merced, Mariposa, Madera, Inyo, Fresno, Tulare, Kings, Yolo, Marin, Kern (that portion of the Sequoia NF). Plumas (that portion of the Tahoe NF), and the Lassen (That portion of the Toiyabe, NF). *Southern Zone*—San Luis Obispo, Orange, Santa Barbara, Imperial, Ventura, San Diego, Kern (portion), Los Angeles, San Bernardino, and Riverside.

[2] The fee will be the zone fee indicated *or* twenty-five percent (25%) of Total Gross Income from *on-site* equipment, space, or frequency rentals, whichever is greater. For fee computation purposes, the holder shall annually provide the Forest Service, by March 1, a certified copy of their previous calendar year's gross income statement. There will be no Forest Service authorization or direct rental charge to third party users who lease equipment and service from commercial communications users.

[3] Market data for small community and private translator associations (less than 5,000 people served) was inconclusive. However, data collected by other Western Regions of the Forest Service was extended to these use groups and fee increments of $75 per 1000 people served resulted. Translator sites operated by a single licensee are considered one use.

*A translator site operated by a single FCC licensee is considered one use.

Definitions

Television Broadcast Use—This category includes FCC authorized facilities that broadcast VHF and UHF audio and video signals for general public reception. Users include (VHF and UHF transmission of) television stations (major and independent networks) that generate revenues from commercial (telecommunication services) whose revenues are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not to any rebroadcast systems such as translators. Appurtenant uses authorized under this use relate to microwave and/or 2-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

Radio Broadcast Use—This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include AM and FM radio stations which generate revenues from commercial advertising, and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not to any rebroadcast systems such as translators. Appurtenant uses authorized under this use relate to microwave and/or 2-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

Commercial Communicator Use—An entity whose primary business is providing communications service to others. The commercial communicator holds an FCC license, may own the building or vault, and lease space either to others, or may lease the same from others. Examples of such use include 800 trunking and Special Mobile Radios (SMR's).

Common Carrier Microwave Relay Use—This use typically includes longline carriers who relay intra and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. The users are regulated by state public utility commissions and must provide service to any consumer with the ability to pay according to a published rate schedule.

Passive Reflector Use—This use includes various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active station and terminal. Passive reflectors require point-to-point line-of-site linking with connecting network stations, but does not require electric power. Maintenance is minimal and reflector sites seldom require visitation.

Broadcast Translator Use—This use consists of picking up a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases, the translator relays the signal to another booster or translator. This category of use includes translators associated with public telecommunication service.

Cable and Subscription Television Use—This use includes cable TV headend antenna or satellite dish receivers used for community television pickpus which retransmit by cable or any other means where subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

Industrial Microwave Use—This use includes entities who are not in the communications business, but have their own internal microwave communications system or network. Users in this group may include pipeline and power companies, railroads, and land and resource management agencies or firms. The communication service is not sold and is limited to the user.

Cellular Telephone Use—This category is a specialized service of commercial communicators which includes mobile (UHF) radio telephone systems. A cell is the area covered by one transmitting/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

Internal Two-Way Radio Repeater Use—This use includes two-way repeaters used for internal communications in support of business, community activities, or other organizational objectives. The communication service is not sold and is limited to the user.

Personal/Private "Receive Only" Use—This use includes radio and TV receiving antennas, satellite dishes and other equipment designed for the reception of electronic signals serving private homes and recreation residences. The equipment is personnally owned and not operated for profit.

Amateur Radio Use—Equipment used by individuals or groups who are licensed by the FCC as amateur radio operators.

Multiple Occupancies

Multiple occupanices can occur in the following forms:

1. The holder owns the facility and the primary business is the rental of space to others. In this situation, the holder does not own or operate communication equipment. (He is referred to as a "site manager".) Fees may be set by competitive bid or other sound business management practice.

2. The holder owns the building and operates communication equipment, but has surplus space for use by others. In this situation, two alternatives exist:

a. Multiple authorizations—An entity whose incidental business is rental of surplus space to customers who must hold an FCC license and provide their own equipment. Typically the shared space provider holds an FCC license for the purpose of conducting a communications business. Each occupant is under a separate authorization. The fee shall be 100% of the schedule fee for each use authorized.

b. Single authorization—Same as above except all occupants are under a single authorization to the owner of the facility. The owner of the facility authorizes, collects fees, and administers all of the uses. For providing these services and as an incentive to encourage single authorizations, the authorized officer may negotiate a reduction of fees when it is to the benefit of the Forest Service. Benefits may consider costs incurred by the holder to administer the uses plus a reasonable profit. The fee shall equal 100% of the scheduled fee for the highest value use plus a percentage of the scheduled fee for each additional use allowed under the holder's authorization.

Appurtenant Use

Appurtenant uses will not be assessed additional fees. Subsidiary firms are considered autonomous and do *not* qualify for appurtenant use fee exemption.

Fee Waivers

The established special use rental fee waiver policy is not affected by this proposed fee schedule. Under certain circumstances, fees waivers may be granted. It is the responsibility of the holder to submit a request with justification for a fee waiver to the authorized officer.

Except for use by another Federal Agency, or cases involving a reciprocal agreement with the state or local government agency, fees will not be waived below $75 for a communication site.

Annual Fee Schedule Adjustment

All categories of use are subject to an annual fee schedule adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year will be divided by the CPI–U for July of the previous year to yield a CPI–U multiplier (CPI–Um) to annually update the Communication Use Fee Schedule.

Periodic Review of Fee Schedule

The Forest Service recognizes the need for granting reasonable fee stability to its holders and of protecting the public's interest by providing for the adjustment of fees when the market value of the use authorized changes. To insure this, the Forest Service shall, by September 15, 1994, review the existing schedule to determine whether market conditions and/or business practices have changed sufficiently to warrant a schedule revision. Holders will be given an opportunity to provide data which will be considered during the review, and fee adjustments, if appropriate, will be announced to holders.

Implementation

This fee schedule would apply to all new and existing authorizations beginning January 1, 1989.

Phase-in guidelines for existing authorizations:

1. If the scheduled fee increase is less than or equal to 100% of the existing fee, there will be no phase-in.

2. If the scheduled fee results in an increase greater than 100% of the existing fee, phase-in will be as follows:

a. If the fee increase is less than Two Thousand Dollars ($2000), the amount of the new fee in excess of the 100% increase shall be phased in three equal increments over a three (3) year period.*

b. If the scheduled fee increase is more than Two Thousand Dollars ($2000), the amount of the new fee in excess of the 100% increase shall be phased in five equal increments over a five (5) year period.[1]

Date: July 11, 1988.

Norwood F. Robertshaw,

Assistant Regional Forester, Lands and Real Estate Management.

[FR Doc. 88–17038 Filed 7–27–88; 8:45 am]

BILLING CODE 3410–11–M

[1] Fees will be subject to the CPI–U annual fee adjustment.

federal register

Thursday
July 28, 1988

Part V

The President

Proclamation 5842—National Week of Recognition and Remembrance for Those Who Served in the Korean War, 1988

Federal Register
Vol. 53, No. 145
Thursday, July 28, 1988

Presidential Documents

Title 3—

The President

Proclamation 5842 of July 26, 1988

National Week of Recognition and Remembrance for Those Who Served in the Korean War, 1988

By the President of the United States of America

A Proclamation

Our Nation's beginning was signed with the blood of patriots, and in the more than 212 years that have followed our founding we have never forgotten to pause in honor of the gallant Americans who have suffered and died in the cause of freedom. As we approach the 35th anniversary of the cease-fire that marked the end of active combat in the Korean War, it is appropriate that we take time to remember and express our gratitude to those who served in that fierce conflict. We do so proudly, knowing that their spirit will define forever the words "courage" and "liberty."

In June 1950, when the Communist North Korean army invaded the Republic of Korea in a brazen attempt to extinguish the light of freedom there, American forces joined with those of many other nations to repel this unprovoked assault. Weary of war ourselves and ready to lead an era of peaceful recovery, we nonetheless came to Korea's defense because instinct and experience have taught us that freedom can have no borders, that an attack on free men anywhere is an attack on free men everywhere.

Standing shoulder to shoulder with the valiant South Korean armies and troops of 16 other countries operating under United Nations command, nearly six million of our service men and women—more than served in World War I—participated in the drive to preserve Korea's territorial integrity and political independence. At Inchon and the Chosin Reservoir, on Old Baldy and Pork Chop Hill, in battle and siege all across the Korean Peninsula, our forces endured unspeakable hardships for a fellow people struggling to keep free. Over 54,000 Americans died, more than 100,000 suffered wounds, and over 8,000 remain missing in action. Theirs has been called the "Forgotten War," but, as President Eisenhower told the Nation 35 years ago on the signing of the Korean Armistice, they proved "once again that only courage and sacrifice can keep freedom alive upon the earth." This is a message that must forever live on in the memories and in the hearts of all who cherish liberty.

The Congress, by Senate Joint Resolution 318, has designated the week of July 25 through July 31, 1988, as "National Week of Recognition and Remembrance for Those Who Served in the Korean War" and authorized and requested the President to issue a proclamation observing this week and urging the departments and agencies of the United States and interested organizations, groups, and individuals to fly the American flag at half-staff on July 27, 1988, in memory of those Americans who died as a result of their service in Korea.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of July 25 through July 31, 1988, as National Week of Recognition and Remembrance for Those Who Served in the Korean War. I call upon the people of the United States to observe such week with appropriate ceremonies and activities and call upon and authorize all departments and agencies of the United States and interested organizations, groups, and individuals to fly United States flags at half-staff on July 27, 1988, as a symbol of our gratitude to those who died as a result of their service

in Korea and of our steadfast commitment to preserving the values for which they fought.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of July, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

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H.R. 3893/Pub. L. 100-368

To amend the provisions of the Toxic Substances Control Act relating to asbestos in the Nation's schools by providing adequate time for local educational agencies to submit asbestos management plans to State Governors and to begin implementation of those plans. (July 18, 1988; 102 Stat. 829; 6 pages) Price: $1.00

H.R. 4639/Pub. L. 100-369

To amend the Higher Education Act of 1965 to prevent abuses in the Supplemental Loans for Students program udner part B of title IV of the Higher Education Act of 1965, and for other purposes. (July 18, 1988; 102 Stat. 835; 5 pages) Price: $1.00

H.R. 4229/Pub. L. 100-370

To amend title 10, United States Code, to codify in that title certain defense-related permanent free-standing provisions of law. (July 19, 1988; 102 Stat. 840; 17 pages) Price: $1.00

H.R. 4567/Pub. L. 100-371

Energy and Water Development Appropriations Act, 1989. (July 19, 1988; 102 Stat. 857; 19 pages) Price: $1.00

S. 623/Pub. L. 100-372

Independent Safety Board Act Amendments of 1988. (July 19, 1988; 102 Stat. 876; 2 pages) Price: $1.00

S. 2203/Pub. L. 100-373

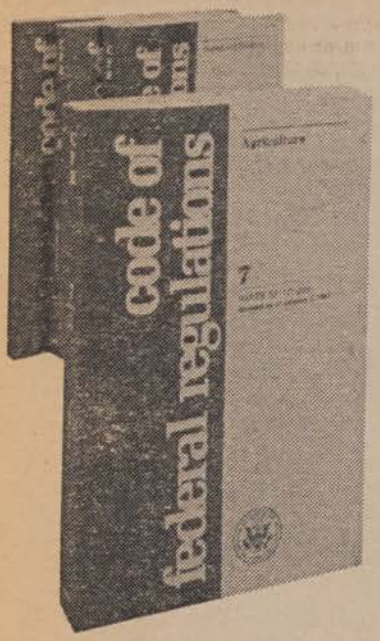
To extent the expiration date of title II of the Energy Policy and Conservation Act. (July 19, 1988; 102 Stat. 878; 1 page) Price: $1.00

S. 2248/Pub. L. 100-374

To designate the United States Courthouse located at 156 Federal Street in Portland, Maine, as the "Edward Thaxter Gignoux United States Courthouse." (July 19, 1988: 102 Stat. 879; 1 page) Price: $1.00

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