AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Vol. 53 No. 191
Pages 38687-38938

federal register

Monday
October 3, 1988

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

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Title 3—

The President

Proclamation 5867 of September 28, 1988

National Sewing Month, 1988

By the President of the United States of America

A Proclamation

Americans are naturally proud of their practical genius; their love and mastery of domestic crafts, handed down from generation to generation, are among our prime national virtues. Throughout American history, one such craft has been the art of sewing. National Sewing Month, 1988, celebrates the American tradition of sewing in the home and salutes the estimated 90 million citizens who partake of its challenges and rewards.

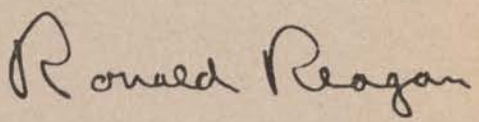
Home sewing is an enjoyable and productive pastime that serves a variety of useful purposes. For instance, it inspires people to pursue sewing-related occupations; sewing skills learned at home or during more formal instruction help foster lifelong careers in fields such as fashion, pattern-making, retail merchandising, and interior and textile design. Many people find that home sewing is a boon to friendship among neighbors, or a good way for caring citizens to assist their fellowman through volunteer projects. Sewing's closest link to most of us, however, is undoubtedly its familiarity as a part of daily life in the home. That is because the sewing circle has so often been a link between grandparents, parents, and children; in its pleasures and satisfactions are found both a sense of individual accomplishment and an intuition of a larger human endeavor. In this way, a basic skill of family life is passed on, and an ancient art made new.

These are all very good reasons for America to celebrate National Sewing Month, 1988, with heartfelt appreciation for the talents and achievements of those among us who sew in the home.

In recognition of the importance of home sewing to the United States, the Congress, by House Joint Resolution 580, has designated September 1988 as "National Sewing Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim September 1988 as National Sewing Month. I call upon the people of the United States to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, 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.



[FR Doc. 88-22758
Filed 9-29-88; 12:17 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5868 of September 28, 1988

National American Indian Heritage Week, 1988

By the President of the United States of America

A Proclamation

National American Indian Heritage Week, 1988, offers us a fine opportunity to reflect upon the profound, many-sided, and lasting impact of American Indians and their forebears on our Nation, history, and way of life. During this time, we can all join American Indians and Alaska Natives in celebrating their ancient and diverse heritages. We can also thank them for their achievements in every area of endeavor.

Those achievements continue today. Despite past periods of conflict and changes in Indian affairs policies, the government-to-government relationship between the United States and Indian tribes has endured. The Constitution, treaties, laws, and court decisions have consistently recognized a unique political relationship between tribal elected governments and the United States. We look to a future of increasing economic independence and self-sufficiency on Indian reservations, and we support efforts to foster greater Indian control of Indian resources.

May our national observance of this truly special week in tribute to American Indians inspire us to seek a deeper understanding of our past and a wider hope for the future we must walk together in this great and bounteous land.

The Congress, by Senate Joint Resolution 322, has designated the period of September 23 through September 30, 1988, as "National American Indian Heritage Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the period of September 23 through September 30, 1988, as National American Indian Heritage Week, and I request all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, 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

[FR Doc. 88-22759
Filed 9-29-88; 12:18 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5869 of September 28, 1988

Polish American Heritage Month, 1988

By the President of the United States of America

A Proclamation

Immigrants from nearly every nation on Earth have taken part in the founding, settling, building, and defending of our land. Prominent among the proud list of our forebears and fellow citizens are Polish Americans, and we can all be grateful for the opportunity given each of us by Polish American Heritage Month, 1988, to recognize their accomplishments.

These achievements have permeated every aspect of American life. The most special characteristic of the Polish people, wherever they may be, has always been a loyal and courageous passion for faith and freedom. Poland's devotion shines so brightly through the centuries, in years of peace and in times of hardship, war, and occupation, that it inspires the people of free nations to a deeper appreciation of their liberty and the people of captive nations to a higher plane of hope.

Poland has given humanity much through the genius of such giants as Copernicus, Madame Curie, Henryk Sinkiewicz, Joseph Conrad, Chopin, and Paderewski. Poland has likewise given America much—through patriotism like that of Pulaski, witness like that of John Cardinal Krol, and the innumerable contributions of generations of Polish immigrants and their descendants. Poland's legacy continues to bless America and all mankind in countless ways today, especially through the leadership and example of Pope John Paul II, Nobel Peace Prize winner and Solidarity Labor Federation leader Lech Walesa, and other lovers of faith and freedom.

The American people feel unwavering unity with the Polish people, now more than ever. Poland's saga must be our own. The freedom loved and advanced so much through the years by loyal Poles and Polish Americans is on the march in every continent today, because freedom is a universal and eternal cause. As we celebrate Polish American Heritage Month, 1988, we celebrate the promise of freedom, the power of faith, and the best in America's history and future.

The Congress, by Public Law 100–385, has designated October 1988 as "Polish American Heritage Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 1988 as Polish American Heritage Month, and I urge all Americans to join their fellow citizens of Polish descent in observance of this month.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, 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

[FR Doc. 88-22760
Filed 9-29-88; 12:19 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5870 of September 28, 1988

National School Lunch Week, 1988

By the President of the United States of America

A Proclamation

Forty-two years ago, just after World War II, America began the National School Lunch Program—a partnership in which State and local governments were to administer Federal food assistance in schools around our country. Today, after more than 4 decades, this program has helped provide good nutrition for millions of American students. National School Lunch Week gives all of us a chance to recognize the vision and concern of everyone associated with this project through the years and to congratulate the many citizens who continue to make it a success.

We can all be proud of the skills, devotion, and hard work supplied to school lunch programs nationwide by parents, school and community officials, and nutrition staffs. These Americans do everything necessary to make sure that the students of their areas enjoy the sound and satisfying lunches that are so important to the school day. Let us all be sure to express our gratitude and appreciation for these efforts, and to offer our cooperation as well—during National School Lunch Week, 1988, and always.

By joint resolution approved October 9, 1962, the Congress designated the week beginning on the second Sunday of October in each year as "National School Lunch Week" and authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 9, 1988, as National School Lunch Week, and I call upon all Americans to give special and deserved recognition to those people at the State and local level whose dedication and innovation contribute so much to the success of the school lunch program.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, 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

[FR Doc. 88-22761
Filed 9-29-88; 12:20 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5871 of September 28, 1988

Leif Erikson Day, 1988

By the President of the United States of America

A Proclamation

On his 11th-century voyage to "Helluland, Markland, and Vinland," Leif Erikson exemplified virtues universally admired throughout world history. This explorer with a missionary spirit challenged the unknown with courage and faith. He triumphed, and his example has inspired many another to do the same. On Leif Erikson Day, 1988, we recall and revere the achievements of this man and of the Nordic people who have followed him to North America through the centuries.

On Leif Erikson Day we also salute all Americans who have left their homes abroad, arrived on our shores after much struggle, and built a new life in this land of freedom and opportunity. Like Leif Erikson, none of them could be sure of success; but, like him, they were willing to take on and conquer adversity. Through the generations they and their descendants have helped America meet many challenges—the cultivation of the land and the construction of cities, the winning of our liberty and independence, and the defense of our country's cause.

This year's 350th anniversary of the first permanent settlement of Swedes and Finns in North America has given us a special opportunity to celebrate the excellent relations between the United States and these two countries. On Leif Erikson Day this year, we celebrate, too, the friendship between the people of the United States and those of all the Nordic countries. Let us also remind ourselves that a treasured part of our heritage as Americans is the longing to seek the horizon and to cross every frontier with daring and determination like those of "Leif the Lucky."

In honor of Leif Erikson and our Nordic American heritage, the Congress, by a joint resolution approved on September 2, 1964 (78 Stat. 849, 36 U.S.C. 169c), has authorized and requested the President to proclaim October 9 of each year as "Leif Erikson Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 9, 1988, as Leif Erikson Day, and I direct the appropriate Government officials to display the flag of the United States States on all Government buildings on that day. I also urge the people of the United States to honor Leif Erikson and our Nordic American heritage by holding appropriate exercises and ceremonies in suitable places throughout our land.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, 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

[FR Doc. 88-22762
Filed 9-29-88; 12:21 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5872 of September 28, 1988

General Pulaski Memorial Day, 1988

By the President of the United States of America

A Proclamation

Casimir Pulaski, Polish and American patriot, revolutionary and hero, gave his life for liberty 209 years ago during America's War of Independence. Leading a cavalry assault at the siege of Savannah, he was mortally wounded. But the cause for which he fought so courageously was to prevail, and his immortal example of service and sacrifice was to inspire lovers of freedom around the globe forever after. America does well to pause in remembrance on the anniversary of General Pulaski's death and to swear eternal allegiance to the principles of liberty and justice he held dear.

Casimir Pulaski had also fought for liberty in Poland, his native land. When victory eluded the brave Polish people, he sought a kindred cause and found it in America. There "the shot heard 'round the world" had sounded warning to tyrants and hope to mankind. Like Polish patriots to this day, Pulaski knew that freedom's call is universal—that a battle for freedom anywhere is a battle for freedom everywhere; that liberty is diminished everywhere as long as tyranny reigns anywhere. In fighting for America, General Pulaski fought also for the unalienable rights to life, liberty, and the pursuit of happiness—rights that America had boldly declared, rights that God had granted Americans and Poles and all humanity alike.

America's struggle for freedom was victorious, thanks to Casimir Pulaski and to countless men and women like him. Tragically, freedom has not yet come to some nations, and it has been snatched from others. But freedom is on the move. Just as General Pulaski stood with us, so will we continue to stand for liberty throughout the globe. So will we stand for the people of Poland, in whose hearts faith and freedom and the spirit of Pulaski burn ever brightly. Let our observance of General Pulaski Memorial Day, 1988, remind us of all this Polish hero and his fellow Poles have done for America; let it remind us as well that his work and ours, the cause of freedom, goes on today and every day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Tuesday, October 11, 1988, as General Pulaski Memorial Day, and I direct the appropriate government officials to display the flag of the United States on all government buildings on that day. In addition, I encourage the people of the United States to commemorate this occasion as appropriate throughout our land.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, 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

[FR Doc. 88-22763
Filed 9-29-88; 12:22 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5873 of September 28, 1988

World Food Day, 1988

By the President of the United States of America

A Proclamation

On World Food Day, the United States joins 150 other nations in reaffirming our determination to end world hunger. We Americans are a generous people, and we are blessed with the liberty and the bountiful natural resources that make prosperity and opportunity possible. Through private and public efforts, we gladly share our abundance in the fight against hunger; we have done so more generously than all other countries combined. This year, we are sending about $1.4 billion in food commodities abroad to help the hungry.

Some estimates suggest that one third of the people of the developing nations lack enough food to lead active working lives. That must change. Clearly, more needs to be done. Permanent progress in this regard will not be achieved, however, unless, along with remedial assistance, needy nations receive a transfusion of incentive- and market-based ideas. The tide of freedom and democracy now sweeping the globe offers the greatest long-term promise for success in the fight against hunger and economic stagnation.

Finding a lasting solution to world hunger requires agricultural and trade policies with one irreplaceable ingredient: freedom. Freedom alone can build economic progress, cooperation, and stability for nations at every level of development. We need to move toward a time when government intervention no longer distorts individuals' production and trade decisions. We also need thriving international markets to which all farmers have broad access.

That is something for all of us to remember this year especially, when World Food Day focuses on rural youth. These young people often migrate to the cities. We must develop policies that will encourage and enable them to remain in their agricultural and rural communities and improve their families' food productivity and income. Stablization of developing countries' agricultural base accompanied by structural reforms to increase farmers' earnings are crucial steps in the drive to conquer hunger worldwide.

This October 16 marks the eighth successive year in which people everywhere have observed World Food Day. It is a day on which all Americans can resolve once again to wage and win the battle against world hunger.

In recognition of the desire and commitment of the American people to end world hunger, the Congress, by Senate Joint Resolution 336, has designated October 16, 1988, as "World Food Day" and authorized and requested the President to issue a proclamation in observance of that day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 16, 1988, as World Food Day. I call upon the people of the United States to observe this day with appropriate activities to find and implement ways in which our Nation can better combat world hunger.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, 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

[FR Doc. 88-22764
Filed 9-29-88; 12:23 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5874 of September 29, 1988

Child Health Day, 1988

By the President of the United States of America

A Proclamation

For parents, nothing in life can be as important as knowing that the children God gives them are healthy and free to live and grow up safe from harm. For 6 decades, the American people have set aside Child Health Day each year to remind ourselves and the world that, as individuals and a Nation, we seek to ensure the good health of each and every American child. Our national observance of this day will fulfill that mission so long as we keep in mind our duty to safeguard our children's physical well-being; to shelter their God-given innocence; and to shield the unalienable rights to life, liberty, and the pursuit of happiness that are theirs as Americans and as human beings.

These duties are best met in the family, society's fundamental unit. But responsibility for the health and safety of youngsters often requires the assistance of the wider community, including, for example, the members of private groups, voluntary organizations, and religious orders who care for children; and government officials at the local, State, and Federal levels as well. Since the early part of this century, the Federal government has worked in partnership with all of these entities to protect the health and safety of children.

America has stopped many illnesses that once claimed children's lives. We have helped provide basic health care services to poor and underserved children. We have established systems of services for children with special health care needs, such as chronic illnesses, birth defects, and related conditions, so that these young people can remain in their families and take part in community life. We have also focused increased attention on reductions in premature and low-weight births, on nutrition and nutrition education, and on prevention of playground and street accidents.

Child Health Day, 1988, is a time for reflection on what we have achieved—and for rededication to tasks not yet accomplished. We must continue to battle conditions such as family breakup, poverty, and moral confusion that can cause health problems in children. We must also fight infant mortality, drinking and driving, and problems that can affect children both born and unborn, such as the HIV, poor eating habits, smoking, illegal drug use and alcohol abuse.

We must also reduce the incidence of teenage pregnancy—as well as the spread of venereal diseases and the HIV—by giving young boys and girls good example and solid teaching about affirming life and avoiding sexual relations outside of marriage. And teenagers who do become pregnant need our help as individuals, families, and communities, to see them through their difficulties, not to condemn them or abandon them to the dead end of abortion. We must also do a much better job of encouraging adoption as a compassionate alternative to abortion.

Advances in technology continue to help us save the lives of many fragile infants and to rescue babies whose premature birth would once have meant certain death. We are also more and more able to treat children in the womb for a variety of illnesses and conditions. These developments demonstrate a stark contradiction in one aspect of our national child health policies—the social environment that fosters often heroic efforts to save little ones whose parents want them, but denies legal protection to the unborn whose parents do not want them. We must restore the right to life and our respect for the dignity and worth of every individual.

Our success in caring for all of our children will continue to determine our faithfulness to our heritage and our fate as a Nation. In our every endeavor, let us pray as did the parent portrayed by the poet, "From cut and from tumble, from sickness and weeping, May God have my jewel this day in His keeping."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, pursuant to a joint resolution approved on May 18, 1928, as amended (36 U.S.C. 143), do hereby proclaim Monday, October 3, 1988, as Child Health Day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, 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

[FR Doc. 88-22866
Filed 9-30-88; 11:46 am]
Billing code 3195-01-M

Presidential Documents

Memorandum of September 29, 1988

Annual Determination on Steel Industry Modernization

Memorandum for the United States Trade Representative

Section 806 of the Steel Import Stabilization Act (19 U.S.C. 2253 note) requires that I make an annual affirmative determination that specified conditions have been met by the domestic steel industry to justify continuation of authority under section 805 to enforce steel restraint agreements. The attached *Report of the President under the Steel Import Stabilization Act* and the report prepared at my direction by the United States International Trade Commission, *Annual Survey Concerning Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize*, enumerate the actions taken by the domestic industry consistent with an affirmative determination under section 806.

Based upon this information, I hereby make an affirmative determination for the fourth annual period (October 1, 1987–September 30, 1988) that during such period:

(A) The major companies of the steel industry, taken as a whole, have—

(i) committed substantially all of their net cash flow from steel product operations for purposes of reinvestment in, and modernization of, that industry; and

(ii) taken sufficient action to maintain their international competitiveness;

(B) each of the major companies committed not less than 1 percent of net cash flow to the retraining of workers, except as waived below; and

(C) the enforcement authority provided under section 805 remains necessary to maintain the effectiveness of bilateral arrangements undertaken to eliminate unfair trade practices in the steel sector.

Moreover, I hereby waive the application of section 806(b)(1)(B) with respect to one major company (Nucor Corporation) not having or reasonably anticipating significant unemployment in steel operations, in light of recent growth in employment.

You are hereby authorized and directed to report this determination to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. This memorandum shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, September 29, 1988.

[FR Doc. 88-22809
Filed 9-29-88; 3:22 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12653 of September 29, 1988

Amending Executive Order 11183, Relating to the President's Commission on White House Fellowships

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and in order to provide flexibility in determining the length of White House Fellowships, it is hereby ordered that Section 3 of Executive Order No. 11183 of October 3, 1964, as amended, is further amended by deleting "12 months, beginning" and inserting in lieu thereof "a period to be set by the Commission, provided that such a period shall not exceed 365 days. Extensions of appointments may be granted by the Commission at any time after appointments are made, but such extensions shall not exceed 90 days. White House Fellows will begin their appointments". This Order is applicable to all Fellows with appointments commencing on or after September 1, 1987, and all such Fellows may be granted extensions of their original appointments so long as such extensions do not exceed 90 days.

Ronald Reagan

THE WHITE HOUSE,
September 29, 1988.

[FR Doc. 88-22836
Filed 9-29-88; 4:22 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 191
Monday, October 3, 1988

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Doc. No. 5993S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing dates.

SUMMARY: This Federal Crop Insurance Corporation (FCIC) herewith gives notice of an extension of the sales closing date for filing application for crop insurance coverage on fall planted barley, oats, rye, and wheat under the provisions of the Barley Endorsement (7 CFR § 401.103), Oat Endorsement (7 CFR 401.105), Rye Endorsement (7 CFR § 401.106), and the Wheat Endorsement (7 CFR 401.101). The intended effect of this rule is to advise all interested parties that, for the 1989 crop year only, FCIC is providing an additional 30 days in which to file application for crop insurance coverage on these crops in order that producers, seeking disaster assistance under the Disaster Assistance Act of 1988, will have sufficient time in which to obtain the required insurance coverage.

EFFECTIVE DATE: October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: In accordance with the provisions applicable to crop insurance coverage under the Barley Endorsement (7 CFR 401.103), Oat Endorsement (7 CFR 401.105), Rye Endorsement (7 CFR 401.106), and the Wheat Endorsement (7 CFR 401.101), FCIC herewith gives notice that it is extending the sales closing date for all fall planted 1989 crop year barley, oat, rye, and wheat crop insurance insurance sales from September 30, 1988, through the close of business on October 31, 1988.

John Marshall, Manager, FCIC, has determined that this action should be taken to provide fall planted barley, oat, rye, and wheat producers the opportunity to comply with the intent of the Disaster Assistance Act of 1988 (the Act).

The Act requires that producers receiving benefits based on losses exceeding 65 percent of a crop be required to carry crop insurance on that crop for the 1989 crop year if it is available. USDA's Agricultural Stabilization and Conservation Service (ASCS) will not begin accepting applications for disaster assistance benefits until after the normal sales closing date of September 30 for the affected crops. This notice of extension of the sales closing date from September 30 to October 31 will accommodate the crop insurance purchase requirement of the Act where appropriate.

The payment received under the relief legislation is forfeited unless the crop insurance provision is met, where applicable. Barley, oat, rye, and wheat producers are urged to review their situation with their ASCS office as soon as practicable after applications begin to be accepted.

For the reasons stated above, the sales closing date for accepting applications on fall planted barley, oat, rye, and wheat crop insurance is hereby extended from September 30, 1988, through the close of business on October 31, 1988.

This action to change the sales closing date will also permit, until the close of business on October 31, 1988, current insureds to change the level of coverage and price election under the provisions of their crop insurance policy, and producers not presently insured to file application for crop insurance on these crops.

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith gives notice that, effective for the 1989 crop year only, the sales closing date for accepting applications for fall planted barley, oat, rye, and wheat crop insurance coverage is extended through the close of business on October 31, 1988.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC, on September 27, 1988.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–22649 Filed 9–30–88; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 633]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 633 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 260,000 cartons during the period October 2 through October 8, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 633 (§ 910.933) is effective for the period October 2 through October 8, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The committee met publicly on September 27, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by an 8 to 5 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons has declined.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.933 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.933 Lemon Regulation 633.

The quantity of lemons grown in California and Arizona which may be handled during the period October 2, 1988, through October 8, 1988, is established at 260,000 cartons.

Dated: September 28, 1988.

Robert C. Keeney

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–22665 Filed 9–29–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid and Oxytetracycline; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: In the **Federal Register** of December 18, 1987 (52 FR 48095), the Food and Drug Administration (FDA) published a document amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoffmann-La Roche, Inc. The NADA provides for use of a Type C cattle feed containing lasalocid and oxytetracycline. The regulation refers to the Type C feed as a complete feed. This document amends the regulation to use the term Type C feed.

EFFECTIVE DATE: October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 18, 1987 (52 FR 48095), FDA published a document amending the animal drug regulations to reflect approval of NADA 140–579 filed by Hoffmann-La Roche, Inc. The NADA provides for the use of oxytetracycline at 7.5 grams per ton with lasalocid at 10 to 30 grams per ton in Type C cattle feeds. The amended regulation in 21 CFR 558.311(e)(1) (vi) and (vii) provides for use limited to complete feeds rather than Type C feeds. In addition, item (viii) uses the term complete feeds rather than Type C feeds. The regulations are amended to change the term complete feeds to read Type C feeds to reflect current nomenclature.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.311 [Amended]

2. Section 558.311 *Lasalocid* is amended in paragraph (e)(1) in the table in entries (vi), (vii), and (viii) in the 4th column "Limitations" by removing the phrase "In complete feeds" and inserting in its place "In Type C feeds."

Dated: September 27, 1988.

Robert C. Livingston,

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

[FR Doc. 88–22653 Filed 9–30–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8232]

Income Tax; Credit for Clinical Testing Expenses for Certain Drugs for Rare Diseases or Conditions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the credit for clinical testing expenses for certain drugs for rare diseases or conditions. The credit was enacted by the Orphan Drug Act. The regulations provide the public with the guidance needed to comply with the law and affect taxpayers seeking to obtain the credit.

DATE: These provisions are effective as of October 3, 1988. They will apply for purposes of determining if and to what extent amounts paid or incurred after December 31, 1982, and before January 1, 1991, qualify for the credit.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention CC:LR:T) (202–566–3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–0619. The estimated annual burden associated with the collection of information in this final rule is 10 hours per recordkeeper.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

On April 23, 1985, the **Federal Register** published proposed amendments to the Income tax Regulations (26 CFR Part 1) under sections 28 (formerly 44H) and 280C(b) (formerly 280C(c)) of the Internal Revenue Code of 1954 (50 FR 15930). Sections 44H and 280C(c), relating to the credit for clinical testing expenses for certain drugs for rare diseases or conditions, were added by section 4 of the Orphan Drug Act (96 Stat. 2053). Sections 44H and 280C(c) were subsequently amended by sections 471(c)(1), 474(g), 474(r)(10) (A), (C), and (D), and 612(e)(1) of the Tax Reform Act of 1984 (98 Stat. 826, 831, 841, 912). Sections 28 and 280C(b) were subsequently amended by sections 231(d)(3) (A) and (E), 232, 701(c)(2), 1275(c)(4), 1277(c), 1847(b)(8) (A) and (B), and 1879(b) of the Tax Reform Act of 1986 (100 Stat. 2178, 2180, 2340, 2599, 2600, 2856, and 2905). Amendments were also proposed to conform the regulations under section 28 to reflect section 526(a)(2) of the Federal Food, Drug, and Cosmetic Act, as amended by section 4(a) of the Health Promotion and Disease Prevention Amendments of 1984 (98 Stat. 2817). Five comments on the proposed amendments were received. A public hearing was neither requested nor held. After consideration of all comments regarding the proposed amendments, this Treasury decision adopts those amendments as proposed, with certain clarifying changes, and conforms the regulations to the changes made by the Tax Reform Act of 1986.

Explanation of Provisions

The Orphan Drug Act enacted a credit against income tax for clinical testing expenses for certain drugs for rare diseases or conditions. The credit, codified in section 28 of the Internal Revenue Code of 1986, is equal to 50 percent of the qualified clinical testing expenses for a taxable year. Only qualified clinical testing expenses paid or incurred by the taxpayer after December 31, 1982, and before January 1, 1991, are creditable.

Section 28(b)(1) defines qualified clinical testing expenses, in general, as amounts which are paid or incurred by the taxpayer which would constitute "qualified research expenses" within the meaning of section 41(h) as modified by section 28(b)(1)(B). For purposes of section 28, section 28(b)(1)(D) provides that section 41 and the regulations thereunder shall be deemed to remain in effect for periods after December 31, 1988. Section 28(b)(1)(C) excludes from qualified clinical testing expenses any amount which would otherwise constitute qualified clinical testing expenses to the extent such amount is funded by a grant, contract, or otherwise by another person (or any governmental entity). Section 28(d)(3) provides that expenses paid or incurred with respect to clinical testing outside the United States are generally not eligible for the credit unless such testing is conducted outside the United States because there is an insufficient testing population in the United States, and such testing is conducted by a United States person or by any other person who is not related to the taxpayer to whom the designation of a drug under section 526 of the Federal Food, Drug, and Cosmetic Act applies.

Section 28 applies to the taxpayer for any taxable years only if such taxpayer makes an election to have section 28 apply for such taxable year. The regulations establish the manner in which the taxpayer is to make the election.

The definition of clinical testing contained in § 1.28–1(c)(1) of the proposed regulations followed the definition of that term contained in section 28(b)(2)(A) of the Code before its amendment by the Tax Reform Act of 1986 and did not provide a rule with respect to biological products. Several commentors requested that the definition of clinical testing be amended to include biological products because such products are considered as drugs for rare diseases or conditions in the provisions of the Orphan Drug Act administered by the Food and Drug Administration and nothing in the legislative history of the Act expresses a Congressional intent to exclude biological products from being within the scope of the provision. Section 1879(b) of the Tax Reform Act of 1986 amended the definition of clinical testing contained in section 28(b)(2)(A) to include clinical testing of biological products before the date on which a license for the biological product is issued under section 351 of the Public Health Services Act. The definition of clinical testing in the final regulations conforms to the amended definition of the term contained in section 28(B)(2)(A) of the Code. Although the new provisions on biological products in the final regulations do not apply to radioactive biological products intended for human use, human clinical testing of such radioactive biological products is clinical testing under the final regulations because applications for these products are approved under section 505(b) of the Federal Food, Drug, and Cosmetic Act.

Section 1.28–1(d)(1)(i) of the final regulations clarifies the definition of "rare disease or condition." The regulation makes clear that the term "rare disease or condition" means any disease or condition which either afflicts 200,000 or fewer persons in the United States or afflicts more than 200,000 persons in the United States but for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. This change conforms the definition in the regulations to the definition of the term provided in section 1879(b) of the Tax Reform Act of 1986 and reflects the definition contained in section 526(a)(2) of the Federal Food, Drug, and Cosmetic Act. Determinations under § 1.28–1(d)(1) with respect to any drug shall be made on the basis of the facts and

circumstances as of the date such drug is designated under section 526 of the Federal Food, Drug, and Cosmetic Act. Examples of diseases or conditions which in 1987 afflict 200,000 or fewer persons in the United States are Duchenne dystrophy, one of the muscular dystrophies; Huntington's disease, a hereditary chorea; myoclonus; Tourette's syndrome; and amyotrophic lateral sclerosis (ALS or Lou Gehrig's disease).

Section 1.28–1(d)(2) of the final regulations limits the amount of the credit to the excess of the taxpayer's regular tax liability for the taxable year (reduced by the sum of the credits allowable under sections 21, 22, 23, 25, and 27 of the Code) over the tentative minimum tax for the taxable year (as determined under section 55(b)(1)). This change conforms the regulations to section 28(d)(2) as amended by the Tax Reform of 1986 for taxable years beginning after December 31, 1986.

Finally, § 1.28–1(b)(3)(iii)(A) of the final regulations provides that, if the taxpayer retains substantial rights in the clinical testing under the agreement providing for the clinical testing, the clinical testing expenses are funded for purposes of section 28(b)(1)(C) to the extent of payments (and fair market value of any property at the time of transfer) to which the taxpayer becomes entitled by conducting the clinical testing.

Section 1.28–1(b)(3)(iii)(B) of the proposed regulations, following the rule contained in proposed § 1.44F–4(d)(3)(ii) (with respect to the credit for increasing research activity), allowed the taxpayer to allocate funded amounts pro rata between its nonqualified and qualified clinical testing expenses if certain conditions were met. On reconsideration, the Service has determined that the pro rata method of allocation is not appropriate for allocating such funded amounts because such allocation results in the taxpayer treating funded amounts as qualified clinical testing expenses in violation of section 28(b)(1)(C). Instead, the final regulations provide that 100 percent of the payments received are treated as funding the taxpayer's otherwise qualified clinical testing expenses.

Another change to the regulations as proposed is that paragraph (d)(5)(ii)(D) of § 1.28–1 has been amended to conform that provision to the amendments made to § 1.52–1(d)(1) by Treasury Decision 8179 to reflect the decision of the Supreme Court in *United States v. Vogel Fertilizer Co.*, 455 U.S. 16 (1982).

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6)

Drafting Informatioin

The principal authors of these regulations are Stuart G. Wessler of the Legislation and Regulations Division, and Nerman Dobynes Hubbard of the Employee Benefits and Exempt Organization, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participating in developing these regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.0–1—1.58–8

Income taxes, Tax liability, Tax rates, Credits.

26 CFR 1.61–1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: 26 U.S.C. 7805. * * * Sections 1.28–0 and 1.28–1 also issued under 26 U.S.C. 28(d)(5). * * * Section 1.280C–3 also issued under 26 U.S.C. 280C(b)(3).

Par. 2. The following new §§ 1.28–0 and 1.28–1 are added to read as follows:

§ 1.28–0 Credit for clinical testing expenses for certain drugs for rare diseases or conditions; table of contents.

In order to facilitate use of § 1.28–1, this section lists the paragraphs, subparagraphs, and subdivisions contained in § 1.28–1.

(a) General rule.
(b) Qualified clinical testing expenses.
(1) In general.
(2) Modification of section 41(b).
(3) Exclusion for amounts funded by another person.
(i) In general.
(ii) Clinical testing in which taxpayer retains no rights.
(iii) Clinical testing in which taxpayer retains substantial rights.
(A) In general.
(B) Drug by drug determination.
(iv) Funding for qualified clinical testing expenses determinable only in subsequent taxable years.
(4) Special rule governing the application of section 41(b) beyond its expiration date.
(c) Clinical testing.
(1) In general.
(2) Definition of "human clinical testing".
(3) Definition of "carried out under" section 505(i).
(d) Definition and special rules.
(1) Definition of "rare disease or condition".
(i) In general.
(ii) Cost of developing and making available the designated drug.
(A) In general.
(B) Exclusion of costs funded by another person.
(C) Computation of cost.
(D) Allocation of common costs. Costs for developing and making available the designated drug for both the disease or condition for which it is designated and one or more other diseases or conditions.
(iii) Recovery from sales.
(iv) Recordkeeping requirements.
(2) Tax liability limitation.
(i) Taxable years beginning after December 31, 1986.
(ii) Taxable years beginning before January 1, 1987 and after December 31, 1983.
(iii) Taxable years beginning before January 1, 1984.
(3) Special limitations on foreign testing.
(i) Clinical testing conducted outside the United States—In general.
(ii) Insufficient testing population in the United States.
(A) In general.
(B) "Insufficient testing population".
(C) "Unrelated to the taxpayer".
(4) Special limitation for certain corporations.
(i) Corporations to which section 936 applies.
(ii) Corporations to which section 934(b) applies.
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(i) Controlled group of corporations: organizations under common control.
(A) In general.
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(ii) Tax accounting periods used.
(A) In general.
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(iii) Membership during taxable year in more than one group.
(iv) Intra-group transactions.
(A) In general.
(B) In-house research expenses.
(C) Contract research expenses.
(D) Lease payments and payments for supplies.
(6) Allocations.
(i) Pass-through in the case of an S corporation
(ii) Pass-through in the case of an estate or trust.
(iii) Pass-through in the case of a partnership.
(A) In general.
(B) Certain partnership non-business expenditures.
(C) Apportionment.
(iv) Year in which taken into account.
(v) Credit allowed subject to limitation.
(7) Manner of making an election.

§ 1.28–1 Credit for clinical testing expenses for certain drugs for rare diseases or conditions.

(a) *General rule.* Section 28 provides a credit against the tax imposed by chapter 1 of the Internal Revenue Code. The amount of the credit is equal to 50 percent of the qualified clinical testing expenses (as defined in paragraph (b) of this section) for the taxable year. The credit applies to qualified clinical testing expenses paid or incurred by the taxpayer after December 31, 1982, and before January 1, 1991. The credit may not exceed the taxpayer's tax liability for the taxable year (as determined under paragraph (d)(2) of this section).

(b) *Qualified clinical testing expenses*—(1) *In general.* Except as otherwise provided in paragraph (b)(3) of this section, the term "qualified clinical testing expenses" means the amounts which are paid or incurred during the taxable year which would constitute "qualified research expenses" within the meaning of section 41(b) (relating to the credit for increasing research activities) as modified by section 28(b)(1)(B) and paragraph (b)(2) of this section. For example, amounts paid or incurred for the acquisition of depreciable property used in the conduct of clinical testing (as defined in paragraph (c) of this section) are not qualified clinical testing expenses.

(2) *Modification of section 41(b).* For purposes of paragraph (b)(1) of this section, section 41(b) is modified by substituting "clinical testing" for "qualified research" each place it appears in paragraph (2) of section 41(b) (relating to in-house research expenses) and paragraph (3) of section 41(b) (relating to contract research expenses). In addition, "100 percent" is substituted for "65 percent" in paragraph (3)(A) of section 41(b).

(3) *Exclusion for amounts funded by another person*—(i) *In general.* The term "qualified clinical testing expenses" shall not include any amount which would otherwise constitute qualified clinical testing expenses, to the extent such amount is funded by a grant, contract, or otherwise by another person (or any governmental entity). The determination of the extent to which an amount is funded shall be made in light of all the facts and circumstances. For a special rule regarding funding between commonly controlled businesses, see paragraph (d)(5)(iv) of § 1.28–1.

(iii) *Clinical testing in which taxpayer retains no rights.* If a taxpayer conducting clinical testing with respect to the designated drug for another person retains no substantial rights in the clinical testing under the agreement providing for the clinical testing the taxpayer's clinical testing expenses are treated as fully funded for purposes of section 28(b)(1)(C). Thus, for example, if the taxpayer incurs clinical testing expenses under an agreement that confers on another person the exclusive right to exploit the results of the clinical testing, those expenses do not constitute qualified clinical testing expenses because they are fully funded under this paragraph (b)(3)(ii). Incidental benefits to the taxpayer from the conduct of the clinical testing (for example, increased experience in the field of human clinical testing) do not constitute substantial rights in the clinical testing.

(iii) *Clinical testing in which taxpayer retains substantial rights*—(A) *In general.* If a taxpayer conducting clinical testing with respect to the designated drug for another person retains substantial rights in the clinical testing under the agreement providing for the clinical testing, the clinical testing expenses are funded to the extent of the payments (and fair market value of any property at the time of transfer) to which the taxpayer becomes entitled by conducting the clinical testing. The taxpayer shall reduce the amount paid or incurred by the taxpayer for the clinical testing expenses that would, but for section 28(b)(1)(C) constitute qualified clinical testing expenses of the taxpayer by the amount of the funding determined under the preceding sentence. Rights retained in the clinical testing are not treated as property for purposes of this paragraph (b)(3)(iii)(A). If the property that is transferred to the taxpayer is to be consumed in the clinical testing (for example, supplies), the taxpayer should exclude the value of that property from both the payments received and the expenses paid or incurred for the clinical testing.

(B) *Drug by drug determination.* The provisions of this paragraph (b)(3) shall be applied separately to each designated drug tested by the taxpayer.

(iv) *Funding for qualified clinical testing expenses determinable only in subsequent taxable years.* If, at the time the taxpayer files its return for a taxable year, it is impossible to determine to what extent some or all of the qualified clinical testing expenses may be funded, the taxpayer shall treat the clinical testing expenses as fully funded for purposes of that return. When the amount of funding for qualified clinical testing expenses in finally determined, the taxpayer should amend the return and any interim returns to reflect the amount of funding for qualified clinical testing expenses.

(4) *Special rule governing the application of section 41(b) beyond its expiration date.* For purposes of section 23 and this section, section 41(b), as amended, and the regulations thereunder shall be deemed to remain in effect after December 31, 1988.

(c) *Clinical testing*—(1) *In general.* The term "clinical testing" means any human clinical testing which—

(i) Is carried out under an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) and the regulations relating thereto (21 CFR Part 312) for the purpose of testing a drug for a rare disease or condition as defined in paragraph (d)(1) of this section,

(ii) Occurs after the date the drug is designated as a drug for a rare disease or condition under section 526 of the Federal Food, Drug, and Cosmetic Act (21, U.S.C. 360bb),

(iii) Occurs before the date on which an application for the designated drug is approved under section 505(b) of the Federal Food, Drug, and Comestic Act (21 U.S.C. 335(b)) or, if the drug is a biological product (other than a radioactive biological product intended for human use), before the date on which a license for such drug is issued under section 351 of the Public Health Services Act (42 U.S.C. 262), and

(iv) Is conducted by or on behalf of the taxpayer to whom the designation under section 526 of the Federal Food, Drug, and Cosmetic Act applies.

Human clinical testing shall be taken into account under this paragraph (c)(1) only to the extent that the testing relates to the use of a drug for the rare disease or condition for which the drug was designated under section 526 of the

Federal Food, and Cosmetic Act. For purposes of paragraph (c)(1)(i) of this section the testing under section 505(i) exemption procedures (21 CFR part 312) of a biological product (other than a radioactive biological product intended for human use) pursuant to 21 CFR 601.21 is deemed to be carried out under an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act.

(2) *Definition of "human clinical testing."* Testing is considered to be human clinical testing only to the extent that it uses human subjects to determine the effect of the designated drug on humans and is necessary for the designated drug either to be approved under section 505(b) of the Federal Food, Drug, and Cosmetic Act and the regulations thereunder (21 CFR Part 314), or if the designated drug is a biological product (other than a radioactive biological product intended for human use), to be licensed under section 351 of the Public Health Services Act and the regulations thereunder (21 CFR Part 601). For purposes of this parargraph (c)(2), a human subject is an individual who is a participant in research, either as a recipient of the drug or as a control. A subject may be either a health individual or a patient.

(3) *Definition of "carried out under" section 505(i).* Human clinical testing is not carried out under section 505(i) of the Federal Food, Drug, and Cosmetic Act and the regulations thereunder (21 CFR Part 312) unless the primary purpose of the human clinical testing is to ascertain the data necessary to qualify the designated drug for sale in the United States, and not to ascertain data unrelated or only incidentally related to that needed to qualify the designated drug. Whether or not this primary purpose test is met shall be determined in light of all of the facts and circumstances.

(d) Definition and special rules—(1) Definition of "rare disease or condition"—(i) In general. The term "rare disease or condition" means any disease or condition which—

(A) Afflicts 200,000 or fewer persons in the United States, or

(B) Afflicts more than 200,000 persons in the United States but for which there is no reasonable expectation that the cost of developing and making available in the United States (as defined in section 7701(a)(9)) a drug for such disease or condition will be recovered from sales in the United States (as so defined) or such drug.

Determinations under paragraph (d)(1)(i)(B) of this section with respect to any drug shall be made on the basis of the facts and circumstances as of the date such drug is designated under section 526 of the Federal Food, Drug, and Cosmetic Act. Examples of diseases or conditions which in 1987 afflicted 200,000 or fewer persons in the United States are Duchenne dystrophy, one of the muscular dystrophies; Huntington's disease, a hereditary chorea; myoclonus; Tourette's syndrome; and amyotrophic lateral sclerosis (ALS or Lou Gehrig's disease).

(ii) *Cost of developing and making available the designated drug*—(A) *In general.* Except as otherwise provided in this subdivision, the taxpayer's computation of the cost of developing and making available in the United States the designated drug shall include only the costs that the taxpayer (or any person whose right to make sales of the drug is directly or indirectly derived from the taxpayer, e.g., a licensee or transferee) has incurred or reasonably expects to incur in developing and making available in the United States the designated drug for the disease or condition for which it is designated. For example, if, prior to designation under section 526, the taxpayer incurred costs of $125,000 to test the drug for the rare disease or condition for which it is subsequently designated and incurred $500,000 to test the same drug for other diseases, and if, on the date of designation, the taxpayer expects to incur costs of $1.2 million to test the drug for the rare disease or condition for which it is designated, the taxpayer shall include in its cost computation both the $125,000 incurred prior to designation and the $1.2 million expected to be incurred after designation to test the drug for the rare disease or condition for which it is designated. The taxpayer shall not include the $500,000 incurred to test the drug for other diseases.

(B) *Exclusion of costs funded by another person.* In computing the cost of developing and making available in the United States the designated drug, the taxpayer shall not include any cost incurred or expected to be incurred by the taxpayer to the extent that the cost is funded or is reasonably expected to be funded (determined under the principles of paragraph (b)(3)) by a grant, contract, or otherwise by another person (or any governmental entity).

(C) *Computation of cost.* The cost computation shall use only reasonable costs incurred after the first indication of an orphan application for the designated drug. Such costs shall include the costs of obtaining data needed, and of meetings to be held, in connection with a request for FDA assistance under section 525 of the Federal, Food, Drug, and Cosmetic Act (21 U.S.C. 360aa) or a request for orphan designation under section 526 of that Act; costs of determining patentability of the drug; costs of screening, animal and clinical studies; costs associated with preparation of a Notice of Claimed Investigational Exemption for a New Drug (IND) and a New Drug Application (NDA); costs of possible distribution of drug under a "treatment" protocol; costs of development of a dosage form; manufacturing costs; distribution costs; promotion costs; costs to maintain required records and reports; and costs of the taxpayer in acquiring the right to market a drug from the owner of that right prior to designation. The taxpayer shall also include general overhead, depreciation costs and premiums for insurance against liability losses to the extent that the taxpayer can demonstrate that these costs are properly allocable to the designated drug under the established standards of financial accounting and reporting of research and development costs.

(D) *Allocation of common costs.Costs for developing and making available the designated drug for both the disease or condition for which it is designated and one or more other diseases or conditions.* In the case where the costs incurred or expected to be incurred in developing and making available the designated drug for the disease or condition for which it is designated are also incurred or expected to be incurred in developing and making available in the United States the same drug for one or more other diseases or conditions (whether or not they are also designated or expected to be designated), the costs shall be allocated between the cost of developing and making available the designated drug for the disease or condition for which the drug is designated and the cost of developing and making available the designated drug for the other diseases or conditions. The amount of the common costs to be allocated to the cost of developing and making available the designated drug for the disease or condition for which it is designated is determined by multiplying the common costs by a fraction the numerator of which is the sum of the expected amount of sales in the United States of the designated drug for the disease or condition for which the drug is designated and the denominator of which is the total expected amount of sales in the United States of the designated drug. For example, if prior to designation, the taxpayer incurs (among other costs) costs of $100,000 in testing the designated drug for its toxic effect on animals (without reference to any

disease or condition), and if the taxpayer expects to recover $500,000 from sales in the United States of the designated drug for disease X, the disease for which the drug is designated, and further expects to recover another $1.5 million from the sales in the United States of the designated drug for disease Y, the taxpayer must allocate a proportionate amount of the common costs of $100,000 to the cost of developing and making available the designated drug for both disease X and disease Y. Since the ratio of the expected amount of sales in the United States of the designated drug for disease X to the total of both the expected amount of sales in the United States of the designated drug for disease X and the expected amount of sales in the United States of the designated drug for disease Y is $500,000/$2,000,000 25% of the common costs of $100,000 (*i.e.*, $25,000) is allocated to the cost of developing and making available the designated drug for disease X.

(iii) *Recovery from sales.* In determining whether the taxpayer's cost described in paragraph (d)(1)(ii) of this section will be recovered from sales in the United States of the designated drug for the disease or condition for which the drug is designated, the taxpayer shall include anticipated sales by the taxpayer or any person whose right to make such sales is directly or indirectly derived from the taxpayer (such as a licensee or transferee). The anticipated sales shall be based upon the size of the anticipated patient population for which the designated drug would be useful, including the following factor: the degree of effectiveness and safety of the designated drug, if known: the projected fraction of the anticipated patient population expected to be given the designated drug and to continue to take it; other available agents and other types of therapy the likelihood that superior agents will becom available within a few years; and the number of years during which the designated drug would be exclusively available, *eg.*, under a patent.

(iv) *Recordkeeping requirements.* The taxpayer shall keep records sufficient to substantiate the cost and sales estimates made pursuant to this paragraph (d)(1). The records required by this paragraph (d)(1)(iv) shall be retained so long as the contents thereof may become material in the administration of section 28.

(2) *Tax liability limitation*—(i) *Taxable years beginning after December 31, 1986.* The credit allowed by section 28 shall not exceed the excess (if any) of—

(A) The taxpayer's regular tax liability for the taxable year (as defined in section 26(b)), reduced by the sum of the credits allowable under—

(*1*) Section 21 (relating to expenses for household and dependent care services necessary for gainful employment),

(*2*) Section 22 (relating to the elderly and permanently and totally disabled),

(*3*) Section 23 (relating to residential energy),

(*4*) Section 25 (relating to interest on certain home mortgages), and

(*5*) Section 27 (relating to taxes on foreign countries and possessions of the United States), over

(B) The tentative minimum tax for the taxable year (as determined under section 55(b)(1)).

(ii) *Taxable years beginning before January 1, 1987, and after December 31, 1983.* The credit allowed by section 28 shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 26 (b) prior to its amendment by the Tax Reform Act of 1986 (Pub. L. 99–514)), reduced by the sum of the credits allowable under—

(A) Section 21 (relating to expenses for household dependent care services necessary for gainful employment),

(B) Section 22 (relating to the elderly and permanently and totally disabled),

(C) Section 23 (relating to residential energy),

(D) Section 24 (relating to contributions to candidates for public office),

(E) Section 25 (relating to interest on certain home mortgages), and

(F) Section 27 (relating to the taxes on foreign countries and possessions of the United States).

(iii) *Taxable years beginning before January 1, 1984.* The credit allowed by section 28 shall not exceed the amount of the tax imposed by chapter 1 of the Internal Revenue Code for the taxable year, reduced by the sum of the credits allowable under the following sections as designated prior to the enactment of the Tax Reform Act of 1984 (Pub. Law 98–369):

(A) Section 32 (relating to tax withheld at source on nonresident aliens and foreign corporations and on tax-free convenant bonds),

(B) Sections 33 (relating to taxes of foreign countries and possessions of the United States),

(C) Section 37 (relating to the retirement income),

(D) Section 38 (relating to investment in certain depreciable property),

(E) Section 40 (relting to expenses of work incentive programs),

(F) Section 41 (relating to contributions to candidates for public office),

(G) Section 44 (relating to purchase of new principal residence),

(H) Section 44A (relating to expenses for household and dependent care services necessary for gainful employment),

(I) Section 44B (relating to employment of certain new employees),

(J) Section 44C (relating to residential energy),

(K) Section 44D (relating to producing fuel from a nonconventional source),

(L) Section 44E (relating to alcohol used as fuel),

(M) Section 44F (relating to increasing research activities), and

(N) Section 44G (relating to employee stock ownership).

The term "tax imposed by chapter 1" as used in this paragraph (d)(2)(iii) does not include any tax treated as not imposed by chapter 1 of the Internal Revenue Code under the last sentence of section 53(a)

(3) *Special limitations on foreign testing—(i) Clinical testing conducted outside of the United States— In general.* Except as otherwise provided in this paragraph (d)(3), expenses paid or incurred with respect to clinical testing conducted outside the United States (as defined in section 7701(a)(9)) are not eligible for credit under this section. Thus, for example, wages paid an employee clinical investigator for clinical testing conducted in medical facilities in the United States and Mexico generally must be apportioned between the clinical testing conducted within the United States and the clinical testing conducted outside the United States, and only the wages apportioned to the clinical testing conducted within the United States are qualified clinical testing expenses.

(ii) *Insufficient testing population in the United States*—(A) *In general.* If clinical testing is conducted outside of the United States because there is an insufficient testing population in the United States, and if the clinical testing is conducted by a United States person (as defined in section 7701(a)(30)) or is conducted by any other person unrelated to the taxpayer to whom the designation under section 526 of the Federal Food, Drug, and Cosmetic Act applies, then the expenses paid or incurred for clinical testing conducted outside of the United States are eligible for the credit provided by section 28.

(B) "*Insufficient testing population.*" The testing population in the United States is insufficient if there are not within the United States the number of

available and appropriate human subjects needed to produce reliable data from the clinical investigation.

(C) "*Unrelated to the taxpayer.*" For the purpose of determining whether a person is unrelated to the taxpayer to whom the designation under section 526 of the Federal Food, Drug, and Cosmetic Act and the regulations thereunder applies, the rules of section 613A(d)(3) shall apply except that the number "5" in section 613A(d)(3) (A), (B), and (C) shall be deleted and the number "10" inserted in lieu thereof.

(4) *Special limitations for certain corporations*—(i) *Corporations to which section 936 applies.* Expenses paid or incurred for clinical testing conducted either inside or outside the United States by a corporation to which section 936 (related to Puerto Rico and possessions tax credit) applies are not eligible for the credit under section 28.

(ii) *Corporations to which section 934(b) applies.* For taxable years beginning before January 1, 1987, expenses paid or incurred for clinical testing conducted either inside or outside the United States by a corporation to which section 934(b) (relating to the limitation on reduction in income tax liability incurred to the Virgin Islands), as in effect prior to its amendment by the Tax Reform Act of 1986, applies are not eligible for the credit under section 28. For taxable years beginning after December 31, 1986, see section 1277(c)(1) of the Tax Reform Act of 1986 (100 Stat. 2600) which makes the rule set forth in the preceding sentence inapplicable with respect to corporations created or organized in the Virgin Islands only if (and so long as) an implementing agreement described in that section is in effect between the United States and the Virgin Islands.

(5) *Aggregation of expenditures—(i) Controlled group of corporations; organizations under common control*—(A) *In general.* In determining the amount of the credit allowable with respect to an organization that at the end of its taxable year is a member of a controlled group of corporations or a member of a group of organizations under common control, all members of the group are treated as a single taxpayer and the credit (if any) allowable to the member is determined on the basis of its proportionate share of the qualified clinical testing expenses of the aggregated group.

(B) *Definition of controlled group of corporations.* For purposes of this section, the term "controlled group of corporations" shall have the meaning given to the term by section 41(f)(5).

(C) *Definition of organization.* For purposes of this section, an organization is a sole proprietorship, a partnership, a trust, an estate, or a corporation, that is carrying on a trade or business (within the meaning of section 162). For purposes of this section, any corporation that is a member of a commonly controlled group shall be deemed to be carrying on a trade or business if any other member of that group is carrying on any trade or business.

(D) *Determination of common control.* Whether organizations are under common control shall be determined under the principles set forth in paragraphs (b)–(g) of 26 CFR § 1.52–1.

(ii) *Tax accounting periods used*—(A) *In general.* The credit allowable to a member of a controlled group of corporations or a group of organizations under common control is that member's share of the aggregate credit computed as of the end of such member's taxable year.

(B) *Special rule where the timing of clinical testing is manipulated.* If the timing of clinical testing by members using different tax accounting periods is manipulated to generate a credit in excess of the amount that would be allowable if all members of the group used the same tax accounting period, the district director may require all members of the group to calculate the credit in the current taxable year and all future years by using the "conformed years" method. Each member computing a credit under the "conformed years" method shall compute the credit as if all members of the group had the same taxable year as the computing member.

(iii) *Membership during taxable year in more than one group.* An organization may be a member of only one group for a taxable year. If, without application of this paragraphs (d)(5)(iii), an organization would be a member of more than one group at the end of its taxable year, the organization shall be treated as a member of the group in which it was included for its preceding taxable year. If the organization was not included for its preceding taxable year in any group in which it could be included as of the end of its taxable year, the organization shall designate in its timely filed return the group in which it is being included. If the return for a taxable year is due before May 1, 1985, the organization may designate its group membership through an amended return for that year filed on or before April 30, 1985. If the organization does not so designate, then the district director with audit jurisdiction of the return will determine the group in which the business is to be included.

(iv) *Intra-group transactions.* (A) *In general.* Because all members of a group under common control are treated as a single taxpayer for purposes of determining the credit, transactions between members of the group are generally disregarded.

(B) *In-house research expenses.* If one member of a group conducts clinical testing on behalf of another member, the member conducting the clinical testing shall include in its qualified clinical testing expenses any in-house research expenses for that work and shall not treat any amount received or accrued from the other member as funding the clinical testing. Conversely, the member for whom the clinical testing is conducted shall not treat any part of any amount paid or incurred as a contract research expense. For purposes of determining whether the in-house research for that work is clinical testing, the member performing the clinical testing shall be treated as carrying on any trade or business carried on by the member on whose behalf the clinical testing is performed.

(C) *Contract research expenses.* It a member of a group pays or incurs contract resarch expenses to a person outside the group in carrying on the member's trade or business, that member shall include those expenses as qualified clinical testing expenses. However, if the expenses are not paid or incurred in carrying on any trade or business of that member, those expenses may be taken into account as contract research expenses by another member of the group provided that the other member—

(*1*) Reimburses the member paying or incurring the expenses, and

(*2*) Carries on a trade or business to which the clinical testing relates.

(D) *Lease payments.* Amounts paid or incurred to another member of the group for the lease of personal property owned by a person outside the group shall be taken into account as in-house research expenses for purposes of section 28 only to the extent of the lesser of—

(*1*) The amount paid or incurred to the other member, or

(*2*) The amount of the lease expense paid to a person outside the group.

The amount paid or incurred to another member of the group for the lease of personal property owned by a member of the group is not taken into account for purposes of section 28.

(E) *Payment for supplies.* Amounts paid or incurred to another member of the group for supplies shall be taken into account as in-house research expenses for purposes of section 28 only to the extent of the lesser of—

(*1*) The amount paid or incurred to the other member, or

(2) The amount of the other member's basis in the supplies.

(6) *Allocations*—(i) *Pass-through in the case of an S corporation.* In the case of an S corporation (as defined in section 1361), the amount of the credit for qualified clinical testing expenses computed for the corporation for any taxable year shall be allocated among the persons who are shareholders of the corporation during the taxable year according to the provisions of section 1366 and section 1377.

(ii) *Pass-through in the case of an estate or a trust.* In the case of an estate or a trust, the amount of the credit for qualified clinical testing expenses computed for the estate or trust for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(iii) *Pass-through in the case of a partnership*—(A) *In general.* In the case of a partnership, the credit for qualified clinical testing expenses computed for the partnership for any taxable year shall be apportioned amount the persons who are partners during the taxable year in accordance with section 704 and the regulations thereunder.

(B) *Certain partnership non-business expenditures.* A partner's share of an in-house research expense or contract research expense paid or incurred by a partnership other than in carrying on a trade or business of the partnership constitutes a qualified clinical testing expense of the partner if—

(1) The partner is entitled to make independent use of the result of the clinical testing, and

(2) The clinical testing expense paid or incurred in carrying on the clinical testing would have been paid or incurred by the partner in carrying on a trade or business of the partner if the partner had carried on the clinical testing that was in fact carried on by the partnership.

(C) *Apportionment.* Qualified clinical testing expenses to which paragraph (d)(6)(iii)(B) of this section applies shall be apportioned among the persons who are partners during the taxable year in accordance with section 704 and the regulations thereunder. For purposes of section 28, these expenses shall be treated as paid or incurred directly by the partners rather than by the partnership. Thus, the partnership shall disregard these expenses in computing the credit to be apportioned under paragraph (d)(6)(iii)(A) of this section, and each partner shall aggregate the portion of these expenses allocated to the partner with other qualified clinical testing expenses of the partner in making the computations under section 28.

(iv) *Year in which taken into account.* An amount apportioned to a person under paragraph (d)(6) of this section shall be taken into account by the person in the taxable year of such person in which or with which the taxable year of the corporation, estate, trust, or partnership (as the case may be) ends.

(v) *Credit allowed subject to limitation.* Any person to whom any amount has been apportioned under paragraph (d)(6)(i), (ii), or (iii) of this section is allowed, subject to the limitation provided in section 28(d)(2), a credit for that amount.

(7) *Manner of making an election.* To make an election to have section 28 apply for its taxable year, the taxpayer shall file Form 6765 (Credit for Increasing Research Activities (or for claiming the orphan drugs credit)) containing all the information required by that form.

Par. 3. A new §1.280C–3 is added to read as follows:

§ 1.280C–3 Disallowance of certain deductions for qualified clinical testing expenses when section 28 credit is allowable.

(a) *In general.* If a taxpayer is entitled to a credit under section 28 for qualified clinical testing expenses (as defined in section 28(b)), it must reduce the amount of any deduction for qualified clinical testing expenses paid or incurred in the year the credit is earned by the amount allowable as credit for such expenses (determined without regard to section 28(d)(2)).

(b) *Capitalization of qualified clinical testing expenses.* In a case in which qualified clinical testing expenses are capitalized, the amount chargeable to the capital account for a taxable year must be reduced by the excess of the amount of the credit allowable for the taxable year under section 28 (determined without regard to section 28(d)(2)) over the amount allowable as a deduction for qualified clinical testing expenses (determined without regard to paragraph (a) of this section) for the taxable year. See section 174 and the regulations thereunder.

(c) *Controlled group of corporations; organizations under common control.* In the case of a taxpayer described in paragraph (d)(5) of § 1.28–1 of this chapter (relating to controlled groups of corporations and organizations under common control), paragraphs (a) and (b) of this section shall be applied in accordance with the rules prescribed for aggregation of expenditures under that paragraph.

(d) *Example.* The following example illustrates the application of paragraphs (a) and (b) of this section:

Example. A incurs $1,000 in clinical testing expenses for which a $500 credit is allowable under section 28. A also elects under section 174 of the Code to amortize these expenses over a 5-year period beginning in the year the credit is claimed. Under paragraph (a), the current year amortization deduction of $200 ($1,000÷5) is disallowed. Moreover, the amount which would otherwise be capitalized, $800, is reduced by the excess of the amount of the section 28 credit claimed for the taxable year over the amount of the allowable section 174 amortization deduction for the taxable year, or $300 ($500–$200). Thus, the amount chargeable to the capital account for the taxable year is $500 ($800–$300). A is entitled to amortize $500 over the remaining amortization period resulting in a deduction of $125 for each of the remaining four years.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.28–1 * * * 1545–0619."

This Treasury decision includes amendments that conform the regulations to the amendments made to section 28 of the Internal Revenue Code of 1986 by the Tax Reform Act of 1986. The rules prescribed reflecting these changes are interpretative. For this reason and because there is need for immediate guidance with respect to the subject addressed in this Treasury decision, it is found impracticable to issue those added rules of this Treasury decision with notice and public procedure under section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: August 19, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–22375 Filed 9–30–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 1285

[DLAR 5400.14]

Defense Logistics Agency Freedom of Information Act Program

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule.

SUMMARY: This revision supplements a final rule (53 FR 27962) published on July 26, 1988, 32 CFR Part 1285—"Defense Logistics Agency Freedom of Information Act Program" to reflect procedural guidance on the disclosure of information related to commercial activities cost studies at paragraph 1285.8(e).

EFFECTIVE DATE: October 3, 1988.

ADDRESS: Headquarters, Defense Logistics Agency, ATTN: DLA–XAM, Cameron Station, Alexandria, Virginia 22304–6100.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, (202) 274–6234.

SUPPLEMENTARY INFORMATION: The DLA Charter has been published in 32 CFR Part 359.

List of Subjects in 32 CFR Part 1285

Freedom of Information.

Accordingly, Title 32 of the Code of Federal Regulations is amended as follows:

PART 1285—DEFENSE LOGISTICS AGENCY FREEDOM OF INFORMATION ACT PROGRAM

1. The authority citation for part 1285 continues to read as follows:

Authority: Title 5, U.S.C. 552, as amended by Pub. L. 93–502.

2. Section 1285.8 paragraphs (e), (f), and (g) are redesignated as paragraphs (f), (g), and (h). A new paragraph (e) is added to read as follows:

§ 1285.8 Procedures

* * * * *

(e) Disclosure of information Related to Commercial Activities Cost Studies. DLA activities must exercise special care in disclosure review of information relevant to a commercial activities cost study to assure protection of the Government's commercial interests while providing potential contractors and others the information required for a full understanding of the nature and quantity of work to be performed under commercial activities contracts. Requests for such information arise both within and outside the procurement context, and careful coordination with cognizant staff officials is required for appropriate determinations.

(1) The central issue in the disclosure of this information is its relationship to the management study determining the Most Efficient Organization (MEO), i.e., the study forming the basis of the Government estimate for the cost comparision with potential contractors. Under exemption 5 (see § 1285.3(e)(4)(v)), there is a qualified privilege permitting withholding of confidential commercial information generated by the Government for use in the contract award process. Examples of information potentially covered by the exemption include the in-house cost estimate, the management study that developed the MEO, proposed staffing for the MEO, and budget data for the activity showing personnel or operating costs based on the MEO. Information on actual or prospective Government actions related to the implementation of the MEO may also fall within the exemption. Such information may be withheld under this exemption prior to the final cost comparison decision provided that:

(i) The information has not been previously released to the general public, and

(ii) Premature disclosure of the information would cause the Government significant competitive harm.

(2) Current and historical cost data pertaining to an activity and not based on the Government's MEO ordinarily falls outside the scope of the exemption. Such data and other information, such as information on past, current, and projected functions and workloads necessary for the fair and adequate preparation of bids or offers based on performance work statements within solicitations, and current or former operating procedures, should be provided promptly in response to requests unless other disclosure exemptions of this regulation apply.

* * * * *

Appendix G—[Amended]

3. Appendix G is amended by redesignating § 1285.8 paragraphs (e), (f), and (g) as paragraphs (f), (g), and (h) and by adding a new paragraph (e) "Disclosure of Information Related to Commercial Activities Cost Studies".

For the Director.

Preston B. Speed,

Chief, Administrative Management Branch.

[FR Doc. 88–22600 Filed 9–30–88; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 88–030]

Special Local Regulations: City of Fort Lauderdale Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the City of Fort Lauderdale Regatta Hydroplane Race. The event will be held on October 8th, 9th and 10th, 1988 from 9:00 a.m. e.d.t. to 6:00 p.m. e.d.t. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective on October 8th, 1988 at 9:00 a.m. e.d.t. and terminate on October 10th, 1988 at 6:00 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: LTJG S. D. DONALD (305) 535–4304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LTJG, S. D. Donald, project officer, USCG Group Miami and LCDR S. T. Fuger, Jr. project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

The City of Fort Lauderdale Regatta Hydroplane Races are high performance power boat races, involving race boats ranging from 15 to 22 feet with capabilities of reaching 100 MPH. Fifty vessels are expected to participate and an additional 100 spectator craft are expected to view the race.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In Consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation of for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.2.

2. A temporary section 100.35–774 is added as follows:

§ 100.35–774 The City of Fort Lauderdale Regatta Hydroplane Races.

(a) Regulated area. (1) The regulated area will be all navigable waters of the Intracoastal Waterway (ICW), from immediately north of the Las Olas Bridge (approximate position 26–07.8N, 80–22.2W) proceeding north for a distance 1000 yards in the New River Sound to the northeast point of the Nurmi Isles.

(b) *Special Local Regulations.* (1) Entry into the regulated area is prohibited unless authorized by the patrol commander.

(2) All vessels on the regulated area will follow the directions of the patrol commander and will proceed at no more than 5 MPH when passing the regulated area.

(3) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessels to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) Effective Date: These regulations become effective on October 8th, 1988 from 9:00 a.m. e.d.t. and terminate on October 10th, 1988 at 6:00 p.m. e.d.t.

Dated: September 19, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard Guard Commander, Seventh Coast District.

[FR Doc. 88–22713 Filed 9–30–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD13 88–20]

Drawbridge Operation Regulations; Youngs Bay and Lewis and Clark River, OR

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Oregon Department of Transportation (ODOT), the Coast Guard is changing the regulations for the New Youngs Bay bridge across Youngs Bay, mile 0.7, the Old Youngs Bay bridge, mile 2.4, and the Lewis and Clark River bridge across the Lewis and Clark River, mile 1.0, at Astoria, Oregon. This change requires at least one half hour's advance notice to be given for opening the Old Youngs Bay and the Lewis and Clark River bridges at all times. Between the hours of 9:00 p.m. and 5:00 a.m. one half hour's advance notice is required for opening the New Youngs Bay bridge. The New Youngs Bay bridge will have a person continuously on duty except for those times when the operator must be absent to open one of the other bridges subject to this regulation. The Lewis and Clark River bridge will have an operator in attendance only from 5:00 a.m. to 9:00 p.m. and the Old Youngs Bay bridge will not have an operator in attendance. Between the hours of 5:00 a.m. and 9:00 p.m. requests for opening the Old Youngs Bay bridge must be made to the operator of the Lewis and Clark River bridge. Between 9:00 p.m. and 5:00 a.m. requests shall be made to the drawtender of the New Youngs Bay bridge. The same operator will also open the Lewis and Clark River bridge between 9:00 p.m. and 5:00 a.m. During these same night hours, one half hour's notice will also be required for opening the New Youngs Bay bridge. This change is being made because of a steady decrease in requests for openings of the affected draws. This action will relieve the bridge owner of the burden of having persons constantly available on drawbridges that are infrequently opened for vessels and should still provide for the reasonable needs of navigation.

The regulation for the Burlington Northern railroad bridge across Youngs Bay at mile 0.8 is revoked since the bridge has been removed.

EFFECTIVE DATE: This regulation becomes effective November 2, 1988.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 442–5864).

SUPPLEMENTARY INFORMATION: On July 1, 1988, the Coast Guard published a proposed rule (53 FR 24958) concerning this amendment. The Commander, Thirteenth Coast Guard District, also published the proposal as a public notice dated July 12, 1988. In each notice interested persons were given until August 15, 1988, to submit comments.

Drafting Information

The drafters of these regulations are Austin Pratt, project officer, and Lawrence I. Kiern, project attorney.

Discussion of Comments

Three letters of comment were received concerning the proposed rule. The U.S. Fish and Wildlife Service offered no objection to the rule change. A local shipyard objected to removing the bridgetender from the Old Youngs Bay bridge if opening delays of greater than thirty minutes would be incurred. The proposed regulations would not impose an undue delay in providing access to the shipyard. The third letter of comment pointed out two errors in the proposed rule. Youngs Bay and the Lewis and Clark River were wrongly placed in Washington in the subject heading instead of Oregon. In the text the proper location was given. The sound signal for requesting the opening of the New Youngs Bay bridge was incorrectly described as two prolonged blasts followed by a single short blast. The established signal requires two short blasts to follow the two prolonged blasts. The existing signal will remain in effect.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that a full regulatory evaluation is unnecessary. Navigation and marine related businesses will be minimally affected by the one half hour advance notice for openings because openings can be planned for and scheduled accordingly. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. Section 117.899 is revised to read as follows:

§ 117.899 Youngs Bay and Lewis and Clark River.

(a) The draw of the US101 (New Youngs Bay) highway bridge, mile 0.7, across Youngs Bay at Smith Point, shall open on signal for the passage of vessels

from 5 a.m. to 9 p.m. At all other times the draw shall open on signal if at least one half hour's notice is given to the drawtender at the New Youngs Bay bridge by marine radio, telephone, or other suitable means. The opening signal is two prolonged blasts followed by two short blasts.

(b) The draw of the Oregon State (Old Youngs Bay) highway bridge, mile 2.4, across Youngs Bay at the foot of Fifth Street, shall open on signal if at least one half hour's notice is given. Requests shall be made to the drawtender at the Lewis and Clark River bridge by marine radio, telephone or other suitable means between the hours of 5 a.m. and 9 p.m. At all other times the request shall be made to the operator of the New Youngs Bay bridge. The opening signal is two prolonged blasts followed by one short blast.

(c) The draw of the Oregon State highway bridge, mile 1.0, across the Lewis and Clark River, shall open on signal if at least one half hour's notice is given from 5 a.m. to 9 p.m. At all other times requests for opening shall be given to the operator of the New Youngs Bay bridge by marine radio, telephone, or other suitable means at least one half hour in advance. The opening signal is one prolonged blast followed by four short blasts.

Dated: September 19, 1988.

R.E. Kramek,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 88-22694 Filed 9-30-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD7 87-38]

Security Zone; Port Canaveral Harbor, Cape Canaveral, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a Security Zone in the East (TRIDENT) Basin at Cape Canaveral Air Force Base, and the Middle Basin adjacent to the Navy wharf at Cape Canaveral Air Force Base, Port Canaveral Harbor, Florida, to protect naval facilities and vessels moored thereto from destruction, loss or injury from sabotage or other subversive acts, accidents or similar causes. The U. S. Navy has reason to believe that sufficient threat exists to justify establishment of these security zones.

EFFECTIVE DATE: November 2, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander H. Henderson. Tel: (904) 791-2648.

SUPPLEMENTARY INFORMATION: On November 6, 1987 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (52 FR 42683). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of these regulations are Lieutenant (junior grade) K. L. Rhodes, project officer, for the Captain of the Port Jacksonville, FL, and Lieutenant Commander S. T. Fuger, Jr., project attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

No objections were received in response to the notice.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The established zones do not impinge upon the ship channel, nor is there likely to be any significant impact upon recreational boating, or on recreational or commercial fishing.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

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

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.705 is added to read as follows:

§ 165.705 Is Port Canaveral Harbor, Cape Canaveral, Florida.

(a) Security Zone A—East (TRIDENT) Basin, Port Canaveral Harbor, at Cape Canaveral Air Force Station, Brevard County, Florida. From the west side of the access channel at latitude 28°24'36"N, longitude 080°35'36"W, to include the entire basin.

(b) Security Zone B—Middle Basin, Port Canaveral Harbor, adjacent to the Navy wharf at Cape Canaveral Air Force Station, Brevard County, Florida. The waters of Port Canaveral Harbor within a line circumscribing the water approaches to the Navy wharf along the northeasterly edge of the Port Canaveral Harbor turning basin at a distance of 200 feet from all portions of the wharf including the dolphins located 200 feet off the northwest end and 75 feet of the southeast end of the wharf.

(c) Entrance into these zones by vessels other than vessels owned or leased by the United States is prohibited without permission of the Captain of the Port, Jacksonville, Florida.

(d) The general regulations governing security zones contained in 33 CFR 165.33 apply.

Dated: September 15, 1988.

R.J. O'Pezio,

Captain, U. S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 88-22715 Filed 9-30-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD7 87-22]

Security Zone; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a Security Zone on the north bank of the St. Johns River at the junction of Brill's Cut Range and Broward Point Turn: said zone to be activated by the Captain of the Port, Jacksonville, Florida, at the request of Commander, Fast Sealift Squadron ONE, should a threat arise. This security zone is necessary for the protection of vital United States assets aboard Fast Sealift ships layberthed at Sealift Terminals.

EFFECTIVE DATE: November 2, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander H. Henderson, Tel: (904) 791-2648.

SUPPLEMENTARY INFORMATION: On September 3, 1987 the Coast Guard

published a notice of proposed rulemaking in the **Federal Register** for these regulations (52 FR 33436). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of these regulations are Lieutenant (junior grade) K.L. Rhodes, project officer, for Captain of the Port, Jacksonville, FL, and Lieutenant Commander S.T. Fuger, project attorney, Seventh Coast Guard Legal Office.

Discussion of Comments

No objections were received in response to the notice.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11024; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Vessels transiting the St. Johns River at Brill's Cut Range and Broward Point Turn will be unaffected by the establishment of the zone, as it does not impede navigation in the channel. Since the security zone will be activated only if a security threat is perceived, only minor delays to other mariners can be foreseen.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

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

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

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

2. Section 165.710 is added to read as follows:

§ 165.710 is St. Johns River, Jacksonville, Florida.

(a) The water, land, and land and water located within the following area is established as a security zone when activated by the Captain of the Port, Jacksonville, Florida: the north bank of the St. Johns River at the junction of Brill's Cut Range and Broward Point Turn, centered at Latitude 30°24'25"N, Longitude 081°34'55"W, including 800 feet of the north bank in each direction (1600 feet total) up and down river from this position (as defined by a corrugated steel bulkhead which extends in a southeasterly direction along the north bank commencing at the entrance to Dunn's Creek) and extending offshore to the northern edge of the ship channel, and extending onshore approximately 300 feet to a steel chain-link fence.

(b) When the security zone is activated, no unauthorized persons shall enter this zone and no unauthorized water craft shall approach ships that are berthed within this zone, nor shall any unauthorized vessel moor alongside the corrugated steel bulkhead anywhere within the security zone.

(c) The general regulations governing security zones contained in 33 CFR 165.33 apply.

(d) Captain of the Port, Jacksonville, Florida, will activate the security zone by means of locally promulgated notices.

Dated: September 15, 1988.

R.J. O'Pezio,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 88–22714 Filed 9–30–88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3456-2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: On April 10, 1987 (52 FR 11696), USEPA reproposed rulemaking on the Indiana lead plan. This notice stated that the Indiana Lead Rule, 325 IAC 15–1, had to be revised to provide an enforceable mechanism to prevent Quemetco, Inc. (Marion County) and other small sources from increasing their lead emissions above 5 tons/year.

In order to comply with this on February 3, 1988, the State submitted to USEPA an amended 325 IAC 15–1. The amendments include site-specific emission limits, a fugitive dust control plan, and an operation and maintenance (O&M) program for Quemetco, Inc. They also require O&M programs and fugitive dust control plans for Exide Corporation in Logansport, C and D Power System in Attica, and General Battery Corporation in Frankfort.

On April 19, 1988 (53 FR 12906), USEPA published a notice of proposed rulemaking on the Indiana lead plan for these four lead sources. During the public comment period, USEPA received one comment from a member of the public. USEPA has reviewed the comments and determined that the Indiana lead SIP revision for the four sources is approvable. Therefore, USEPA approves the amended Indiana lead rule and plans for Quemetco, Inc., Exide Corporation, C and D Power System, and General Battery Corporation. USEPA's action is based upon a revision which was submitted by the State to satisfy section 110 of the Clean Air Act (Act).

EFFECTIVE DATE: This final rulemaking becomes effective on November 2, 1988.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Anne E. Tenner, at (312) 353–3849, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

A copy of today's revision to the Indiana SIP is available for inspection at U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 353–3849.

SUPPLEMENTARY INFORMATION: On April 10, 1987 (52 FR 11696), USEPA published a notice of proposed rulemaking on the Indiana lead plan. This notice stated that the Indiana lead rule, 325 IAC 15–1, had to be revised to provide an enforceable mechanism to prevent Quemetco, Inc. (Marion County) and other smaller sources from increasing their lead emissions above 5 tons/year.

In order to comply with the requirement on July 17, 1987, the State submitted to USEPA a revised draft rule which would amend rule 325 IAC 15–1. The amendments include site-specific emission limits, a fugitive dust control plan, and an O&M program for Quemetco, Inc. The amended rule also required an O&M program and fugitive dust control plan for Exide Corporation in Logansport, C and D Batteries in Attica, and General Battery Corporation in Frankfort. The State requested that the amended rule by "parallel processed" for approval as a SIP revision. The amended rule, was revised,[1] as resubmitted to USEPA on February 3, 1988, after it had been promulgated by the State.

On April 19, 1988 (53 FR 12906), USEPA published a notice of proposed rulemaking on the February 3, 1988, Indiana lead Plan for Quemetco, Inc., and the three other lead sources [Exide Corporation in Logansport, C and D (Batteries) Power System in Attica, and General Battery Corporation in Frankfort].

USEPA received comments on the notice from one commentor, Quemetco, Inc.

1. *Comment:* USEPA's reference to Quemetco as "RSR—Quemetco" is incorrect. In future references, USEPA should identify the company as "Quemetco, Inc.".

Response: As requested, USEPA acknowledges the error and will in the future identify the company as "Quemetco, Inc."

2. *Comment:* The source-specific limitations applicable to Quemetco, Inc., were repealed by the Indiana Air Pollution Control Board (APCB) and are null and void as a matter of State law. The emission limits thus are not "enforceable" under section 110(a)(2) of the Clean Air Act (Act).

Response: This issue is addressed by Indiana Department Environmental Management (IDEM) in both a July 21, 1988, letter from Thomas W. Rarick, Assistant Commissioner, Officer of Air Management, and a August 2, 1988, letter from Larry Kane, Director, Office of Legal Counsel, IDEM. Both Messrs. Rarick and Kane explain that when the revised rule was recodified, incorrect limits for Quemetco, Inc., were mistakenly published. They note that the correct limits, the same ones which USEPA proposed to approve, have now been correctly codified, published in the *Indiana Register*, and became effective August 20, 1988 (45 days from filing with the Secretary of State). Mr. Kane states that these errors have been corrected pursuant to IC 4–22–2–38, a provision in Indiana's rulemaking statute which authorizes the agency to correct typographical, clerical or spelling errors in rules without repeating the entire rulemaking process. This explanation is reasonable and is supported by the courts, which have held that deference should be accorded to a State in interpreting the procedural aspects of its air pollution laws when the interpretation is consistent with the Act. See, e.g., *Florida Power & Light Co.* v. *Costle*, 650 F.2d 579 (5th Cir. 1981), the *Ohio Environmental Council* v. *USEPA*, 593 F.2d 24 (6th Cir. 1974).

3. *Comment:* The State did not provide a reasonable period for public comment. Quemetco, Inc., had insufficient time to review the data on which the rulemaking was based, which precluded it from developing fully its comments. Indiana refused to grant Quemetco's request for an extension of the public comment period.

Response: It should be noted initially that section 110(a)(1) of the Act affirms that SIP provisions must be adopted after "reasonable notice and public hearings." Regulations at 40 CFR 51.102 similarly require that the State conduct a public hearing after reasonable notice, which is considered to include notice 30 days prior to the hearing. According to Mr. Kane's letter, notice of public hearing was published in, *inter alia*, the *Indianapolis Star and News* on May 20, 1987, more than 30 days prior to the June 24, 1987, public hearing. Mr. Kane's letter also notes the following additional facts: (1) Quemetco, Inc., was afforded an opportunity to present oral and written comments at the hearing, but did neither, although the company was represented there; (2) although Indiana law does not require a comment period subsequent to a hearing on a proposed rule, IOGM provided an additional 12 days for receiving comments; and (3) Quemetco, Inc., did submit written comments dated July 2, 1987.

As to Quemetco's objection to the APCB's rejection of its request for an extension of the public comment period, Mr. Kane's letter cites as the basis for this denial the scheduling commitments made by USEPA in papers it has filed in *NRDC* v. *Thomas*, No. 82–2137 (D.D.C.). Mr. Kane also notes that Quemetco's complaint about receiving the modeling data only a week before the hearing should be assessed against the fact that Quemetco, Inc., still had approximately 3 weeks to submit comments regarding this data; and, more importantly, the 1987 modeling data was not used to arrive at Quemetco's emission limits, but to demonstrate attainment of the National Ambient Air Quality Standard for lead. (Additional modeling showing the need for emission limits at Quemetco's facility had been available since long before 1987.)[2]

After reviewing Mr. Kane's letter, USEPA believes his assessment was reasonable that Quemetco, Inc., had adequate time before, during, and after the public hearing to provide meaningful comment. This conclusion is again buttressed by the court decisions deferring to State interpretation of such matters, *Florida Power & Light Co.* and *Ohio Environmental Council, supra.*

4. *Comment:* The revised plan was adopted in violation of State law due to the Hearing Officer's failure to make the necessary "findings and recommendations" under Indiana law.

Response: Mr. Kane's letter addresses this comment in detail, noting: (1) The fact that the Hearing Officer asserted that he took the above factors into consideration constitutes a *prima facie* demonstration that the appropriate requirements were met; (2) when the revised lead rule was presented to the APCB for preliminary adoption, the Issue Paper specifically addressed these factors under the heading "Consideration of Factors outlined in Indiana Code 13–7–7–2–(b)"; and (3) The Attorney General's approval of the revised rule establishes a presumption that the rule was adopted in accordance with applicable Indiana requirements. This presents another issue of State procedural law in which deference is appropriate under *Florida Power & Light Co.* and *Ohio Environmental Council, supra.*

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[1] The revisions during the State adoption procedure to Rule 325 IAC 15–1 were as follows:

1. Specific lead emission limits for each stack and process fugitive source were added for Quemetco, Inc. [325 IAC 15–1–2(a)(8)].

2. Language in the Quemetco provision, 325 IAC 15–1–2(a)(8)(A–D), concerning capture efficiency was revised from the phrase "with capture efficiency of" to read "designed to achieve a capture efficiency of."

3. "C and D Batteries" is now referred to as "C and D Power Systems" [325 IAC 15–1–2(b)(1)].

3. Rule 325 IAC 15–1–3(a)(3) was modified to include the language "non-process" in reference to fugitive emission points.

The amended rule also includes fugitive dust control plans and O&M programs for Quemetco, Inc., and the three lead storage battery manufacturing plants. Additional information may be found in the technical support document located at Region V.

On January 12, 1988, Indiana committed to investigative methods of assuring capture efficiencies and to incorporate these methods, e.g., process and control equipment design and operating perameters, within Quemetco's operating permits.

[2] According to the IDEM representatives, the limits used in the modeling were based on Quemetco's actual, controlled emissions.

5. *Comment:* USEPA must defer further action on the Quemetco, Inc., limits pending resolution of its recently filed challenge to the rule in Marion County Superior Court.

Response: The mere filing of an action in State court challenging a proposed SIP rule cannot serve as the basis for staying a rulemaking action for nor disapproving the proposed rule.[3]

By letter dated August 29, 1988, submitted after the close of the comment period, Quemetco disputed the IDEM's response to Quemetco's objections. EPA Region V staff has discussed Quemetco's August 29, 1988 letter with IDEM staff. EPA continues to believe that the IDEM's position on the points noted above is reasonable. A summary of the EPA Region V staff's discussion with IDEM staff is included in the record of this rulemaking.

6. *Comment:* Modeling performed by Quemetco's consultant demonstrates that the proposed emission limitations are more stringent than necessary to demonstrate attainment of the NAAQS. In addition, Indiana's modeling was erroneous for three reasons: (1) Quemetco's emissions are far less than those assumed by Indiana; (2) Indiana failed to use recent site-specific meteorological data; and (3) Indiana failed to use the default wind speed values in the model. Modeling performed by Quemetco's consultant using different input data predicted lower concentrations.

Response: Pursuant to section 116 of the Clean Air Act, the State has authority to establish requirements which are more stringent than the requirements of the Clean Air Act. Therefore, USEPA cannot disapprove emission limitations merely because they may be more stringent than necessary to ensure attainment and maintenance of the NAAQS.

USEPA has, however, reconsidered Indiana's modeling analysis based on Quemetco's comment. Based on this technical review, USEPA has determined that Indiana's analysis is consistent with USEPA modeling quidelines and is, therefore, acceptable. Each of the errors cited by Quemetco, Inc., is addressed below.

First, the difference in the emission rates used by IDEM and those which Quemetco maintains should have been used was not addressed in the consultant's report. Thus, it is unclear what the differences alluded to by Quemetco, Inc., might be. Because the emissions modeled by Indiana are consistent with the limits in Indiana's regulations, the modeled inventory is acceptable to USEPA.

Second, the Mann Road meteorological data referred to by the source is not site-specific but is located 10 kilometers from the smelter whereas the Indianapolis airport site is 3 kilometers away. Given the closer proximity of the airport site, it would be expected to be at least as, if not more, representative of conditions at the smelter.

The additional years of meteorological data considered by Quemetco's consultant merely constitute additional information, but do not invalidate Indiana's analysis. USEPA's modeling guidelines require the use of 5 years of representative meteorological data for estimating concentrations with an air quality model. Consecutive years from the most recent, readily available 5-year period are preferred. Indiana's use of 1980–1984 Indianapolis National Weather Service Station data satisfies this requirement. USEPA's modeling guidelines also require that the critical year from this 5-year analysis be included in any later modeling analysis. Therefore, the use of additional years of data (e.g., 1985, 1986 data from the Mann Road Site) is acceptable as additional information, but does not replace or contradict Indiana's analysis.

Third, the State's use of the mid-point speed for each wind speed class, rather than the default values, is acceptable. Quemetco's consultant has shown that different input values of wind speed result in different predicted concentrations, but not necessarily more accurate concentrations. Therefore, USEPA has no reason to reject Indiana's results in favor of Quemetco's results.

Additionally, Quemetco's consultant identified some minor discrepancies in source locations between those assumed in Indiana's modeling and those derived through an aerial photograph and U.S. Geological Survey maps. The source locations in Indiana's modeling were based on a plot plan of Quemetco. Because Quemetco has provided little support for its identified source locations (i.e., merely a list of the Universal Transverse Mercator coordinates and no substantiating data), USEPA is not convinced that Indiana's source locations are wrong. Even if they are wrong, USEPA does not expect the modeled concentrations to change significantly, given that the difference in source locations is small (i.e., less than 30m). No information (e.g., modeling) has been provided by Quemetco to show that the different source locations will change the modeled concentration. Therefore, USEPA does not believe that this issue affects the State's attainment demonstration.

USEPA has reviewed each of the issues cited by Quemetco. USEPA accepts Indiana's analysis, given its use of USEPA-approved models and sufficient input data. USEPA has determined that the State modeled concentrations, coupled with the State's assumed background level, demonstrate attainment of the NAAQS and, therefore are approvable.

Conclusion

The State has satisfied the deficiencies which were noted in the April 19, 1988 (53 FR 12896), **Federal Register**, which approved other portions of Indiana's lead SIP. It did this by amending its Rule 325 IAC 15 to establish (1) site-specific emission limits for each stack and process fugitive sources at Quemetco, Inc., and (2) fugitive dust control plans and O and M programs for Quemetco, Inc., Exide Corporation, C and D Power System, and General Battery Corporation. As a result, USEPA is approving the revised Rule 326 IAC 15–1 (as submitted on February 3, 1988, recodified from 325 IAC 15–1 to 326 IAC 15–1, and corrected in the August 1, 1988, *Indiana Register*). Finally, USEPA is approving Indiana's lead plans for the areas around the following facilities; Quemetco, Inc., (Indianapolis), Exide Corporation (Logansport), C and D Power System (Attica), and General Battery Corporation (Frankfort).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovermental relations, Lead.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

[3] We note, however, that the Seventh Circuit has held that a successful challenge of a SIP rule at the highest appellate court level in the State to consider the matter may render the provision unenforceable. *Sierra Club* v. *Indiana-Kentucky Electric Company*, 716 F.2d 1145 (1983).

Dated: September 23, 1988.

Lee M. Thomas,

Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS: INDIANA

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.770 is amended by adding new paragraph (c)(70) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(70) On February 3, 1988, and August 23, 1988, Indiana submitted its lead plans for Quemetco, Inc., in Indianapolis; Exide Corporation in Logansport; C and D Power System in Attica; and General Battery Corporation in Frankfort. This included a recodification of its former lead rule, 325 IAC 15–1 (40 CFR 52.770(c)(65)), to 326 IAC 15–1 and revisions to this rule.

(i) *Incorporation by reference.* (A) Title 326—Air Pollution Control Board—Indiana Administrative Code (326 IAC) 15–1, Lead Emission Limitations, as published in the *Indiana Register* (IR) on April 1, 1988, at 11 IR 2564.

(B) Corrections of typographical, clerical, or spelling errors to the document printed at 11 IR 2368 (Indiana's recodified air rules, including 326 IAC 15–1), as published on August 1, 1988, at 11 IR 3921.

* * * * *

3. Section 52.797 is amended by removing and reserving paragraph (a) and adding new paragraph (c).

§ 52.797 Control strategy: lead.

(a) [Reserved]

* * * * *

(c) On January 12, 1988, Indiana's Office of Air Management (OAM), Indiana Department of Environmental Management, agreed to review all relevant hood designs and performance guidance to determine which criteria to use in determining ongoing compliance with the capture efficiency provisions in 326 IAC 15–1 for Quemetco, Inc., and Refined Metals. Because these efficiencies are closely related to equipment design, OAM believes that a review of the process and control equipment designs and operating parameters should provide the necessary determination of compliance. OAM will work with the Indianapolis local agency, the Indianapolis Air Pollution Control Divison, on viable alternatives and will keep USEPA up to date on its progress. OAM anticipates that specific criteria for determining compliance will be incorporated into the sources' operation permits (and forwarded to USEPA for informational purposes), and, should the opportunity arise, 326 IAC 15–1 will be revised to similarly incorporate capture efficiency criteria.

* * * * *

[FR Doc. 88–22492 Filed 9–30–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3457–2]

Approval and Promulgation of Air Quality Implementation Plans; State of New Mexico; Removal of Federal Assistance Limitations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is removing the funding limitations on Bernalillo County and the State of New Mexico, which were imposed on March 4, 1985. The limitations were imposed pursuant to section 176(a) of the Clean Air Act, and were applied to highway and air program grants. With this notice, EPA is removing only the limitations on Federal funding assistance in New Mexico, which includes the withdrawal of the proposed sewage treatment facility funding limitations. The construction moratorium under section 110(a)(2)(I) will remain in effect until a complete State Implementation Plan (SIP) revision for the Bernalillo County carbon monoxide (CO) problem is submitted by the State of New Mexico and approved by EPA. The proposal to remove funding limitations was published on July 14, 1988.

EPA is removing the Federal funding restrictions because, by adopting legal authorities to implement a vehicle inspection and maintenance (I/M) program, by providing adequate funding to administer the I/M program, and by submitting the program design elements, the City of Albuquerque, Bernalillo County, and the State of New Mexico have made reasonable progress toward submitting a legally enforceable I/M program, which is an essential portion of the SIP for Bernalillo County for attainment of the National Ambient Air Quality Standard (NAAQS) for CO.

EFFECTIVE DATE: This action is effective on September 23, 1988.

ADDRESSES: Copies of all materials relating to EPA's action may be inspected during business hours at the following locations:

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733

Air Quality Bureau, Environmental Improvement Division, Health and Environment Department, 1190 St. Francis Dr., Harold Runnels Building, Santa Fe, New Mexico 87504–0968

Air Pollution Control Division, City of Albuquerque, 1 Civic Plaza, Albuquerque, New Mexico 87103

Public Information, Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Gerald Fontenot, Air Programs Branch (6T–A), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–7204.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to section 172(a) of the CAA, the State of New Mexico submitted a Part D SIP in January 1979, which demonstrated that the CO standard could not be attained by December 31, 1982, in Bernalillo County. (A Part D SIP is a SIP submitted by the State in order to meet the requirements of Part D of the Clean Air Act, as amended in 1977.) Consequently, the State of New Mexico requested and received an extension to December 31, 1987, to attain the CO standard in this area. The State was required to submit a SIP revision in 1982 which would demonstrate attainment of the CO standard by December 31, 1987. The SIP was required to include an I/M program that met EPA's program specifications as outlined in the January 22, 1981, policy for extension area SIPs (47 FR 7182).

The State of New Mexico submitted the 1982 SIP for attainment of the CO NAAQS in Bernalillo County on June 28, 1982. On July 1, 1983 (48 FR 30365), EPA approved the 1982 SIP for attainment of the CO NAAQS in Bernalillo County, including the provisions for an I/M program in Bernalillo County. On January 3, 1983, the I/M program in Bernalillo County began operation. However, on January 4, 1983, a suit was filed in a New Mexico State District Court to stop the I/M program on both statutory and constitutional grounds. The New Mexico Supreme Court issued a final ruling on the suit in March 1984 concluding that the City of Albuquerque

and Bernalillo County did not have the authority to collect an inspecition fee. Following the ruling that no I/M fee could be collected to fund the program, the Albuquerque City Council revoked Ordinance No. 49–1969, governing the operation of the I/M program, on March 26, 1984. The inspection facilities for the I/M program closed on March 28, 1984.

On September 4, 1984, EPA published a notice in the **Federal Register** (49 FR 34866) proposing to disapprove the I/M portion of the 1982 CO SIP for Bernalillo County and to impose both funding sanctions under section 176(a) of the CAA and a construction ban under section 110(a)(2)(I). Subsequently, in response to requests by the City of Albuquerque, State of New Mexico and other interested parties a public hearing on the proposed EPA action was held on December 4, 1984. A rulemaking which finalized the disapproval of the I/M plan, authorized a construction moratorium, and imposed funding restrictions on highway and air program grants was published by EPA on March 4, 1985, (50 FR 8616). The sanctions became effective on April 3, 1985. Challenges to EPA's rulemaking action were dismissed by the United States Court of Appeals for the Tenth Circuit in *New Mexico Environmental Improvement Division vs. Thomas,* 789 F.2d 825, on April 23, 1986.

The March 4, 1985, notice also outlined the conditions which must be met for EPA to remove the funding restrictions. Either of the following conditions must be met:

(a) The State submits evidence that it has taken concrete steps toward restarting its I/M program in an expeditious manner, including the submittal of adequate legal authority and the institution of an adequate funding mechanism, or

(b) The County is formally redesignated by EPA to attainment for CO.

On August 4, 1986, the Albuquerque City Council adopted an ordinance to govern the operation of the I/M program. Subsequently Bernalillo County adopted a similar ordinance.

The ordinance which provided funding for the I/M program was based on a two cent gasoline tax to be imposed in Bernalillo County. The tax ordinance could not be imposed without a referendum vote of Bernalillo County citizens, scheduled for November 4, 1986. The referendum was defeated and the ordinances revoked.

Due to the failure of the funding referendum and lack of any further action to reestablish the I/M program, section 316(b) funding restrictions on EPA sewage treatment facility grants were proposed in the **Federal Register** on February 25, 1987, (52 FR 5556).

B. I/M Activities

On August 31, 1987, the City Council adopted ordinances to govern and fund a decentralized I/M program. The County Commission adopted similar ordinances on October 13, 1987. On May 13, 1988, the City/County Air Quality Control Board conducted a public hearing and adopted the final I/M regulations. Based on the City's and County's adoption of these ordinances, EPA found that New Mexico was making reasonable efforts to submit a CO attainment plan for Bernalillo County. Based on this finding, EPA proposed to remove funding limitations on July 14, 1988 (53 FR 26607). The proposal stated that removal of the funding limitations would be finalized after certain program development activities were completed and appeared approvable.

The ordinances and regulations provide for the inspection of vehicles for excess tailpipe emissions of CO and hydrocarbons (HC), the presence and proper connection of a catalytic converter, air pump or aspiration system, fuel inlet restrictor, oxygen sensor, and presence of lead in the tailpipe of vehicles requiring unleaded gasoline. The inspection is to be performed biennially on 1975 and newer model year, gasoline powered, four wheeled vehicles with a gross vehicle weight of 26,000 pounds or less. Diesel and off-road vehicles will be exempted. Although Bernalillo County currently attains the ozone NAAQS, HC standards will be set to help maintain the ozone standard.

The program enforcement will be registration based. The ordinance requires the Director of the I/M program to enter into a binding agreement with the New Mexico Vehicle Division whereby motor vehicles registered to an owner who resides or has principal place of business within Bernalillo County will be eligible for re-registration only if the owner presents a valid certificate of inspection with registration application. On-street enforcement will be performed by Police in conjunction with enforcement of other traffic violations.

The program will not charge a fee for inspections. Each licensed inspection facility can charge what the market will bear for the inspections performed. The charge must be prominently posted in each inspection station. The administration of the program will be funded from general revenue funds and inspection station license fees.

The I/M Program Manager has submitted copies of the program design including the enforcement plan, equipment requirements, quality assurance plan and repair requirements. The preliminary review of these items determined that they appear acceptable. However, the EPA will continue to work with the Program Manager to assure that all details of the plan are approvable and that the program will be implemented on schedule. The program is to begin inspecting fleet vehicles by January 1, 1989, and is to begin inspecting public vehicles on March 1, 1989. EPA will take action on the I/M program as a component of the New Mexico SIP in a separate rule-making action.

C. EPA Findings

Based upon the City's and County's adoption of ordinances to implement and fund the necessary I/M program in the nonattainment area, the approval of regulations at public hearing, and submission of the program design elements, EPA finds that New Mexico is now making reasonable efforts to submit a CO attainment plan for Bernalillo County that considers each of the elements in section 172 of the Act. Therefore, EPA is rescinding the funding assistance limitations imposed pursuant to section 176(a) of the Act. Specifically, the action removes the funding restrictions affecting highway grants in Bernalillo County and air pollution control program grants for the State of New Mexico Health and Environment Department and the City of Albuquerque/Bernalillo County Air Quality Control Board that EPA imposed on March 4, 1985, (50 FR 8616). This notice also withdraws EPA's action of February 25, 1987, (52 FR 5556), which proposed withholding of Federal construction grants for sewage treatment facilities under section 316(b) of the CAA.

The construction moratorium under section 110(a)(2)(I) will remain in effect until a complete SIP revision for the Bernalillo County CO area is submitted by the State of New Mexico and approved by EPA. The Governor of New Mexico was notified on May 26, 1988, that the Albuquerque metropolitan statistical area failed to attain the CO standard by December 31, 1987, and that the SIP is substantially inadequate to attain the standard. Therefore, the current efforts to implement the I/M program should be continued and additional corrective planning should commence now. The construction moratorium will remain in effect until this effort is completed.

D. Public Comments

Three public comments were received on the proposal to remove the funding limitations. All three commentors supported the removal of the limitations as soon as possible.

E. Regulatory Process

EPA finds good cause for the reasons stated below to make this action effective less than thirty days after its publication in the **Federal Register**. EPA believes that continuation of the funding limitations for the additional 30 days after publication would be contrary to public interest. Continuation of the funding restrictions would penalize the citizens of Bernalillo County and the State of New Mexico and thus harm the public interest by restricting Federal highway and air grants. Since New Mexico is now making reasonable progress toward implementing an I/M program, the funding restrictions are no longer necessary. Most important, continuation of the restrictions for even a short time would delay the submittal of a revised CO SIP in Bernalillo County by restricting Federal air grants which New Mexico intends to use to begin the revisions of the CO SIP. A likely result of this delay is the delay in the attainment of the CO NAAQS, resulting in public exposure to high CO levels for a longer time than necessary.

Consequently, EPA is proceeding, pursuant to 5 U.S.C. 553(d) (1) and (3), for good cause found and stated, to make this action effective on the date of signature.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 1988. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations.

Date: September 23, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart GG—New Mexico

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

§ 52.1627 [Amended]

2. Section 52.1627 is amended by removing paragraphs (a) (2) and (3) which will remove the funding restrictions imposed.

[FR Doc. 88–22623 Filed 9–30–88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[FRL–3457–3; SC–018]

Designation of Areas for Air Quality Planning Purposes; Redesignation of a South Carolina Carbon Monoxide; Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves the request by South Carolina that the The City of Columbia be redesignated from nonattainment to attainment for carbon monoxide (CO). The redesignation request is based on eight quarters of ambient monitoring data that show no exceedances of the CO standards and on implementation of EPA-approved control strategies.

DATE: This action is effective December 2, 1988, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Kay T. Prince of the EPA Region IV Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by South Carolina may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, South Carolina 29201

FOR FURTHER INFORMATION CONTACT: Kay T. Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number 404/347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: In the March 3, 1978 **Federal Register** (43 FR 8962), EPA designated the City of Columbia, South Carolina as nonattainment for CO. The State was therefore required to revise their state implementation plan (SIP) for CO. Through the Federal Motor Vehicle Control Program (FMVCP), South Carolina demonstrated attainment of the CO standard by 1983 in its 1979 Part D SIP revisions. EPA fully approved South Carolina's 1979 Part D SIP.

South Carolina has requested that EPA change the attainment status of the City of Columbia from nonattainment to attainment for CO. In order to redesignate a nonattainment area, EPA policy requires the most recent eight (8) consecutive quarters of quality assured, representative ambient air quality data plus evidence of an implemented control strategy that EPA had fully approved. South Carolina has submitted ambient air quality data collected at the Wardlaw School site. The most recent eight quarters of air quality data (1985 and 1986) show no exceedances of either the one-hour or eight-hour standards. The decreases in CO levels were achieved through fleet turnover due to the FMVCP.

For a more detailed discussion, please refer to the Technical Support Document which is available for inspection at the EPA Region IV office.

Final Action

The redesignation request meets EPA requirements. This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no comments on it. The public shoud be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. Therefore, on the basis of eight consecutive quarters of air quality data showing no exceedances and evidence of an implemented, EPA-approved control strategy, EPA is today redesignating the City of Columbia from CO nonattainment to attainment.

Under 5 U.S.C. section 605(b), I certify that this request will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709). The Office of Management and Budget had exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this

action must be filed in the United States Courts of Appeals for the appropriate circuit by December 2, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 26, 1988.

Lee M. Thomas,

Administrator.

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations South Carolina

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

Authority: 42 U.S.C. 7401–7642.

2. In §81.341 the attainment status table titled "South Carolina—CO" is amended by removing the entry for the City of Columbia and by revising the remaining entry from "Rest of State" to "Statewide." As amended, the table reads as follows:

§ 81.341 South Carolina.

* * * * *

SOUTH CAROLINA—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Statewide		X

* * * * *

[FR Doc. 88–22625 Filed 9–30–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 94

[PR Docket No 87–5]

Multiple Address System Operations; Correction

AGENCY: Federal Communications Commission.

ACTION: Partial stay of final rule; correction.

SUMMARY: The Commission has released an Erratum correcting a typographical error in a recently adopted Order granting a partial stay of the final rule in PR Docket 87–5, 53 FR 32901 (August 29, 1988), regarding amended rules for Multiple Address System operations.

FOR FURTHER INFORMATION CONTACT: Rudolfo Baca, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2444.

SUPPLEMENTARY INFORMATION: This is a summary of the text of the erratum in PR Docket No. 87–5. The text of this document is available for inspection and copying during the normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW. Washington, DC 20554 and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

1. On August 4, 1988, the Commission released an Order granting a partial stay of the revised rules governing 900 MHz multiple address system (MAS) operations. PR Docket No. 87–5, FCC 88–255, 53 FR 32901 (August 29, 1988). The Order stayed the separation criteria codified in § 94–63 of the Commission's Rules, 47 CFR 94.63, pending reconsideration of the Report and Order in PR Docket No. 87–5, 3 FCC Rcd 1564 (1988).

2. This document corrects a typographical error in the Order that created an inconsistency between the processing date for options provided to the applicants affected by the stay and the effective date of the revised rules. Accordingly, paragraph three of the "Summary of Order", 53 FR 32901 granting the stay is corrected to specify that the three stated options will be available to applicants for multiple address station licenses who filed on or after May 11, 1988 rather than May 12, 1988.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–22644 Filed 9–30–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 71147–8002]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of sablefish from the non-specific reserve to domestic fishermen processing fish or delivering fish to domestic processors (DAP). This action, taken under provisions of the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), assures optimum use of grounfish in fisheries that take sablefish as bycatch. By providing retainable amounts of sablefish and reducing wastage that would otherwise occur, it allows DAP fishing for other species in the BSAI to continue.

DATES: Effective September 28, 1988. Comments will be accepted through October 18, 1988.

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

FOR FURTHER INFORMATION CONTACT: Jessica Gharrett, Resource Management Specialist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: Rules appearing at 50 CFR 611.93 and Part 675 implement the FMP.

Initially, 15 percent of the 1988 total allowable catch (TAC) for each species or species group in the BSAI area was placed in reserve, DAP was specified, and remaining amounts were provided to domestic fishermen delivering fish to foreign processors (JVP) (53 FR 894, January 14, 1988). No amounts of groundfish were provided for foreign harvest because U.S. fishermen are able to harvest the entire 1988 TAC amounts.

The following in-season actions have apportioned amounts from the reserve to DAP and/or JVP, or amounts from DAP to JVP: April 19 (53 FR 12772), May 10 (53 FR 16552), May 25 (53 FR 19303), June 22 (53 FR 23402), July 14 (53 FR 26599), July 27 (53 FR 28229), August 30 (53 FR 33140), and September 9 (53 FR 35081).

The Director, Alaska Region, NMFS (Regional Director), has determined from fishery data, including DAP catches to date and a DAP survey completed in August, 1988, that DAP fisheries could harvest and process at least 3,363 metric tons (mt) of sablefish in the Bering Sea subarea by the end of 1988. The DAP catch of Bering Sea subarea sablefish as of September 10 was 2,864 mt, 99 percent of the current apportionment of 2,890 mt. For these reasons, the Regional Director has determined that the current DAP amounts of sablefish in the Bering Sea subarea sablefish allocation are

insufficient to meet DAP needs in 1988. Therefore, 473 mt of the reserve are transferred to the DAP sablefish category in the Bering Sea subarea.

These apportionments do not result in overfishing of sablefish because the sum of the adjusted DAP amount and the JVP amount for sablefish does not exceed the allowable biological catch for this species, 3,400 mt as listed in Table 1. Directed fishing for sablefish by DAP fishermen in the Bering Sea subarea continues to be prohibited for the remainder of 1988. Directed fishing is defined at § 675.2.

Without this reapportionment, fishermen would be required to treat sablefish in the same manner as a prohibited species, and excessive wastage of sablefish would occur during the course of other groundfish fisheries that take sablefish as bycatch.

Classification

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

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice will allow DAP fishermen to continue directed fishing for species that require sablefish as bycatch. Interested parties are invited to submit comments in writing to the address above for 15 days after the effective date of this notice, in accordance with § 675.20(b)(2)(i).

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: September 27, 1988.

Joe P. Clem,

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

TABLE 1.—BERING SEA SUBAREA REAPPORTIONMENTS OF INITIAL TAC

[All values are in metric tons]

		Current	This action	Revised
Sablefish (Bering Sea subarea)	DAP	2,890	+473	3,363
TAC=3,400; ABC=3,400	JVP,	37	No change	37
Total (TAC=2,000,000)	DAP	7808,520	−473	708,993
	JVP	1,282,784	No change	1,282,784
	Reserve	8,696	−473	8,223

[FR Doc. 88-22583 Filed 9-28-88; 10:54 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 191
Monday, October 3, 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 1002

[Docket No. A0-71-A76; DA-88-107]

Milk in the New York-New Jersey Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts an increase in the maximum allowable rate of payment for expense of administration from four cents to five cents per hundredweight of milk handled under the New York-New Jersey Federal milk order. The higher maximum allowable rate of payment reflects the increased costs of administering the order that have occurred since the rate was last adjusted in September 1969.

The decision is based on a public hearing held in Syracuse, New York, on June 6, 1988, to consider an industry proposal to amend the marketing order. The hearing was requested by three dairy farmer cooperatives.

A referendum will be conducted to determine whether producers who supplied milk during April 1988 favor issuance of the order. I must be approved by at least two-thirds of the eligible voting producers to become effective.

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

SUPPLEMENTARY INFORMATION: 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.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The economic impact of the amendment incorporated in this decision will fall on all regulated handlers pro rata to their size of operation. On a unit basis such additional expense is minor (less than 1/1000 of the value of milk handled) and most likely would be translated into the price of the goods that a handler sells. As a result, the action taken here is not expected to have a significant economic impact on a substantial number of small entities.

Prior documents in this proceeding:

Notice of Hearing: Issued May 19, 1988; published May 25, 1988 (53 FR 18844).

Recommended Decision: Issued August 23, 1988; published August 29, 1988 (53 FR 32911).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handing of milk in the New York-New Jersey marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice (7 CFR Part 900), at Syracuse, New York, on June 6, 1988. Notice of such hearing as issued on May 19, 1988 and published May 25, 1988 (53 FR 18844).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on August 23, 1988 filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein.

The material issue on the record of the hearing relates to an increase in the maximum allowable rate of payment for expense of administration.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Expense of Administration. The maximum allowable rate of assessment for expense of administration under Order 2 should be increased to five cents per hundredweight. Such payment should continue to be applicable to the total quantity of pool milk received by the handler from dairy farmers at plants or from farms in a unit operated by the handler directly or at the instance of a cooperative association of producers and on the quantity for which payment is made pursuant to § 1002.70(d)(2).

The Act requires that handlers shall pay the cost of operating an order through an assessment on milk handled. The present maximum allowable rate of payment adopted September 1, 1969, of four cents per hundredweight has not provided sufficient funds since 1980 to cover the administrative expenses necessarily incurred by the market administrator and to maintain a reasonable operating reserve.

The increase was jointly proposed by three dairy farmer cooperatives, namely, Agri-Mark, Inc., Dairylea Cooperative, Inc., and Eastern Milk Producers Cooperative Association (Agri-Mark, Dairylea and Eastern, respectively). Spokesmen for these groups stated that the administrative fund has been operating at a deficit for several years due to supplies of milk leveling off while costs were continuously increasing. Therefore, they proposed that the maximum allowable charge for administering the order be raised to offset such deficit. At the hearing, representatives of two Order 2 handlers, namely, Empire Cheese, Inc., and Sunnydale Farms, gave statements in support of such action.

An indication of an adequate financial status of the administrative fund is an operating reserve adequate to close out the office in the event that the order is terminated. This entails maintaining an operating reserve with a balance within 15 percent of the sum of one-half of a year's total expenses plus one-quarter of a year's salaries and services expense. The New York-New Jersey order has not maintained such a reserve since 1982, and in 1987 the operating reserve was barely one-quarter of that

recommended. If such trend were not reversed, then it would be reasonable to expect that the operating reserve would be exhausted by the end of 1989. However, by increasing the maximum allowable rate of assessment to five cents per hundredweight, and charging that amount, it is conceivable, barring any unforseen escalation of expenses or a reduction in milk receipts of order handlers, that the operating reserve could be brought to an adequate level by the end of 1991.

Total expenses exceeded total income in 1981 by $71,000. However, the operating reserve still exceeded the recommended reserve. In 1982 expenses exceeded income by $215,000 and the operating reserve fell short of the recommended level, but only by five percent. In 1983 expenses exceeded income by $315,000 and the operating reserve was only 72 percent of the recommended reserve, below the 15 percent safety net. From 1983 on (excluding 1984 when the accounting changed to accrual method), annual operating deficits have served to drain the operating reserve. The net accumulated decrease in the administrative fund reserve for the 1983–1987 period has totaled $1,742,893. The operating reserve as of December 31, 1987, was $823,772, only 25.3 percent of the recommended reserve.

This trend could be reversed if either receipts of milk pooled would drastically increase, or expenses would drastically decline, or if the maximum allowable assessment rate is increased. Presently, milk production is declining. In fact, between 1986 and 1987, total receipts of pooled milk under the New York-New Jersey order decreased 3.5 percent. On the other hand, expenses have and are expected to keep pace with the rate of inflation, which between 1983 and 1988 rose 19 percent. Therefore, increasing the maximum allowable assessment rate one cent as proposed is the only sure way of obtaining sufficient funds to administer the New York-New Jersey order.

Opponents on the proposed increase suggested one other alternative to solving the financial problems of administering Order 2, that being to move the main headquarters out of New York City. In their testimony and briefs, representatives of the New Jersey Milk Industry Association, the Diary Industry Institute, the National Farmers Organization, Inc. (NFO) and Crowley Foods all rejected the idea of increasing the assessment one more penny on the basis that such action would increase handler cost by over one million dollars. The midtown Manhattan address of the market administrator's office was cited as the main reason why the cost of adminstration under Order 2 is much higher that that under other comparable orders. Rather than raise handlers' and ultimately consumers' costs, these groups suggested that the market administrator's headquarters be moved to a less expensive location which would also be closer to a majority or regulated handlers. Such site would be somewhere beyond 150 miles of New York City because 58 percent of the handlers are located beyond the 150 mile zone. It was even put forth that such a move might result in an actual assessment charge of less than four cents a hundredweight.

The four opponents all suggested that the market administrator promptly institute a search for a new location. The Dairy Industry Institute suggested that an independent professional study be undertaken and that from such study a report on the "wisdom of location in New York City" be given to an advisory group composed of diary farmers, handlers and government representatives. This group would then join in a recommendation as to location. In the meantime, however, they stated that the maximum assessment charge should remain at four cents.

On the other hand, NFO stated that they would support a temporary increase in the maximum assessment charge while the market administrator conducted a search for new headquarters.

It must be noted that proponent, Dairylea, in its brief, stated that it supported a study to determine a feasible location for the market administrator's office. However, Dairylea still supported an increase in the maximum allowable assessment rate.

The record indicated that in 1983 the market administrator's office was relocated from one Manhattan address to another because it lost its lease in its former location. When determining where to move, several things were considered, including choosing a location that would cause the least amount of disruption to the industry that the office serves. After studying alternative sites in New York City and its suburbs, it was decided that the location that would best accommodate the effective operation of the office and industry needs would be another midtown address. It was believed that a suburban location would have resulted in a loss of trained and experienced employees that would adversely impact on the industry. A suburban location would have meant longer commutes for part of the staff, with most having to come into the City first on their way to the suburban office. The salaries paid by the market administrator were viewed as not enough to entice many of the existing staff to endure such commutes.

With respect to the location of regulated handlers, a majority of the handlers, as opponents indicated, are located 150 miles beyond the City. However, the greatest concentration of large handlers have their corporate headquarters in New York City. The complex books and records of these large handlers, being located at the corporate headquarters require auditors to spend a great deal of time in the City. It is also desirable for other office personnel to keep in close contact with these handlers. These are additional considerations supporting the decision to have the market administrator's office remain in New York City.

In the face of declining milk receipts, the ever increasing office rental expense combined with the other expenses incurred in order to effectively administer the order make it imperative that the maximum allowable assessment rate be increased to five cents per hundredweight.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the New York-New Jersey order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the

Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(d) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as its pro rata share of such expense, five cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1002.90 of the aforesaid tentative marketing agreement and the order as proposed to be amended.

Rulings on Exceptions

No exceptions were received.

Marketing Agreement and Order

Annexed hereto and made a part hereto are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the New York-New Jersey marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the New York-New Jersey marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be April 1988.

The agent of the Secretary to conduct such referendum is hereby designated to be Norman K. Garber, Assistant Market Administrator.

List of Subjects in 7 CFR Part 1002

Milk marketing orders, Milk, Dairy products

Signed at Washington, DC, on: September 27, 1988.

Kenneth A. Gilles,

Assistant Secretary of Agriculture Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the New York-New Jersey Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New York-New Jersey marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, incure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) It is hereby found that the necessary expense of the market adminstrator for the maintenance and functioning of such agency will require the payment by each handler, as its pro rata share of such expense, five cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1002.90.

Order Relative to Handling

It is therefore order that on and after the effective date hereof, the handling of milk in the New York-New Jersey marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on August 23, 1988 and published in the **Federal Register** on August 29, 1988 (53 FR 32911), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. The authority citation for 7 CFR Part 1002 continues to read as follows:

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

2. Section 1002.90 is amended by revising the first sentence to read as follows:

§ 1002.90 Payment by handlers.

To share on a pro rata basis the expense of administration of this part, each handler shall, on or before the date specified for making payment to the producer-settlement fund pursuant to § 1002.85, pay to the market administrator a sum not exceeding five cents per hundredweight on the total quantity of pool milk received from

dairy farmers at plants or from farms in a unit operated by such handler, directly or at the instance of a cooperative association of producers and on the quantity for which payment is made pursuant to § 1002.70(d)(2), the exact amount to be determined by the market administrator subject to review by the Secretary. * * *

Marketing Agreement Regulating the Handling of Milk in the New York-New Jersey Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1002.1 to 1002.90, all inclusive, of the order regulating the handling of milk in the New York-New Jersey marketing area 7 CFR Part 1002 which is annexed hereto; and

II. The following provisions:

§ 1002.91 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of April 1988, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1002.92 Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

(Seal)

By

(Name) (Title)

(Address)

Attest

Date

[FR Doc. 88-22735 Filed 9-30-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1098 and 1007

[Docket No. AO-184-A52 and AO-366-A29; DA-88-104]

Milk in the Nashville and Georgia Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision would make certain changes in the pooling provisions of the Nashville, Tennessee, and Georgia milk orders based on industry proposals considered at a public hearing held at Nashville, Tennessee, on November 3, 1987. A pool distributing plant physically located in the Nashville, Tennessee, marketing area would be regulated under that order irrespective of the market in which the plant has most of its fluid milk products distribution. Another change in the Nashville order would estabish a plus location adjustment of 8.5 cents per hundredweight for milk received at plants located in 18 Tennessee counties south of Nashville. The Georgia order would be amended to accommodate the pooling changes in the Nashville order. These changes are needed to reflect current marketing conditions and to insure orderly marketing. In the Nashville market, a referendum will be conducted to determine whether producers favor issuance of the proposed amended order. In the Georgia market, cooperative associations will be polled to determine whether producers favor issuance of the proposed amended order.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: 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.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended orders will promote more orderly marketing of milk by producers and regulated handlers.

This action would change the regulatory status that prevailed when the hearing was held of two pool distributing plants located in the Nashville marketing area. At that time, one of the plants was regulated by the Memphis milk order and the other plant was regulated by the Georgia milk order. Both plants would be regulated under the Nashville order under the provisions adopted herein. The cost of the raw milk supplies to the pool plants would be unchanged. There would be no economic impact of such action on the returns to dairy farmers under the Memphis order because milk is pooled under such order on an individual handler basis. Under the Georgia order, there should be little, if any, change in the returns to dairy farmers due to a shift in regulation because the utilization of milk at the Georgia plant differs little from the Class I utilization percentage of the Georgia market. The returns to dairy farmers under the Nashville order will be reduced slightly since the utlization of milk at the two pool plants that would be added is less than the Nashville market's Class I utilization percentage. The Nashville producers whose blend prices would be reduced are members of Dairymen, Inc. (DI), a cooperative association whose representative testified that the cooperative was not opposed to the "lock-in" proposal which would result in the pooling of additional pool plants under the Nashville order.

The current Nashville, Tennessee, Federal milk order also contains three temporary amendments which have no regulatory impact and, accordingly, should be removed from the order. The provisions are § 1098.60(g) and the last sentences in §§ 1098.90 and 1098.92. The provisions in § 1098.60(g) were effective for the months of September 1984 through February 1985. Such provisions provided for a hauling credit of 3.3 cents per hundredweight for each 10 miles on bulk milk purchased from pool plants of other Federal orders and allocated to Class I milk. The amendments contained in the last sentences in §§ 1098.90 and 1098.92 dealt with the computation of base milk for the months of March 1985 through July 1985 and the computation of daily average base for each producer for those bases computer on or before February 25, 1985. Since the temporary periods during which the three amendatory provisions were effective have expired, such provisions should be removed from the other.

Prior Documents in This Proceeding

Notice of Hearing: Issued October 16, 1987; published October 21, 1987 (52 FR 39232).

Recommended Decision: Issued July 21, 1988; published July 26, 1988 (53 FR 27993).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Nashville, Tennessee, and Georgia marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), at Nashville, Tennessee, on November 3, 1987. Notice of such hearing was issued on October 16, 1987, and published October 21, 1987 (52 FR 39232).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on July 21, 1988, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the revision of the ninth paragraph under issue No. 2 and the addition of one paragraph at the end of issue No. 2.

The material issues on the record of hearing relate to:

1. Regulation of a distributing plant physically located in the Nashville marketing area.

2. Location adjustment for milk received at Tennessee plants located south of Nashville.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Regulation of a Distributing Plant Physically Located in the Nashville Marketing Area

The Nashville, Tennessee, order (Nashville order) should be amended to provide that a distributing plant which meets the pooling standards of the Nashville order and one or more other Federal orders and which is located in the Nashville order's marketing area shall be a pool plant under the Nashville order irrespective of the quantity of fluid milk products distributed in any other Federal order market. However, such pool plant status should be accorded only as long as the Nashville order's Class I price at the plant is not less than the Class I price that would be applicable at the plant if regulated under the order for the Federal order marketing area in which the plant has the greatest route disposition.

Presently, when a distributing plant qualifies for pooling under the Nashville order and another order, it is regulated in the market in which it has the greater route sales.

The "lock-in" provision adopted herein for the Nashville order cannot achieve its intended purpose without a corollary change in the pooling standards of the Georgia order. Thus, the Georgia order should provide that any plant with route sales in the Georgia marketing area shall be exempt from full regulation under that order, even though it has more sales in the Georgia market than in the other market, if the plant is subject to full regulation under the other order.

Malone & Hyde Dairy proposed (proposals 1 and 2 as listed in the Notice of Hearing) that a distributing plant that is physically located in the Nashville order's marketing area (Order 98) should be regulated by that order irrespective of the quantity of such plant's route disposition in any other Federal order marketing area. Proposal No. 1 would amend Order 98 by locking in such a plant under the order and proposal No. 2 is intended to amend the Georgia order (Order 7) by releasing from regulation such a plant even though the plant may have more fluid milk sales in the Order 7 area than in the Order 98 area.

A witness for Malone & Hyde stated that this action is necessary in order to minimize disruptive market conditions in the Kentucky and Tennessee supply areas. The witness indicated that the proposal would affect the Malone & Hyde distributing plant located in Nashville, Tennessee, but regulated by the Memphis order (Order 97). It would also affect Heritage Farms (Kroger) distributing plant located in Rutherford County, Tennessee (Order 98 marketing area), but currently regulated by the Georgia order (Order 7). He said that the milk procurement and sales patterns of the Malone & Hyde and Kroger plants establish a primary association of such plants with the Order 98 market.

The Malone & Hyde witness testified that the traditional method of pooling a distributing plant has been on the basis of the market in which the plant has the most sales. The justification for this method, he said, was to ensure that all handlers having the major portion of their sales in the same order area were subject to the same minimum order prices and other regulatory provisions. He said that this principle rested on an assumption that such competing plants would be located in the same geographic area.

Also, the witness for Malone & Hyde said that the traditional method of pooling fluid milk plants has become outdated because of large processing plants, such as chain store plants, that have sales over wide geographical areas. The proposal, he said, better serves the principle of trying to assure that all handlers competing for milk procurement and sales in an order area are subject to the same price as their competition. He indicated the proposal would regulate a distributing plant under the order for the marketing area where it is physically located even though its route distribution was greater in another Federal order's marketing area.

A representative of Southern Milk Sales (SMS), a cooperative association whose members supply about 40 percent of the fluid milk receipts of the Kroger plant at Murfreesboro, Tennessee, testified in support of the proposal to fully regulate under the Nashville order distributing plants physically located within the Nashville marketing area.

A representative for the National Farmers Organization (NFO), which had no member producers on the Nashville or Georgia markets at the time of the hearing, testified in opposition to the lock-in proposal and the proposed change in location adjustment under the Nashville order. It was NFO's position that pooling on the basis of a plant's physical location is "not good Federal order policy." The NFO representative testified that "the issues of producer blend price equity in the Southeast should be addressed by the merger of Federal orders, not by jerry-rigging the present orders to pool targeted plants on selected orders."

NFO contended that the proposed lock-in deviates from the well-established principles of pooling plants and producers in accordance with the sales areas served. The cooperative's representative contended that this pooling technique has fostered both producer and handler equity over the years and should not be abandoned.

At the time of the hearing, there were only three regulated handlers under the Nashville order: Purity Dairies in Nashville, a pool distributing plant; DI in its capacity as the operator of a cooperative balancing plant in Lewisburg, Tennessee; and DI in its capacity as the handler of its member milk. Purity Dairies has Class I distribution principally in the Nashville market with some distribution in Alabama. The Lewisburg plant operates as a manufacturing plant and reload

center. During the months of flush production, the plant manufacturers milk that is in excess of handlers' fluid milk needs and during the fall months, the plant transfers Class I milk to plants in other markets.

Marketing changes that have occurred since a hearing in 1983 on the issue of whether the Malone & Hyde plant should be pooled under the Nashville order on the basis of the plant's location or under the Memphis order on the basis of greater sales in that market warrant the pooling of the Malone & Hyde plant under the Nashville order. Malone & Hyde purchased its Nashville distributing plant from Kraft Dairy Group in 1983. The company distributes milk through company-owned warehouses throughout the Southeast and south central states from Georgia to Arkansas.

Beginning in 1984, the Malone & Hyde plant became regulated under the Memphis order because it distributed the principal portion of its bottled milk to the Memphis market. In 1984, the plant's sales in Memphis represented more than 50 percent of its total distribution and the Nashville-area sales were less than half of the Memphis sales.

While the Malone & Hyde plant's distribution in Memphis has remained fairly constant since 1984, the plant's sales in Nashville and Alabama-West Florida have increased greatly. In Nashville, the fluid milk sales from the plant have doubled since 1984. The plant's sales in Alabama which were nonexistent when the plant first opened are now almost as great as its sales in the Nashville area. In some months, the plant's sales in Alabama have exceeded its sales in the Nashville area.

Recently, Malone & Hyde has acquired supermarkets in the Nashville marketing area which will provide new accounts for the plant in 1988. The plant operator expects its sales in Nashville in 1988 to equal or exceed its sales in the Memphis area.

Malone & Hyde procures its raw milk supply primarily from producers located in south-central Kentucky and central Tennessee. This milk production area provides regular and reserve milk supplies to handlers associated with the Nashville, Georgia and other Federal order markets.

Current marketing conditions warrant the pooling of the Malone & Hyde plant under the Nashville order. As previously noted, the plant's Class I sales in Nashville for 1988 are expected to equal or exceed its Class I sales in the Memphis market. Furthemore, the pooling of the plant on the basis of its location rather than sales area will avoid the plant shifting regulation among the Memphis, Nashville and Alabama-West Flordia milk orders. In that regard, the plant's Class I sales in the Nashville and Alabama markets each accounted for about 19 percent of the plant's distribution and a shift of 400,000 pounds in sales from Memphis to either the Nashville or Alabama market would shift regulation of the plant to such market. An additional reason for pooling the Malone & Hyde plant under the Nashville order by means of the lock-in provision is that the shifting of regulation among orders could impair the plant's ability to maintain its producer milk supply.

Under the Memphis order, an individual handler pool order, when the Malone & Hyde plant has a high Class I utilization percentage, it is able to return to its producers a favorable blend price. During the months of flush production, however, the plant's Class I utilization percentage is less and it must pay producers in excess of the Federal order's blend price to return a competitive pay price to its producers. The pooling of the Malone & Hyde plant under a marketwide pool order should better enable the plant operator to retain its milk supply on a year-round basis.

As previously noted, the provision that would result in the regulation of the Malone & Hyde plant would also fully regulate the Kroger plant at Murfreesboro, Tennessee, under the Nashville order. The Kroger plant is currently regulated under the Georgia order since a plurality of the plant's distribution is in the Georgia market. The milk supply for the plant comes from dairy farms located in the county where the plant is located and from south central Kentucky and middle Tennessee. The Kentucky and Tennessee areas are the same areas from which Purity Dairies and Malone & Hyde obtain their producer milk supply.

In addition to sharing a common milkshed, Malone & Hyde and Kroger share a common distribution area in the Southeast. Both Malone & Hyde and Kroger have significant distribution in the Nashville market. Malone & Hyde distributes about 20 percent of its plant's Class I sales in the Nashville market. Kroger's distribution in the Nashville market is between 20 and 25 percent of the Murfreesboro plant's total Class I sales.

Regulation of the Kroger plant under the Nashville order is appropriate in this instance since it will result in a common set of regulations for three distributing plants located within 30 miles of each other. As previously noted, the three plants procure milk from a common production area and distribute fluid milk products in a common sales area. Furthermore, the shifting of the Kroger plant to the Nashville market will have no impact upon the Class I price paid for fluid milk products by the plant operator due to a new pricing zone which will retain the $2.605 Class I differential that applies at such plant's location under the Georgia order.

It also appears that the pay prices received by producers supplying the Kroger plant would not be reduced and may be slightly enhanced by the plant's regulation under the Nashville order. The representative of a cooperative association that supplies about 40 percent of the Kroger plant's fluid milk needs supported the pooling of the Kroger plant under the Nashville order. A representative of the Kroger Company who was present at the hearing expressed no position on the proposal to pool the Kroger plant under the Nashville order.

A further reason for pooling the three distributing plants under one order is to facilitate the shifting of milk supplies between the three plants. Such pooling arrangement will permit the milk of dairy farmers to be shipped directly from the farm to the plant where the milk is needed. Currently, Malone & Hyde must use plant transfers to ship milk to Purity Dairy and the Kroger plant. As proponent points out, it would be much more efficient for the milk to move directly from the farm to either Purity Dairy or the Kroger plant rather than being received at the Malone & Hyde plant and then transferred to such plants. However, the current regulations make it impractical for the milk to move directly from the farm to a plant under another order. If milk were shifted from Malone & Hyde, a Memphis order plant, to Purity Dairy, a Nashville order plant, during the months of March through July, the dairy farmer would have no base under the Nashville order and would receive only the excess price for such milk shipments. If such a shift occurred during the months of September-January, the dairy farmer would lose the opportunity to build a full base under the order. In addition, such shifting of supplies would complicate the accounting and reporting obligations of the plants involved.

Counsel for NFO questions in his brief the legality of pooling a distributing plant on the basis of a plant's physical location. In his opinion the Act authorizes regulation by either production area or marketing area. He contends that the Act does not authorize regulation on the basis of plant location.

The proposal under consideration is merely a means of identifying which order should regulate a plant when such plant qualifies as a pool plant under more than one order. The Malone & Hyde plant and the Kroger plant acquire regulatory status under the Nashville order because they meet the pool plant standards of the Nashville order. The physical location of the plant becomes relevant only if the plant also qualifies as a pool plant under another Federal milk order.

The determination that a distributing plant which qualifies as a pool plant under the Nashville order and also qualifies as a pool plant under one or more other Federal orders should be regulated under the Nashville order if such plant is physically located in the Nashville marketing area is consistent with the authority set forth in § 608c(7)(D) of the Act. This subsection specifies that an order may contain various terms that are incidental to, and not inconsistent with, the terms explicity authorized by the Act if the incidental terms are found necessary to effectuate the other provisions of the order. The special pooling arrangement adopted herein is considered essential for the assurance of adequate supplies and the maintenance of orderly marketing.

Counsel for NFO next raises several points why a plant should not be pooled on the basis of its location if the Department concludes such regulation is permitted by the Act. Counsel suggests that the solution to producer blend price equity in the Southeast should be addressed by the merger of orders. Such suggestion is not a viable alternative at this time because it is beyond the scope of the hearing notice. Under the circumstances, there appears to be no reason to preclude some measure of producer blend price equity through the lock-in provision as an interim measure until there is a consensus among producers on the need to merge orders and the number of milk orders that should be merged.

Counsel also contends that the designated pooling of plants will not allow producers under the Alabama-West Florida, Georgia and possibly other orders to share in the pool proceeds of such plants. While it is true that producers under the Alabama-West Florida order would not be able to share in the pool proceeds attributable to the Malone & Hyde plant if the lock-in provision is adopted, it needs to be pointed out that this works to their advantage. A comparison of the Class I utilization percentage of the Malone & Hyde plant and the Alabama-West Florida market's average Class I utilization percentage from January 1986 through September 1987 indicates that pooling the Malone & Hyde plant under the Alabama-West Florida order would have resulted in a lower blend price in 14 of the 21 months for producers regularly associated with the Alabama-West Florida market.

With regard to the gains or losses that producers under the Georgia order would incur by the Kroger plant being locked-in under the Nashville order, there is no way to estimate such gains or losses precisely since the month-to-month Class I utilization percentage of the Kroger plant was not placed in evidence. Two witnesses estimated that the Kroger plant's Class I utilization percentage does not vary significantly from the Georgia market's Class I utilization percentage. If there is the case, a "lock-in" of the Kroger plant under the Nashville order would have little impact on the blend price under the Georgia order.

The final objection by counsel for NFO to "locking-in" the Malone & Hyde plant and the Kroger plant under the Nashville order is that the blend price differences are not sufficient to justify the lock-in provision.

Malone & Hyde estimated on the basis of its uniform price under the Memphis order for the months of February through June 1987 that the Kroger plant enjoyed from 16 cents to 32 cents per hundredweight advantage in obtaining its milk supply. For January through September 1987, the cost advantage enjoyed by Kroger (or cost disadvantage of Malone & Hyde) was estimated by Malone & Hyde to amount to $258,000. Such costs are not inconsequential. When these costs are considered in conjunction with other reasons offered by proponents of the lock-in provision, adoption of the proposal is warranted.

2. Establishment of a Plus 8.5-cent Location Adjustment Zone in Counties South of Nashville

A plus 8.5-cent location adjustment zone should be established in Tennesee in an area south and southeast of Nashville. The Tennessee counties that should be included in the plus 8.5-cent zone are Bedford, Cannon, Coffee, Dekalb, Franklin, Giles, Grundy, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Rutherford, Van Buren, Warren, Wayne and White.

Malone & Hyde proposed that a plus 8.5-cent location adjustment apply on milk received at plants located in the Tennessee counties of Cannon, Coffee, DeKalb, Rutherford, Warren and White. The 8.5-cent location adjustment zone would establish a Class I differential of $2.605 at the Murfreesboro plant, w hich is in Rutherford County. Such Class I differential would be the same as the Class I differential that applies at the Murfreesboro plant under the Georgia order.

At the hearing, Dairymen, Inc., urged a modification of this proposal. The cooperative proposed that milk that is physically received from producers or from a cooperative association acting as a bulk tank handler at plants located in the Tennessee counties of Bedford, Cannon, Coffee, DeKalb, Franklin, Giles, Grundy, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Rutherford, Van Buren, Warren, Wayne and White, be subject to a plus location adjustment of 8.5 cents per hundredweight.

DI pointed out that under the Georgia order, the location adjustment applicable at both the Murfreesboro and the Lewisburg plants is a minus 47.5 cents per hundredweitght—resulting in a Class I price at both locations 8.5 cents higher than at Nashville. DI also took the position that producer milk delivered to pool and nonpool plants in the same general geographic location should receive the same blend price. In this regard, the cooperative noted that the Kroger plant at Murfreesboro, Tennessee, could request that the milk that it receives from cooperative members be diverted to a nonpool plant at which no location adjustment applies while at the same time receiving the milk of independent producers. Under such arrangement, independent producers would receive an 8.5-cent higher blend price than cooperative members whose milk is diverted to nearby plants.

A representative of Southern Milk Sales supported a plus 8.5-cent-per-hundredweight location adjustment for milk received at the plant at Lewisburg, Tennessee. SMS plans to divert milk to the Lewisburg plant in the coming months. The cooperative wanted its members to receive the 8.5-cent higher blend price whether the milk of such members was received at the Murfreesboro plant or was diverted to the Lewisburg plant.

SMS also suggested an alternative pricing method for milk diverted to the Lewisburg plant. The cooperative proposed that milk diverted to the Lewisburg plant be priced at the plant from which the milk was diverted. It opposed, on the other hand, an alternative suggested by counsel for Malone & Hyde, which would price the milk of producers on the basis of the location of the plant where the majority of the producers' milk is received during the month. SMS claimed that this would not solve the problem of pricing milk

diverted to nonpool plants during the months of April, May and June. During such months, SMS would most likely divert its members' milk a greater percentage of the time than the milk of the nonmembers is diverted from the Kroger plant to nonpool plants. In that event, the milk diverted by the cooperative would be priced at the location of the Lewisburg plant while the milk of the nonmembers would be priced at the Murfreesboro location, an eight and one-half-cent higher priced zone.

Malone & Hyde opposed any plus location adjustment in those counties of south central Tennessee in which manufacturing plants are located. The handler noted that DI operates a balancing plant and a cheese plant located at Lewisburg in Marshall County, that Kraft operates a cheese plant at Fayetteville in Lincoln County, and that another cheese plant is located at Ardmore in Giles County. Malone & Hyde expressed concern that adoption of a plus location adjustment for manufacturing plant locations would tend to encourage the movement of milk to manufacturing in preference to delivering milk to fluid milk plants. In addition, such milk movements would reduce the level of the blend price at the central market location in Nashville.

NFO, in its brief, also opposed DI's suggestion that the Lewisburg, Tennessee, plant be in a "plus" location adjustment zone. The cooperative contended that it would be a gross deviation from location pricing practices to grant a plus location adjustment to the supply plant in a market. Opponent pointed out that there would be a lower price to producers if milk supplies were diverted from the Lewisburg plant to the fluid milk plants in Nashville. The cooperative contends that DI's objective is to obtain a competitive advantage for producers supplying the Lewisburg plant versus producers supplying the Malone & Hyde plant in Nashville.

An 8.5-cent location adjustment to the Class I price, to the uniform price to producers during the months of August through February, and to the uniform price for base milk during the months of March through July should apply to milk received at plants in the eighteen-county area proposed by DI. The eighteen-county area forms a corridor between Nashville and Chattanooga and Nashville and the Alabama-West Florida marketing area. Such area with an 8.5-cent plus location adjustment provides a Class I pricing zone with a Class I differential of $2.605 for plants at Murfreesboro and Lewisburg. Such intermediate pricing zone will provide an appropriate alignment between the $2.52 Class I differential that applies in the Nashville area, the $2.77 Class I differential at Chattanoogo under the Tennessee Valley order, and the $2.85 Class I differential at plants located in the northern tier of counties in Alabama under the Alabama-West Florida orders.

The objections raised to providing a higher price to producers for milk delivered to nonpool manufacturing plants than to fluid milk plants are not without merit. However, there are compelling reasons for adopting the higher location adjustments for milk received at plants south of Nashville. The addition of 8.5 cents to the blend price on milk received at the Lewisburg plant will price the milk of producers that is diverted from the Kroger plant at Murfreesboro to the Lewisburg plant at the same level as milk received at the Murfreesboro plant. In this case, it is essential that the blend price on milk diverted to the Lewisburg plant be equivalent to the blend price on milk received at the Murfreesboro plant. Such pricing will provide equity between the two groups of producers who supply the Murfreesboro plant—one group of producers are members of a cooperative association while the other group of producers are not members of a cooperative. As long as the blend price for milk diverted to the Lewisburg plant is equal to the blend price for milk received at the Murfreesboro plant, the operator of the plant and the cooperative association should be indifferent as to which group of producers is diverted to the nonpool manufacturing plant.

Another factor to be considered in the pricing of milk diverted to Tennessee nonpool plants located south of Nashville is that the primary milk supplies for the Malone & Hyde plant, Purity Dairy at Nashville, and the Kroger plant at Murfreesboro and plants in other southeastern markets are located in central Kentucky and Tennessee counties to the north of Nashville. In such instance, the 8.5-cent-higher price is not going to draw milk away from the fluid milk plants loated in Nashville because the added cost of hauling milk beyond the Nashville area to plants further south will nullify the added returns from the 8.5-cent-higher blend price. Yet, the 8.5-cent higher price at plants south of Nashville is needed to reflect added transportation service provided by those producers in Kentucky and northern Tennessee that haul their milk past Nashville to the Kroger plant.

To establish a plus location adjustment in the 18 Tennessee counties, the recommended decision provided for a new paragaph to be added to the section of the order dealing with plant location adjustment for handlers. In addition to that change, several additional modifications to the order are needed as follows:

(1) Plant location adjustment for handlers (§ 1098.52(a)(4))—This provision currently specifies that no location adjustment shall apply in the State of Tennessee. Accordingly, the provision needs to be modified to permit a location adjustment to apply in the 18 Tennessee counties.

(2) Computation of uniform price (§ 1098.61(a)(2))—This provision of the order is structured currently to deal only with minus location adjustments. In view of the plus location adjustments adopted herein, the provision needs to be modified in that regard.

(3) Plant location adjustments for producers and on nonpool milk (§ 1098.75)—Paragraphs (a) and (b) of this section refer to location adjustment rates set forth in § 1098.52(a). Both paragraphs need to be changed to reflect the plus 8.5-cent location adjustment provided in § 1098.52(b).

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain intersted parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Nashville, Tennessee, and Georgia orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the

price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Rulings on Exceptions

Malone & Hyde Dairy and DI filed responses indicating their approval of the proposed changes. They requested that the changes be implemented as soon as possible.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the Nashville, Tennessee, and Georgia marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the Nashville, Tennessee, marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be July 1988.

The agent of the Secretary to conduct such referendum is hereby designated to be Arnold M. Stallings.

Determination of Producer Approval and Representative Period

July 1988 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Georgia marketing area is approved or favored by producers, as defined under the terms of the order as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Parts 1098 and 1007

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on September 27, 1988.

Kenneth A. Gilles,

Assistant Secretary of Agriculture Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the Nashville, Tennessee, and Georgia Marketing Areas

(This order shall not become effective unless and until the requirements of §900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Nashville, Tennessee, and Georiga marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantiy of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore, ordered that on and after the effective date hereof, the handling of milk in the Nashville, Tennessee, and Georgia marketing areas shall be in confirmity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending the orders contained in the recommended decision issued by the Administrator, on July 21, 1988 and published in the **Federal Register** on July 26, 1988 (53 FR 27993), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein, subject to the following modifications:

1. In §1098.52, paragraph (a)(4) is reivsed.
2. In §1098.60, paragraph (g) is removed.
3. In §1098.61, paragraph (a)(2) is revised.
4. Section 1098.75 is revised.
5. Section 1098.90 is revised.
6. Section 1098.92 is revised.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA

1. The authority citation for 7 CFR Parts 1098 and 1007 continues to read as follows:

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

2. In §1098.7, paragraph (d)(2) is revised to read as follows:

§1098.7 Pool plant.

* * * * *

(c) * * *

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in the Nashville, Tennessee, marketing area, except:

(i) That such distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order;

(ii) On the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions; and

(iii) A plant located in the marketing area that qualifies pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition shall be subject to all the provisions of this part so long as this order's Class I price applicable at such plant location is not less than the other order's Class I price applicable at this same location even though the plant may have greater route disposition in the other marketing area than in the Nashville marketing area.

3. In §1098.52, paragraph (a) (4) is revised, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), and a new paragraph (b) is added to read as follows:

§1098.52 Plant location adjustment for handlers.

(a) * * *

(4) For such milk that is physically received at plants located east of the Mississippi River and south of the northern boundary of Tennessee, except for the Tennessee counties specified in paragraph (b) of this section or the northern boundary of North Carolina, no adjustment shall be made under this paragraph.

(b) For such milk that is physically received from producers or from a handler described in §1098.9(c) at plants located in the Tennessee counties of Bedford, Cannon, Coffee, DeKalb, Franklin, Giles, Grundy, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Rutherford, Van Buren, Warren, Wayne, and White, the price shall be adjusted by plus 8.5 cents per hunderweight.

* * * * *

§ 1098.60 [Amended]

4. In §1098.60, paragraph (g) is removed.

5. In § 1098.61, paragraph (a)(2) is revised to read as follows:

§1098.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk.)

(a) * * *

(2) Add an amount equal to the total value of the minus adjustments and subtract an amount equal to the total value of the plus adjustments computed pursuant to §1098.75;

* * * * *

6. Section 1098.75 is revised to read as follows:

§ 1098.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to §1098.73(b), the uniform price and the uniform price for base milk pursuant to §1098.61 for producer milk received at a plant shall be adjusted at the rates set forth in §1098.52 (a) and (b) according to the location of the plant; and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in §1098.52 (a) and (b) applicable at the location of the nonpool plant from which the milk was received, except that the weighted average price shall not be less than the Class III price.

§ 1098.90 [Amended]

7. Amend § 1098.90 by removing the last sentence which reads "For the months of March 1985 through July 1985, base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1098.13."

§ 1098.92 [Amended]

8. Amend § 1098.92 removing the last sentence which reads "For producer bases to be calculated on or before February 25, 1985, and subject to § 1098.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the number of days' production represented by such producer milk or by 153, whichever is more; or by 138 pursuant to the above provisions."

PART 1007—MILK IN THE GEORGIA MARKETING AREA

9. In § 1007.7, paragraph (e)(3) is revised and a new paragraph (e)(4) is added to read as follows:

§ 1007.7 Pool plant.

* * * * *

(e) * * *

(3) A plant (except a plant that is a pool pursuant to paragraph (d) of this section) that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraphs (a) or (b) of this section and, except as provided in paragraph (e)(4) of this section, a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants pursuant to paragraphs (a) or (d) of this section than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

(4) A distributing plant qualified pursuant to paragraph (a) this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Georgia marketing area as route disposition than as route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation, even though such plant has greater route disposition in the marketing area of the Georgia order.

Marketing Agreement Regulating the Handling of Milk in the Nashville and Georgia Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ [1] to , all inclusive, of the order regulating the handling of milk in the ( ) marketing area (7 CFR PART [2]) which is annexed hereto; and

II. The following provisions:

§ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of July 1988, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ [3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Seal)

Attest _____

Date _____

_____

(Signature)

By _____

(Name) (Title)

_____

(Address)

[FR Doc. 88-22734 Filed 9-30-88; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies

AGENCY: Small Business Administration.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: SBA proposes to reduce the minimum amount of pool certificates representing an undivided interest in a pool of development company debentures (505 certificates) from $100,000 to $25,000, in order to improve the market acceptance of 505 certificates.

DATE: Written comments should be submitted on or before November 2, 1988.

ADDRESS: Submit written comments to Wayne Foren, Director, Office of Economic Development, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analyst, Small Business Administration, 1441 L Street NW., Room 720-A, Washington, DC 20416, 202-653-6416.

SUPPLEMENTARY INFORMATION: Section 505 of the Small Business Investment Act, 15 U.S.C. 697(b) authorizes SBA to issue certificates representing undivided ownership of all or a fractional part in a pool of development company debentures quaranteed by SBA. SBA is further authorized to guarantee the timely payment of principal and interest on these certificates. The full faith and credit of the United States is pledged to such guarantees. Pursuant to this authority, SBA has adopted a regulation which provides in relevant part that 505 certificates shall be issued in amounts of at least $100,000. Experience has shown, however, that this minium amount is too large, and that purchasers frequently split these amounts by selling fractional interests in such certificates to other investors. By reducing the minimum amount to $25,000, it is hoped to improve the marketability of 505 certificates, and therefore eventually to reduce the interest cost to the development companies which have issued the debentures forming such pools, and to their small business borrowers.

SBA has determined that this proposed rule is not a major rule for purposes of E.O. 12291 because it would not have an annual economic impact on the national economy of $100 million or more. In this regard, SBA estimates that the anticipated interest rate reduction, assuming the authorized program level for FY 1989 of $468 million and an interest rate reduction of one-half of one percent, would not exceed $2,340,000. The proposed rule also would not result in a major increase in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Further the proposed rule would not have a significant adverse effect on competition, employment, investment, productivity, innovations or international competitiveness of U.S. based businesses.

SBA certificates that this proposed rule will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities because it would only change the form of the certificates now being sold by the underwriters.

SBA also certifies that this rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, Pub. L. 98-511, 44 U.S.C. Ch. 35, SBA certifies that this regulation, if adopted, would not impose any reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 108

Loan Programs/business—Small business.

Accordingly, pursuant to the authority contained in section 308(c) of the Small Business Investment Act, 15 U.S.C. 687(c), SBA proposed to amend Part 108, Chapter I, of Title 13, Code of Federal Regulations, as follows:

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

1. The authority citation would be revised to read as follows:

Authority: Secs. 308(c), 501, 502, 503, 504, 505 of the Small Business Investment Act, 15 U.S.C. 687(c), 695, 696, 697, 697a, 697(b).

§ 108.505 [Amended]

2. Section 108.505(e) would be amended by striking "one hundred thousand dollars ($100,000)" therefrom and substituting "twenty-five thousand dollars ($25,000)" therefor.

[Catalog of Federal Domestic Assistance #59.036 Development Company Loans and #59.041 Certified Development Company Loans]

Dated: September 6, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-22703 Filed 9-30-88; 8:45 am]

BILLING CODE 8025-01-M

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[1] First and last sections of the respective orders.

[2] Appropriate part number.

[3] Next consecutive section number.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918 and 1926

[Docket No. H-022D]

Hazard Communication

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; extension of time to submit comments and notices of intention to appear at hearing; rescheduling of informal hearing.

SUMMARY: On August 8, 1988, OSHA published a notice of proposed rulemaking (NPRM) on Hazard Communication (53 FR 29822). Today's notice extends the period for the submission of public comments on the issues raised in the August 8 NPRM, and for the submission of notices of intention to appear at an informal hearing on the NPRM, from October 7, 1988, until October 28, 1988. It also reschedules the beginning of the informal public hearing from November 15, 1988, to December 6,1988.

DATES: Written comments concerning the issues raised in the proposal and notices of intention to appear at the public hearing must be received on or before October 28, 1988.

Parties requesting more than 10 minutes for their presentation at the hearing and parties to present documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence no later than November 14, 1988.

The hearing will begin in Washington, DC, on December 6, 1988, at 9:30 a.m., and may continue for more than one day based on the number of notices of intention to appear.

ADDRESSES: Four copies of written comments must be sent to the Docket Office, Docket H-022D; Occupational Safety and Health Administration; Room N2634; 200 Constitution Avenue NW.; Washington, DC 20210. Telephone (202) 523-7894.

Four copies of each notice of intention to appear and testimony and evidence that will be introduced into the hearing record must be sent to Mr. Thomas Hall, Division of Consumer Affairs; Docket H-022D; Occupational Safety and Health Administration; Room N3647; 200 Constitution Avenue NW., Washington, DC 20210.

The informal hearing will begin in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue NW.; Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: *Hearing:* Mr. Thomas Hall, Division of Consumer Affairs; Occupational Safety and Health Administration; Room N3647; 200 Constitution Avenue NW.; Washington, DC 20210. Telephone (202) 523-8615. For additional information on how to submit a notice of intention to appear, see discussion below.

Proposal: Mr. James F. Foster, Office of Information and Consumer Affairs; Occupational Safety and Health Administration; Room N3647; 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Public Comments

On August 8, 1988, OSHA published a NRPM on Hazard Communication (53 FR 29822). Interested persons are invited to submit written data, views and arguments on all issues raised in the NPRM. These comments must be received on or before October 28, 1988. Four copies of each comment must be sent to the Docket Office, Docket H-022D; Occupational Safety and Health Administration; Room N3647; 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-7894. Written submissions must clearly identify the provisions of the standard which are addressed and the position taken with respect to each issue. The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions will be made a part of the record of the proceeding.

Public Hearing

Under section 6(b)(3) of the Occupational Safety and Health Act (29 U.S.C. 655(b)(3)) and OSHA regulations at 29 CFR Part 1911, an opportunity to testify orally concerning the issues raised in the NPRM will be provided at an informal public hearing beginning on December 6, 1988, at 9:30 a.m., in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210.

Notice of Intention to Appear

All persons desiring to participate in the hearing must file four copies of a notice of intention to appear with Mr. Thomas Hall, Division of Consumer Affairs; Docket H-022D; Occupational Safety and Health Administration; Room N3647; 200 Constitution Avenue NW.; Washington, DC 20210. Telephone (202) 523-8615. This notice must be filed on or before October 22, 1988. Notices of intention to appear, which will be available for public inspection and copying at the OSHA Docket Office (address previously listed) must contain the following information:

1. The name, address and telephone number of each person who will testify;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The specific issues that will be addressed;
5. A detailed statement of the position that will be taken with respect to each issue addressed; and
6. Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide, in quadruplicate, the complete text of the testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be received by November 14, 1988, and will be available for inspection and copying at the OSHA Docket Office. Each such submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10 minute presentation and may be requested to return for questioning at a later time. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper notices of intention to appear at the hearing will be entitled to ask questions and otherwise participate fully in the proceeding.

Conduct of the Hearing

The hearing will commence at 9:30 a.m., on December 6, 1988, in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210, with the resolution of any

procedural matters relating to the proceeding. The hearing will be conducted in accordance with 29 CFR Part 1911 and the prehearing guidelines, which will be sent to all persons who file a notice of intention to appear. The hearings will be conducted as expeditiously as possible, consistent with the full development of the record and the rights of the parties.

The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;

2. To dispose of procedural requests, objections, and comparable matters;

3. To confine the presentation to the matters pertinent to the issues raised;

4. To limit the time for questioning;

5. To regulate the conduct of those present at the hearing by appropriate means; and,

6. To keep the record open for a reasonable stated time to receive additional written data, views and arguments from any person who has participated in the oral proceeding.

Following the close of the hearing or of any post-hearing comment period, the presiding Administrative Law Judge will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of a final standard. The proposed standard will be reviewed in light of all oral and written submissions received as part of the record, and final decisions will be made by the Assistant Secretary based upon the entire record in this proceeding, including the earlier written comments and evidence received from the public.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued pursuant to sec. 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655); Secretary of Labor's Order No. 9–83 (48 FR 35736); and 29 CFR Part 1911.

Signed at Washington, D.C. this 28th day of September.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 83–22664 Filed 9–30–88; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 256, 281, and 282

Outer Continental Shelf Minerals and Rights-of-Way Management, General; Leasing of Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf; Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulphur

AGENCY: Minerals Management Service, Interior.

ACTION: Extension of comment period.

SUMMARY: On August 18, 1988, the Minerals Management Service (MMS) published two Notices of proposed rulemaking in the **Federal Register**. One Notice proposed rules for leasing minerals other than oil, gas, and sulphur in the Outer Continental Shelf (OCS); the other Notice proposed rules for operations for minerals other than oil, gas, and sulphur in the OCS. The public comment period for each of these proposed rules was to close on October 3, 1988. The MMS has determined that extensions of these comment periods are warranted. This Notice extends the comment period for each of these proposed rulemakings until November 2, 1988.

DATE: Comments must be hand delivered or postmarked no later than November 2, 1988.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior, Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Attention: Gerald D. Rhodes; telephone (703) 648–7816; (FTS) 959–7816.

FOR FURTHER INFORMATION CONTACT: John Mirabella; Branch of Rules, Orders, and Standards; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; telephone (703) 648–7816 or (FTS) 959–7816.

SUPPLEMENTARY INFORMATION: On August 18, 1988, MMS published in the **Federal Register** a Notice of proposed rulemaking to establish rules governing the leasing of minerals other than oil, gas, and sulphur (53 FR 31424) and a Notice of proposed rulemaking to establish rules governing operations on the OCS for minerals other than oil, gas, and sulphur (53 FR 31442). The comment period for each of these proposed rules was to close October 3, 1988. It was thought that this comment period would provide sufficient time for interested parties to review and analyze the proposed rules and to prepare and submit written comments (advance Notices of proposed rulemaking were published and public comments were obtained on drafts of each of the proposed rules prior to their publication August 18, 1988).

The MMS received several requests for additional time within which to submit comments on these proposed rules. The requests were based on either a need for additional time to allow commenters from similar organizations to discuss the proposed rule and consider the submission of consolidated comments on behalf of an association of commenters or on a need for additional time to analyze the proposed rules and to prepare comments on behalf of other parties.

In view of the apparent need for additional time, it has been decided that an additional 30 days for analysis and comment would be authorized; therefore, the comment period is being extended to November 2, 1988. Although the additional time is less than the amount of additional time requested by some of the applicants, MMS believes that the additional 30-day time period, when combined with the period specified in the Notices of proposed rulemaking, will provide amply time for interested parties to analyze and prepare comments on the proposed rules.

The Notices of proposed rulemaking addressing leasing of OCS minerals other than oil, gas, and sulphur and operations associated with OCS minerals other than oil, gas, and sulphur were issued separately and apply to two separate rulemaking actions. Parties wishing to comment on the proposed rulemakings should submit separate sets of comments for each of the proposed rules. Comments should be sent to the address provided above and must be received or postmarked by November 2, 1988.

Date: September 27, 1988

J. Rogers Pearcy,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 88–22590 Filed 9–30–88; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 10

[Docket No. 80866-8166]

Requests for Reconsideration in Patent and Trademark Office Disciplinary Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice of proposed rulemaking sets forth a proposed amendment to 37 CFR 10.156. The purpose of the amendment is to prescribe a date on which the decision of the Commissioner of Patents and Trademarks in a Patent and Trademark (PTO) disciplinary proceeding becomes final agency action for purposes of judicial review, and to provide for one request for reconsideration or modification of such decision by a party. Interested parties are invited to comment on the proposed amendment.

DATES: Written comments must be received on or before December 1, 1988 to insure consideration. No oral hearing will be conducted.

ADDRESS: Address written comments to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231 marked to the attention of Harris A. Pitlick.

FOR FURTHER INFORMATION CONTACT: Harris A. Pitlick by telephone at (703) 557-4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Present rules do not explicitly provide for requests for reconsideration or modification of Commissioner's decisions in appeals from initial decisions of administrative law judges in PTO disciplinary proceedings. 37 CFR 10.156 presently provides that such a Commissioner's decision is a final agency action.

In a recent case, *Klein v. Peterson*, 6 USPQ 2d 1556 (D.D.C. 1988), a first decision of the Commissioner was withdrawn and ultimately replaced with a second decision. The respondent sought judicial review of the first decision under 35 U.S.C. 32 after its finality had already been withdrawn and then sought judicial review of the second decision. The authority of the Commissioner to, in effect, reconsider his decision in a disciplinary proceeding was challenged in the cited case. The district court held that since there was no express statutory authority proscribing the Commissioner from reconsidering the first decision, there was implicit authority to do so consistent with long-standing precedent in the area of federal administrative law.

While *Klein* confirmed that the Commissioner has inherent authority to reconsider a decision, at least before an appeal has been noted, the PTO believes that a rule explicitly providing for a time in which requests for reconsideration may be made by a party and a date certain for when Commissioner's decisions in disciplinary proceedings become final will both promote greater certainty in this area of disciplinary proceeding practice and eliminate the possibility of multiple appeals. The rule proposed is not intended to preclude the Commissioner from *sua sponte* reconsidering or modifying a decision in a disciplinary proceeding at any time where conditions warrant and a respondent's due process rights are not violated, consistent with long-standing federal administrative law precedent.

37 CFR 10.156 is proposed to be amended as follows.

Paragraph (a) would be amended to provide that, subject to paragraph (c), the decision of the Commissioner in a disciplinary proceeding becomes final agency action upon the expiration of twenty (20) days after entry thereof.

New paragraph (c) would be added to provide for a single request for reconsideration or modification by the respondent or the Director of Enrollment and Discipline, if made within 20 days of entry of the Commissioner's decision. Such a request would have the effect of staying the effective date of the decision. The decision by the Commissioner on the request would be the final agency action in a disciplinary proceeding and would be effective on the date of entry.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule change is not expected to have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354) because in merely codifying the inherent right of the PTO to reconsider its decisions *sua sponte*, the proposed rule extends the right to each party in a PTO disciplinary proceeding to seek reconsideration.

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this proposed rule has no federalism implications affecting the relationship between the national government and the States as outlined in Executive Order 12612.

This proposed rule change does not contain a collection of information subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 37 CFR Part 10

Administrative practice and procedure, Courts, Inventions and patents, Lawyers, Trademarks.

For the reasons set out in the preamble, it is proposed to amend 37 CFR Part 10 as follows wherein removals are indicated by brackets and additions by arrows:

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

1. The authority citation for 37 CFR Part 10 would continue to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

2. Section 10.156 is proposed to be amended by revising paragraph (a) and adding new paragraph (c) to read as follows:

§ 10.156 Decision of the Commissioner.

(a) An appeal from an initial decision of the administrative law judge shall be decided by the Commissioner. The Commissioner may affirm, reverse or modify the initial decision or remand the matter to the administrative law judge for such further proceedings as the Commissioner may deem appropriate. ►Subject to paragraph (c) of this section, a decision by the Commissioner does not become a final agency action in a disciplinary proceeding until 20 days after it is entered.◄ [Entry of a decision by the Commission is a final agency action in a disciplinary

proceeding.] In making a final decision, the Commissioner shall review the record or those portions of the record as may be cited by the parties in order to limit the issues. The Commissioner shall transmit a copy of the final decision to the Director and to the respondent.

* * * * *

►(c) A single request for reconsideration or modification of the Commissioner's decision may be made by the respondent or the Director if filed within 20 days from the date of entry of the decision. Such a request shall have the effect of staying the effective date of the decision. The decision by the Commissioner on the request is a final agency action in a disciplinary proceeding and is effective on its date of entry.◄

Dated: September 7, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88-22603 Filed 9-30-88; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 145

[FRL-3458-2]

Environmental Protection Agency and Nebraska Department of Environmental Control Underground Injection Control Program Aquifer Exemption Proposal

AGENCY: Environmental Protection Agency.

ACTION: Notice of Extension of Period to Receive Written Comments.

SUMMARY: The purpose of this notice is to extend the deadline for receipt of written comment regarding the Chadron Aquifer Exemption Request. On August 23, 1988, a public hearing was held at Fort Robinson near Crawford, Nebraska. Interested parties requested an extension of the deadline for receipt of written comment regarding the proposed exemption. The original deadline for written comments was September 6, 1988 (53 FR 27534). In response to the request for an extension of the comment period, the deadline for written comments is now being extended to December 21, 1988.

DATE: The deadline for receipt of written comments is December 21, 1988.

ADDRESSES: Written comments should be mailed to Angela C. Ludwig, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas 66101. Copies of the Nebraska Department of Environmental Control Aquifer Exemption Request and supporting documentation are available for review during the comment period, between 8 a.m. and 4 p.m., at the following locations: Environmental Protection Agency, Region VII, Water Management Division, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236-2815; Nebraska Department of Environmental Control, 301 Centennial Mall, South, Lincoln, Nebraska 68509, (402) 471-2186; Nebraska Department of Environmental Control, Chadron Office-Room 112, Chadron, Nebraska 69337, (308) 432-2550; Nebraska Oil & Gas Conservation Commission, 1135 Jackson, Sidney, Nebraska 69162, (308) 254-4595.

FOR FURTHER INFORMATION CONTACT: Angela C. Ludwig, Environmental Protection Agency, Region VII, Drinking Water Branch, Water Management Division, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236-2815. Comments should be sent to this address.

Date: September 21, 1988.

Morris Kay,

Regional Administrator.

[FR Doc. 88-22615 Filed 9-30-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6937]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications 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 (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper or local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Maticks, 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 base (100-year) flood elevations and modified base 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 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 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 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 elevation determinations, however, impose no restriction unless and until 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 prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirements; of itself it has no economic impact.

List of Subject in 44 CFR Part 67

Flood insurance, Flood plains.

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.

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Florida	City of Atlantic Beach, Duval County.	Sherman Creek Canal	Just downstream of Unnamed Road	None	*8
			Just upstream of Plaza Street	None	*9
		Atlantic Ocean	About 350 feet east of intersection of Beach Avenue and 6th Street.	*10	*15
			About 500 feet east of intersection of Beach Avenue and Atlantic Boulevard.	*14	*21
		Intracoastal Waterway	About 2800 feet west of intersection of Main Street and Levy Road.	*6	*8
			About 1300 feet west of intersection of Main Street and Levy Road.	*6	*6
Maps available for inspection at the City Building, Atlantic Beach, Flordia. Send comments to The Honorable Richard Fellows, City Manager, City of Atlantic Beach, P.O. Drawer 25, Atlantic Beach, Florida 32233.					
Florida	City of Jacksonville Beach, Duval County.	Atlantic Ocean	About 250 feet east of intersection of Tenth Avenue North and 1st Street North.	*10	*14
			About 500 feet east of intersection of 37th Avenue South and Duval Drive.	*12	*20
		Intracoastal Waterway	About 300 feet west of intersection of Seabreeze Avenue and Evans Drive.	None	*5
			About 0.9 mile west of intersection of Seabreeze Avenue and Evans Drive.	*5	*8
Maps available for inspection at the City Hall, 11 North 3rd Street, Jacksonville Beach, Florida. Send comments to The Honorable Lester Griffis, City Manager, City of Jacksonville Beach, City Hall, 11 North 3rd Street, Jacksonville Beach, Florida 32250.					
Florida	City of Neptune Beach, Duval County.	Atlantic Ocean	About 400 feet east of intersection of Seagate Avenue and 1st Street.	None	*14
			About 500 feet east of intersection of Oak Street and 1st Street.	*10	*21
		Intracoastal Waterway	About 500 feet south of intersection of Kings Road and Indian Woods Drive.	*5	*5
			About 900 feet west of intersection of Kings Road and Indian Woods Drive.	*5	*6
Maps available for inspection at the City Hall, 116 First Street, Neptune Beach, Florida. Send comments to The Honorable Ish Brant, Mayor, City of Neptune Beach, City Hall, 116 First Street, Neptune Beach, Florida 32233.					
Georgia	City of Blackshear, Pierce County.	Alabaha River	About 2.0 miles downstream from CSX railroad	None	*78
			About 0.1 mile upstream of U.S. Route 82	None	*84
Maps available for inspection at the City Hall, Blackshear, Georgia. Send comments to The Honorable Harry G. Adams, Mayor City of Blackshear, P.O. Box 268, Blackshear, Georgia 31516.					

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: September 26, 1988.

[FR Doc. 88-22637 Filed 9-30-88; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 580

[Docket No. 88-19]

Rules on Effective Date of Tariff Changes

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 88-19, concerning the rule on effective date of tariff changes, and found that its resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATE: Petitions for review are due on or before October 13, 1988.

ADDRESS: Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Special Studies, 1100 L Street NW., Washington, DC 20573-0001.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that Docket No. 88-19 (53 FR 33153, August 30, 1988) will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. section 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket No. 88-19, the Commission proposes to amend its foreign tariff filing rules to require common carriers to publish in their tariffs a rule specifying that rates, rules and charges applicable

to a given shipment must be those published and in effect on the date the cargo is received by the carrier or its agent (including a connecting inland carrier in the case of an intermodal through movement).

This Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the Federal Register unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573–0001, telephone (202) 523–5725.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88–22632 Filed 9–30–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket 88–375]

Amendment of Rules To Provide for an Additional FM Station Class (Class C3) and To Increase the Maximum Transmitting Power for Class A FM Stations

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: The Commission proposes to create an additional intermediate class of FM broadcast stations and allotments (Class C3) in Zone II. Also, the Commission proposes to increase the maximum permitted effective radiated power for Class A FM broadcast stations from 3000 watts to 6000 watts. By providing additional opportunities for expanded coverage areas, both of the proposed actions would potentially enable Class A FM broadcast stations to provide better service to their audiences.

DATES: Comments must be submitted on or before November 22, 1988, and replies must be submitted on or before December 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bernard Gooden (Class C3) and/or B .C. "Jay" Jackson, Jr. (Class A), Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* in MM Docket 88–375, adopted on July 20, 1988 and released on September 12, 1988. The full text is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC and may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Notice of Proposed Rule Making

1. The Commission hereby gives notice of proposed rule amendments that would permit improvements in the facilities of Class A FM broadcast stations. By providing additional opportunities for expanded coverage areas, the proposed amendments would potentially enable Class A FM broadcast stations to provide better service to their audiences.

2. The Commission initiates this rulemaking in response to two petitions. The first, filed by Petaz Communications, Inc., requests amendment of the rules to provide for a new class of commercial FM station in Zone II. The second petition, filed by the New Jersey Class A FM Broadcasters Association, requests amendment of the rules to allow Class A FM broadcast stations to operate using a maximum ERP of 6000 watts, rather than the 3000 watts currently permitted.

3. The Commission believes that significant public benefits may indeed result from the creation of a new FM Class C3 in Zone II and a modest increase in transmitting power for Class A stations. Originally, Class A stations were intended to provide local service to smaller communities. However, in order to meet the demand for FM service, they are now also assigned to larger communities in order to provide additional service where no additional higher class stations can be assigned. Also, to encourage the improvement of FM radio service, the Commission has in recent years amended its rules to reduce the expense, inconvenience and risk incurred by FM stations, including Class A stations located in smaller communities, seeking upward reclassification of their allotment and station facilities. Consequently, many Class A FM stations today find themselves competing directly with the much larger Classes B1, B, C2, C1, and C FM stations in the same communities. The actions proposed have the potential to offset some of the competitive disadvantages currently faced by Class A stations.

4. Therefore, the Commission proposes to add a new class of station: Class C3 (an intermediate class between Class A and C2) with maximum facilities of 25 kW ERP and antenna height of 100 meters (328 feet) above average terrain. Appropriate additional separation distance requirements are proposed for this new class.

5. Also, the Commission proposes to raise the maximum ERP limit for Class A FM stations from 3000 watts to 6000 watts. The reference HAAT would remain at 100 meters. Two possible methods for implementing the proposed power increase are being considered by the Commission. Using the first method, the Commission would raise the maximum ERP limit for all Class A FM stations from 3000 to 6000 watts while retaining the co-channel and adjacent channel spacings currently applicable to Class A stations. Grandfathered short-spaced Class A stations would be allowed to increase ERP up to 6000 watts, but would remain subject to the provisions of §73.213 of the rules. Initially, it appears that allowing all Class A stations to increase power would have little effect on other existing stations.

6. The second method would allow the increase in power for only those Class A stations able to meet increased separation distances. Service gains would not be as great as under the first method, but any adverse effects on existing stations would be minimized. The effect of this approach would be to create two categories of Class A station—one would consist of 6000 watt Class A stations; the other would comprise those Class A stations that could not reach 6000 watts ERP because of their inability to meet the increase separation requirements. Grandfathered short-spaced stations would apparently fall into the latter category. However, some granfathered short-spaced stations might be allowed to increase power if mutual agreements could be reached with all of the stations involved, and if it were shown that such an increase would serve the public interest.

7. Regardless of which method is selected, the Commission prefers to minimize administrative burdens. Therefore, the following procedures for handling administration of the Class A power increase are proposed. It is proposed to allow those Class A stations that can effect the power increase by simply adjusting transmitter output power, replacing an omnidirectional antenna with a higher gain omnidirectional antenna, replacing the transmission line or components within the transmission line, or by a combination of these methods, to do so without individual prior approval. In

such cases, the station license would be required to file Form 302, together with a supplemental exhibit addressing environmental and coordination matters, within ten days after the power increase is made.

8. In all other cases, such as a change in location or an increase in antenna height, individual prior approval would be required and the station license would need to file Form 301 before making the change. Also, in cases where the power increase could result in exposure of workers or the general public to levels of radio frequency radiation in excess of American National Standards Institute guidelines (ANSI C95.1–1982), approved by the Commission in advance of implementation would be required. Use of these procedures would enable many Class A stations to take advantage of the increase quickly, and would avoid undue burden on the Commission's application processing staff.

9. The rule amendments proposed differ only slightly between the two methods. Specifically, in the proposed revisions to §73.211, proposed new paragraph (b)(1)(iv) would be included if the second method were employed, and excluded if the first method were employed. Also, additional revisions to certain other sections, such as §73.207, might be necessary under certain circumstances.

10. Class A, B1 and B FM stations are authorized in Puerto Rico and the U.S. Virgin Islands, however stations there are already allowed much larger coverage areas than their counterparts in the mainland. The Commission proposes to allow the same range of transmitting power for these stations, but believes that no additional coverage is justified. Therefore, it is proposed to increase the maximum ERP for Puerto Rico/Virgin Islands Class A FM stations to 6000 watts, and to reduce the reference HAAT to 240 meters. By doing so, the Commission is maintaining exactly the same coverage area that these stations now have.

11. Before the proposed Class C3 allotment or the proposed Class A power increase could be implemented within the areas adjoining the Canadian and Mexican borders, coordination with the respective governments of those two countries would be necessary.

12. There are some Class C2 stations currently operating with an ERP of 25 kW or less and an antenna HAAT such that the reference distance for these stations is not greater than 39 km (the class contour distance for the proposed C3 Class). Also, there are a few Class C stations operating with (grandfather) ERP greater than 100 kW, but with an antenna HAAT such that the reference distance for these stations is not greater than 72 km. In both cases, the Commission proposes to inform the licensees of these stations of their status, then provide a three year period during which they may modify facilities to meet the criteria for station classification under their current class, or otherwise be subject to reclassification. Implementation of these procedures would ensure that stations that do not meet minimum service requirements do not receive excessive protection and thereby preclude other operations.

13. Under procedures set out in §1.415 of the rules and regulations, 47 CFR 1.415, interested persons may file comments on or before November 22, 1988 and reply comments on or before December 22, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in Report and Order.

14. In accordance with the provisions of §1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, DC.

15. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* §1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter had been placed on the Sunshine Agenda, and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

16. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, in not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a memorandum to the Secretary (with a copy to the commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

I. Reason for Action

The Commission is proposing to add an additional Zone II FM broadcast station classification (Class C3), and to increase the permitted maximum power for Class A FM broadcasting stations. The principal reason for these proposals is to provide additional options for improvement of facilities of Class A FM stations. In particular, the proposed action would provide means for Class A FM broadcast stations to expand their signal coverage areas and to provide a stronger signal within their existing coverage areas, while providing reasonable levels of protection to other classes of existing stations and allotments. These proposed actions are intended to increase FM broadcast service to the public and to encourage beneficial competition between broadcast facilities.

II. The Objective

The objectives of the proposed rules are to promote a competitive marketplace for the development and use of broadcast facilities and services, to provide a regulatory framework that permits markets for broadcast services to function effectively, and to encourage efficiency in the allocation, licensing, and use of the electromagnetic spectrum.

III. Legal Basis

The legal basis for the action proposed herein is contained in sections 4 and 303 of the Communications Act of 1934, as amended. Specifically, paragraphs 303(a), 303(b), 303(c), 303(d), 303(f), 303(h) and 303(r) of the Communications Act apply.

IV. Description, Potential Impact, and Number of Small Entities Affected

There are approximately 5382 FM broadcast stations, most of which are small entities. Changes in operating parameters as proposed herein have the potential to affect the balance between the number of stations that can be authorized in a given market and the extent of primary service each can provide.

V. Reporting, Recordkeeping, and Other Compliance Requirements

There would be no additional reporting, recordkeeping or other compliance requirements. However, under the proposed rules, those Class A licensees able to increase transmitting power without prior approval would be required to file, together with existing Form 302, a supplementary exhibit comprising responses to a few of the questions that are contained in existing Form 302.

VI. Federal Rules Which Overlap, Duplicate, or Conflict with the Proposed Rules

No federal rules overlap, duplicate or conflict with the proposed rules.

VII. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent With Stated Objective

Two of the parties filing initial comments suggested that additional or increased distance separations be required for Class A FM stations wishing to increase power. These suggestions could affect the impact of this proposal on small entities. The Commission will consider all relevant and timely comments filed that address these alternatives.

17. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and has been found to impose a modified information collection requirement on the public. Implementation of any modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

18. *It is proposed*, pursuant to authority contained in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303, that Part 73 of the Commission's Rules be *amended* as set forth below.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

It is proposed to amend 47 CFR Part 73 as follows:

PART 73—[AMENDED]

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

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

2. 47 CFR 73.207 would be amended by revising paragraph (a), the introductory text to paragraph (b) and the text of paragraphs (b)(2) and (b)(3), and by adding a new paragraph (c), as follows:

§ 73.207 Minimum distance separation between stations.

(a) Except as provided in § 73.213, FM allotments and assignments must be separated from other allotments and assignments on the same channel (co-channel) and on five pairs of adjacent channels by not less than the minimum distances specified in paragraphs (b) and (c) of this section. The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments unless transmitter sites meet the minimum distance separation requirements of this section. Class D (secondary) assignments, however, are subject only to the separation distance requirements contained in paragraph (b)(3) of this section. (*See* § 73.512 for rules governing the channel and location of Class D (secondary) assignments.)

(b) The distances listed in Tables A, B, and C apply to allotments and assignments on the same channel and each of five pairs of adjacent channels. The five pairs of adjacent channels are the first (202 kHz above and 200 kHz below the channel under consideration), the second (400 kHz above and below), the third (600 kHz above and below), the fifty-third (10.6 MHz above and below), and the fifty-fourth (10.8 MHz above and below). The distances in the Tables apply regardless of whether the proposed station class appears first or second in the "Relation" column of the table.

* * * * *

(2) Under the Canada-United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Canadian allotments and assignments by not less than the distances given in Table B, which follows. When applying Table B, U.S. Class C2 allotments and assignments are considered to be Class B; also, U.S. Class C3 allotments and assignments and U.S. Class A assignments operating with more than the equivalent of 3 kW effective radiated power and 100 meters antenna height above average terrain are considered to be Class B1.

(3) Under the Mexico-United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Mexican allotments and assignments by not less than the distances given in Table C, which follows. When applying Table C, U.S Class C2, C3 and B1 allotments and assignments are considered to be Class B; U.S. Class C1 allotments and assignments are considered to be Class C; also, U.S. Class A assignments operating with more than the equivalent of 3 kW effective radiated power and 100 meters antenna height above average terrain are considered to be Class B.

* * * * *

(c) The distance listed below apply only to allotments and assignments on Channel 253 (98.5 MHz), after _____ 1988. The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) from any TV Channel 6 allotment or assignment are not met:

MINIMUM DISTANCE SEPARATION FROM TV CHANNEL 6 (82–88 MHz)

FM class	TV zone I	TV zones II & III
A	16	21
B1	19	23
B	22	26
C3	19	23
C2	22	26
C1	29	33
C	36	41

3. 47 CFR 73.207 would be further amended by revising the introductory text in paragraph (b)(1); by revising, in Table A in paragraph (b)(1), the numbers in the 10.6/10.8 MHz column corresponding to relations "A to A", "A to B1", "A to B", "A to C2", "A to C1", and "A to C"; and by adding, in TABLE A in paragraph (b)(1), a new relation "A to C3" to be inserted after the existing relation "A to B", a new relation "B1 to C3" to be inserted after the existing relation "B1 to B", a new relation "B to C3" to be inserted after the existing relation "B to B", and four new relations "C3 to C3", "C3 to C2", "C3 to C1" and "C3 to C", to be inserted, in that order, after relation "B to C", as follows:

§ 73.207 Minimum distance separation between stations.

* * * * *

(b) * * *

(1) Domestic allotments and assignments must be separated from each other by not less than the distances in Table A which follows:

TABLE A.—MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS (MILES)

Relation	Co-channel	200 kHz	400/600 kHz	10.6/10.8 MHz
A to A				10 (6)
A to B1				12 (8)
A to B				15 (9)
A to C3	138 (86)	84 (52)	42 (26)	12 (8)
A to C2				15 (9)
A to C1				22 (14)
A to C				29 (18)
* * * * *	*		*	
B1 to C3	175 (109)	114 (71)	50 (31)	14 (9)
* * * * *	*		*	
B to C3	211 (131)	145 (90)	71 (44)	17 (11)
* * * * *	*		*	
C3 to C3	153 (95)	99 (62)	43 (27)	14 (9)
C3 to C2	177 (110)	117 (73)	56 (35)	17 (11)
C3 to C1	211 (131)	144 (90)	76 (47)	24 (15)
C3 to C	237 (147)	176 (109)	96 (60)	31 (19)
* * * * *	*		*	

4. 47 CFR 73.210 would be amended by revising paragraphs (a), (b)(1), (b)(2), and (b)(3) to read as follows:

§ 73.210 Station classes

(a) The rules applicable to a particular station, including minimum and maximum facilities requirements, are determined by its class. Possible class designations depend upon the zone in which the station's transmitter is located, or proposed to be located. The zones are defined in § 73.205. Allotted station classes are indicated in the Table of Allotments, § 73.202. Class A, B1 and B stations may be authorized in Zones I and I–A. Class A, C3, C2, C1, and C stations may be authorized in Zone II.

(b) The power and antenna height requirements for each class are set forth in § 73.211. If a station has an ERP and an antenna HAAT such that it cannot be classified using the maximum limits and minimum requirements in § 73.211, its class shall be determined using the following procedure:

(1) Determine the reference distance of the station using the procedure in paragraph (b)(1)(i) of § 73.211. If this distance is less than or equal to 28 km, the station is Class A; otherwise,

(2) For a station in Zone I or Zone I–A, except for Puerto Rico and the Virgin Islands:

(i) If this distance is greater than 28 km and less than or equal to 39 km, the station is Class B1.

(ii) If this distance is greater than 39 km and less than or equal to 52 km, the station is Class B.

(3) For a station in Zone II:

(i) If this distance is greater than 28 km and less than or equal to 39 km, the station is Class C3.

(ii) If this distance is greater than 39 km and less than or equal to 52 km, the station is Class C2.

(iii) If this distance is greater than 52 km and less than or equal to 72 km, the station is Class C1.

(iv) If this distance is greater than 72 km and less than or equal to 92 km, the station is Class C.

* * * * *

5. 47 CFR 73.211 would be amended by revising paragraphs (a)(1), (a)(2), the table in the introductory text of paragraph (b)(1), paragraphs (b)(1)(ii) and (b)(3) and adding paragraph (b)(1)(iv) to read as follows:

§ 73.211 Power and antenna height requirements.

(a) *Minimum requirements.* (1) Except as provided in paragraphs (a)(3) and (b)(2) of this section, FM stations must operate with a minimum effective radiated power (ERP) as follows:

(i) The minimum ERP for Class A stations is 0.1 kW.

(ii) The ERP for Class B1 stations must exceed 6 kW.

(iii) The ERP for Class B stations must exceed 25 kW.

(iv) The ERP for Class C3 stations must exceed 6 kW.

(v) The ERP for Class C2 stations must exceed 25 kW.

(vi) The ERP for Class C1 stations must exceed 50 kW.

(vii) The minimum ERP for Class C stations is 100 kW.

(2) Class C stations must have an antenna height above average terrain (HAAT) of at least 300 meters (984 feet). No minimum HAAT is specified for Classes A, B1, B, C3, C2, or C1 stations.

* * * * *

(b) *Maximum limits.* (1) Except for stations located in Puerto Rico or the Virgin Islands, the maximum ERP in any direction, reference HAAT, and distance to the class contour for each FM station class are listed below:

Station class	Maximum ERP	Reference HAAT in meters (feet)	Class contour distance in kilometers
A	6kW (7.8 dBk)	100 (328)	28
B1	25kW (14.0 dBk)	100 (328)	39
B	50kW (17.0 dBk)	150 (492)	52
C3	25kW (14.0 dBk)	100 (328)	39
C2	50kW (17.0 dBk)	150 (492)	52
C1	100kW (20.0 dBk).	299 (981)	72
C	100kW (20.0 dBk).	600 (1968)	92

* * * * *

(ii) If a station's ERP is equal to the maximum for its class, its antenna HAAT must not exceed the reference HAAT, regardless of the reference distance. For example, a Class A station operating with 6 kW ERP may have an antenna HAAT of 100 meters, but not 101 meters, even though the reference distance is 28 km in both cases.

* * * * *

(iv) Class A stations, other than stations located in Puerto Rico or the Virgin Islands, are further limited to a maximum ERP in any direction of 3kW (4.8 dBk), with height power reduction based on a class contour distance of 24 kilometers, unless the following minimum separation distances to other FM assignments are met:

MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS (MILES)

Relation	Co-channel	200 kHz	400/600 kHz
A to A	(See full text of notice for possible distances		
A to B1			
A to B			

* * * * *

(3) For stations located in Puerto Rico or the Virgin Islands, the maximum ERP in any direction, reference HAAT, and distance to the class contour for each FM station class are listed below:

Station class	Maximum ERP	Reference HAAT in meters (feet)	Class contour distance in kilometers
A	6kW (7.8 dBk)	240 (787)	42
B1	25kW (14.0 dBk)	150 (492)	46
B	50kW (17.0 dBk)	472 (1549)	78

* * * * *

6. 47 CFR 73.506 would be amended by revising paragraph (a)(3) to read as follows:

§ 73.506 Classes of noncommercial educational FM stations and channels.

(a) * * *

(3) Noncommercial educational FM (NCE–FM) stations with more than 10 watts transmitter power output are classified as Classes A, B1, B, C3, C2, C1, or C depending on the station's effective radiated power and antenna height above average terrain, and on the zone in which the stations' transmitter is located, on the same basis as set forth in §§ 73.210 and 73.211 for commercial stations.

* * * * *

7. 47 CFR 73.610 would be amended by adding a new paragraph (f) to read as follows:

§ 73.610 Minimum distance separations between stations.

* * * * *

(f) The distances listed below apply only to allotments and assigments on Channel 6 (82–88 MHz), after ———, 1988. The Commission will not accept petitions to amend the Table Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) from any FM Channel 253 allotment or assignment are not met:

MINIMUM DISTANCE SEPARATION FROM FM CHANNEL 253 (98.5 MHz)

FM class	TV zone I	TV zones II & III
A	16	21
B1	19	23
B	22	26
C3	19	23
C2	22	26
C1	29	33
C	36	41

8. 47 CFR 73.1690 would be amended by revising paragraph (b)(2) and adding a new paragraph (c)(4):

§ 73.1690 Modification of transmission systems.

* * * * *

(b) * * *

(2) Change in the operating power from that specified on the station authorization, except as provided in paragraph (c)(4) of this section.

* * * * *

(c) * * *

(4) Increase in the effective radiated power of a Class A FM station pursuant to MM Docket 88–375, when such increase is effected by:

(i) Replacement of a non-directional antenna with another non-directional antenna having higher gain, provided that the height above ground of the center of radiation is within −2 meters of that specified in the station authorization; and/or

(ii) Increase in the power imput to the antenna, as a result of adjustment of the transmitter output power, change in the type or length of the transmission line, and/or installation of filters or diplexers.

[FR Doc. 88–21494 Filed 9–30–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATION COMMISSION

47 CFR Part 73

[MM Docket No. 87–268;FCC 88–288]

Broadcast Television Service; Policies and Requirements for Advanced Television Systems

AGENCY: Federal Communications Commission.

ACTION: Tentative decision and further notice or inquiry.

SUMMARY: The Commission has issued a number of tentative decisions and a further notice of inquiry on the matter of terrestrial broadcasters improving video and audio quality by initiating transmissions using advanced television (ATV) techniques. The action seeks to narrow the relevant policy issues and to obtain additional public comment on methods by which improved television broadcast service may be attained.

DATES: Comments are due by October 31, 1988, and reply comments are due by December 1, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David R. Siddall, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Tentative Decision and Further Notice of Inquiry (Further Notice)* in MM Docket No. 87–268, adopted September 1, 1988, and released September 1, 1988. The complete text of the *Further Notice* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC, and also

may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-38, 2100 M Street, NW., Suite 140, Washington DC 20037.

Summary of Tentative Decision and Further Notice of Inquiry.

1. In this *Further Notice* the Commission addresses the technical, economic, legal, and policy issues presented by development of ATV techniques that utilize new methods of signal transmission that may be used to broadcast programs with significantly improved video and audio quality. Although ATV may be used by other services and media, such as cable, satellite, and video cassettes, broadcast television is unique in its pervasiveness and in that it is governed by a complex and interrelated set of both spectrum management and compatibility issues. This proceeding is addressed solely to use of ATV techniques in the broadcast service, and seeks to implement broadcast ATV in a manner that will promote efficient realization and wide dissemination of the new technology in a timely and effecient manner.

2. The Commission reached the following tentative conclusions in the *Further Notice*. First, the public would benefit from terrestrial broadcast use of ATV techniques by the existing system of freely available enterainment and non-entertainment programming provided by privately-owned and operated stations. The Commission concluded that the public could reap the benefits of ATV technology most quickly if existing broadcasters are premitted to implement it.

3. Second, based on the work of the FCC Advisory Committee on advanced Television Service (Advisory Committee) and its Office of Engineering and Technology (OET), the Commission tentatively concluded that any spectrum capacity necessary to transmit ATV signals will be obtained from the spectrum presently allocated to broadcasting rather than from other allocations. Consideration of additional spectrum outside existing allocations would delay implementation of ATV service because suitable spectrum not already in use for other purposes has not been identified; differences in propagation characteristics between the existing allocations and other bands limit their attractiveness for ATV broadcast purposes; and proceedings involving reallocation likely would be lengthy.

4. Third, the Commission concluded that, at least initially, ATV signals should be either compatible with existing NTSC receivers or that broadcasters transmitting ATV signals should simulcast them on another channel. This will permit viewers to continue receiving television signals on their receivers and thereby prevent sudden loss of service to the public and immediate obsolescence of the television in use today.

5. Finally, the Commission tenatively concluded that systems requiring more than 6 MHz to broadcast a nopncompatible signal will not be authorized for terrestrial broadcast service and that the public interest will be served best by not retarding the independent introduction of ATV in other services or on non-broadcast media.

6. As part of the Further Notice of Inquiry, the Commission sought public comment on a number of related issues. First, the Commission requested comment on the issue, recommendations, and conclusions expressed by the FCC Advisory Committee in its Interim Report. Second, the Commission sought additiona; information on ATV technological developments, with emphasis on the ability of systems being designed for terrestrial service to operate under the interference limitations indicated necessary by the Advisory Committee and OET spectrum studies.

7. Third, the Commission requested comment on the advantages and disadvantages of the following four options to accomodate broadcast ATV: providing each broadcaster with (1) no additional spectrum, thereby requiring use of a 6 MHz compatible ATV system; (2) 3 MHz of additional spectrum, not necessarily contiguous, to augment existing 6 MHz channels; (3) 6 MHz of additional spectrum, not necessarily contiguous, for augmentation of the NTSC signal; and (4) 4 MHz of additional spectrum, not necessarily contiguous, for transmission of a non-compatible ATV signal. In particular, information was sought on service quality, equipment costs, and economic and spectrum implications for each option, including spectrum used by broadcasters to relay their signals to broadcast stations such as that used in studio-to-transmitter links. In addition, the *Further Notice* requested comment on how using additional television spectrum for ATV would affect U.S. obligations under bilateral agreements with Canada and Mexico in border areas. Commenters were asked to address the interference potential of proposed ATV systems as they relate to these obligations and to suggest how this potential interference may be minimized.

8. Fourth, the Commission sought comment on how standards should be established for ATV broadcasts and whether the existing NTSC standard should be amended or repealed. Options described included requiring a detailed standard, such as the existing NTSC standard; mandating no standard and thereby relying upon multiple standard or "open architecture" receivers; protecting a standard by prohibiting interference to systems using that standard, but not requiring the standard to be used, such as the approach used for television stereo (BTSC) sound; using a particualr standard for allocation and assignment purposes to encourage its use and assure its viability, but again, not requiring its use; or including a sunset provision with an adopted standard to ensure its review later when improved technology or receivers capable of receiving multiple standards are available. Comment was also requested on whether it is too early to adopt ATV transmission standards and, if so, what benchmarks should be used to determine when it may be appropriate to adopt standards.

9. The Commission also addressed compatibility of ATV signals with NTSC receivers. The Commission expressed the belief that maintaining existing television service is extremely important and, to this end, it would be desirable to require that ATV signals either be compatibile with NTSC receivers or that ATV broadcasters simulcast an NTSC signal with their ATV signal, at least for an initial period., Commenters were asked to consider whether the broadcast industry would provide NTSC compatibility without the Commission requiring it and also whether there still would be a need to require that ATV signals be directly receivable on NTSC receivers if low cost ATV-to-NTSC converters become available.

10. Likewise, comment was sought on whether an ATV standard must be compatible with alternative media, such as satellite, cable, or video cassettes. The Commission tentatively concluded that ATV compatibility among alternative media may develop in an appropriate manner without governmental involvement because of what appears to be a commonality of interest among all industry participants to achieve interoperability among alternative distribution media. The Commission expressed its intention not to require compatibility among the various media. Accordingly, comment was solicited on the advantages and disadvantages of compatibility and, if

compatibility is found to be in the public interest, whether it should be accomplished through voluntary industry standards or through Commission action. In addition, it sought comment on whether the Commission has the legal authority to adopt compatibility standards for non-spectrum using media such as VCRs.

11. The Commission also requested comment on the policy and legal issues related to the distribution and use of any additional spectrum deemed suitable for ATV broadcasting, including other possible uses during a transition period. It identified four particular areas for comment. First, the Commission invited comment on the class of eligible applicants for ATV spectrum. The Commission proposed that existing broadcasters be the initial class of users of the additional spectrum in order to permit upgrading of the existing service and to permit use of augmentation ATV systems. The Commission noted that nothing in the public interest standard or the Communications Act appears to require or suggest that the transition to an improved broadcast service should be accompanied by major changes in the industry's ownership structure. Likewise, it stated that such an approach would not conflict with the holding of the Supreme Court In *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945), that granting an application for a broadcast license—which is mutually exclusive with another—without considering the merits of the other application at the same time deprives the other of an oppoortunity for a hearing pursuant to section 309 of the Communications Act. In support thereof, the Commission stated that it has discretion to limit the class of competing applicants eligible for comparative consideration and that it has declined to entertain competing applications in other contexts where it has been found to promote the public interest. Comment was invited on this legal analysis and these initial conclusions.

12. Second, the Commission requested comment on whether allotment of additional spectrum should be made (1) on a case-by-case "demand" system; (2) in accordance with a newly created Table of Allotments based upon spectrum studies; or (3) a combination of the two approaches. Under this last option, if only one television station could be associated with a particular supplemental allotment, the Commission proposed amending the table of allotments to permit use of that additional spectrum. But, if any of a group of supplemental channels could be associated with any of a number of stations, it proposed use of a selection process after the allotment rule making that could include (1) permitting parties to choose approved supplemental allotments by private agreements within a fixed period of time; (2) using lotteries or random selection techniques; or (3) conducting hearings. Commenters were asked to consider the advantages and disadvantages of these various allotment approaches and methods of selecting among mutually exclusive requests for additional spectrum and, regardless of which particular allotment scheme is used, whether a licensee should be required to use the additional spectrum within a fixed amount of time or be forced to surrender it.

13. Recognizing that post-allotment adjustments might be needed to "fine tune" any allotment plan adopted, the Commission also sought comment on allowing licensees themselves to make agreements with other broadcasters to modify and adjust their ATV allotments to suit local conditions. For example, it asked whether licensees should be permitted to swap additional ATV spectrum or to enter agreements to reduce their service areas to allow other broadcasters to enlarge their ATV service areas. In addition, the *Further Notice* asked whether such agreements should be limited to only supplemental capacity and what type of procedures should be utilized by the Commission to review negotiated allotment adjustments.

14. Finally, since it recognized that not all licensees would proceed at the same pace in implementing ATV given the cost and complexity, the Commission requested comment on permitting broadcasters to use supplemental spectrum for non-ATV purposes for some interim period. The Commission indicated that non-ATV uses would be limited to a fixed transitional period and these ancillary uses would be given a "secondary status" in order to protect the availability of spectrum for ATV purposes. Commenters were requested to comment on this proposal and on Commission authority to allow ATV allotments to be used for other purposes.

Paperwork Reduction Act Statement

15. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act.

Ex Parte Consideration

16. This is a non-restricted proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Comment Information

17. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 31, 1988, and reply comments on or before December 1, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Ordering Clauses

18. Accordingly, *it is ordered* that, pursuant to sections 1, 4 (i) and (j), 301, 303 (g), (r), and (s), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j), 301, 303 (g), (r), and (s), and 403, this *Tentative Decision and Further Notice of Inquiry* is adopted.

19. *It is further ordered,* that pursuant to §§ 1.415(d) and 1.430 of the Commission's Rules, 47 CFR 1.415(d) and 1.430, the motions of the Land Mobile Communications Council, Mississippi Authority for Educational Television, and Association of Maximum Service Telecasters to file supplemental information *are granted.*

20. *It is further ordered,* that the Joint Request for Setting Additional Comment Dates filed by the Association of Maximum Service Telecasters, National Association of Broadcasters, and National Cable Television Association *is denied.*

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

[FR Doc. 88–22645 Filed 9–30–88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 222

Department of Defense Federal Acquisition Regulation Supplement; Davis-Bacon Act

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is propsing to

publish a proposed Defense Federal Acquisition Regulation Supplement (DFARS) Supbart 222.4, which will provide implementing instructions to contracting officers regarding Federal Acquisition Regulation (FAR) Subpart 22.4 A minor change to correct DFARS 222.101–1(S–74) is also proposed. FAR Subpart 22.4 implements Department of Labor (DOL) labor standards provisions applicable to the Davis-Bacon Act.

DATE: Comments on the proposed revisions should be submitted in writing to the address shown below on or before December 2, 1988 to be considered in the formulation of the final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council ODASD (P)/DARS, c/o OASD(P&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301–3062. Please cite DAR Case 88–55 in all correspondence related to this subject.

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

SUPPLEMENTARY INFORMATION:

A. Background

The FAR was recently revised (FAC 84–34 dated February 18, 1988) to implement labor standards provisions issued by the Department of Labor that are applicable to contracts covering Federally Financed and Assisted Construction. The DAR Council is proposing to amend the DFARS to provide instructions to DoD contracting officers to implement the FAR provisions. Forms referenced in this coverage can be obtained form government contracting offices and DD Form 1567 Labor Standards Interview" will be replaced by Standard Form 1445, "Labor Standards Interview" if the proposed rule is finalized.

B. Regulatory Flexibility Act

A full, final regulatory impact and regulatory flexibility analysis was prepared by DOL and a summary was published in the **Federal Register** on April 29, 1983, (48 FAR 19541) when DOL published its regulation. The proposed DFARS 222.4 is an implementation of the policy and regulation published by DOL. This regulation will not have a significant economic impact on a substantial number of small entities because it merely codifies in the DFARS (48 CFR), for the convenience of contractors and Government contracting personnel, regulations issued by DOL and codified in 29 CFR for which comments were requested and considered. Accordingly, the Regulatory Flexibility Act does not apply to this proposed rule and comments are not required. However, because the importance to the Government and the public of this subject matter, comments are being requested. Comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such Comments must be submitted separately and cite DAR Case 88–610D in correspondence.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subparts in 48 CFR Part 222

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Part 222 as follows:

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

1. The authority citation for 48 CFR Part 222 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301

2. A new Subpart 222.4, consisting of sections 222.403 through 222.407, is added to read as follows:

Subpart 222.4—Labor Standards for Contracts Involving Construction

Sec.

222.403 Statutory and regulatory requirements.
222.403–4 Department of Labor regulations.
222.404 Davis-Bacon Act wage determinations.
222.404–2 General requirements.
222.404–3 Procedures for requesting wage determinations.
222.404–11 Wage determination appeals.
222.406 Administration and enforcement.
222.406–1 Policy.
222.406–6 Payrolls and statements.
222.406–8 Investigations.
222.406–9 Withholding from or suspension of contract payments.
222.406–10 Disposition of disputes concerning construction contract labor standards enforcement.
222.406–13 Semiannual enforcement reports.
222.407 Contract clauses.

Subpart 222.4—Labor Standards for Contracts Involving Construction

222.403 Statutory and regulatory requirements.

222.403–4 Department of Labor regulations.

If a question arises relating to the application and interpretation of wage determinations (including the classifications therein), the Department concerned should attempt to resolve it with the appropriate office of the Department of Labor. In any case in which resolution of the question by higher authority within the contracting agency is deemed appropriate, such question shall be submitted via appropriate channels to the Departmental Labor Advisor (see 222.101–1 (S–74)).

222.404 Davis-Bacon Act wage determinations.

(S–70 Not later than 1 April of each year, each department shall furnish the Administrator, Wage and Hour division, with a general outline of its proposed construction program for the coming fiscal year indicating by individual project the anticipated type of construction, the estimated dollar value, and the location in which the work is to be performed (city, town, village, county or other civil subdivision of the state). Individual projects less than $500,000 need not be reported. The report format is contained in Department of Labor All Agency Memo 144, 27 December 1985. The report control number is 1671–DOL–AN. The Department of Labor uses this information to determine where General Wage Determination surveys will be conducted.

222.404–2 General requirements.

(c)(5) Information concerning the proper application of wage rate schedules to the type or types of construction involved, shall be obtained from the appropriate District Commander, Corps of Engineers for the Army, from the cognizant Naval Facilities Engineering Comand Division for the Navy, from the appropriate Regional Industrial Relations Office for the Air Force, and from the appropriate Defense Logistics Agency Region (ATTN: Industrial Labor Relations Office) for the Defense Logistics Agency.

222.404–3 Procedures for requesting wage determinations.

(b) *Requests for project wage determinations.* Requests for project wage determinations shall be initiated and forwarded to the Department of Labor as follows:

(1) *For the Army.* SF 308 shall be initiated by the office responsible for the preparation of specifications or the awarding of contracts, and shall be forwarded in duplicate to the appropriate District Commander. The original SF 308 shall be sent by the District Commander to the Department of Labor.

(2) *For the Navy.* With the Naval Facilities Engineering Command, requests shall be initiated by the office responsible for the preparation of specifications. The original SF 308 shall be sent to the Department of Labor with a copy to the cognizant Naval Facilities Engineering Command Division Office. Requests relating to contracts of other commands or officers should be processed through the cognizant Naval Facilities Engineering Command Division Office.

(3) *For the Air Force.* Requests shall be initiated by a civil engineering office in cases where it is responsible for preparing the construction specifications, and by the contracting officer administering the contract in cases of subcontracts and facilities contracts. The original SF 308 shall be submitted to the Department of Labor. One copy of the SF 308 shall be forwarded to the appropriate Air Force Regional Industrial Relations Office and one copy retained in the requesting office's files.

(4) *Defense Logistics Agency.* Requests shall be initiated by the office responsible for the preparation of specifications or award of contracts. The original SF 308 shall be sent to the Department of Labor with a copy to Headquarters, DLA, ATTN: Industrial Labor Relations (DLA–PRS).

(c) *Time for submission of requests.* When due to an emergency, a wage determination is required immediately, the requiring activity shall request assistance from the appropriate office listed under 222.404–3(b).

(e) *Review of wage determinations.* The requesting office shall inform the appropriate office indicated in 222.404–3(b) of any changes considered to be necessary or appropriate to correct errors in a wage determination.

222.404–11 Wage determination appeals.

A copy of a petition for review filed by the contracting agency shall be sent to the departmental labor advisor (see 222.101–1(S–74)).

222.406 Administration and enforcement.

222.406–1 Policy.

(a)(5) Training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities.

(a)(6) Periodic review of field enforcement activities to ensure compliance with applicable regulations and instructions.

(b) *Preconstruction letters and conferences.*—(S–70) *Preconstruction letters.* Promptly after award of the contract, the contracting officer shall furnish to the prime contractor a preconstruction letter calling attention to the labor standards requirements contained in the contract which relate to:

(i) Employment of foremen, laborers, mechanics and others,

(ii) Wages and fringe benefits payments, payrolls and statements,

(iii) Differentiation between subcontractors and suppliers,

(iv) Additional classifications,

(v) Benefits to be realized by contractors and subcontractors in keeping complete work records,

(vi) Penalties and sanctions for violations of labor standards provisions, and

(vii) The provisions of FAR 22.403 which may be of consequence in contract performance.

The letter shall state that the labor standards requirements are based on the following statutes and regulations: Davis-Bacon Act, Contract Work Hours and Safety Standards Act, Copeland ("Anti-Kickback") Act, and Parts 3 and 5 of the Secretary of Labor's Regulations (Parts 3 and 5, Subtitle A, Title 29, Code of Federal Regulations). Executive Order 11246 (Equal Employment Opportunity) also may be covered in this letter. Prime contractors shall also be advised to send a copy of the preconstruction letter to each subcontractor.

(S–71) *Preconstruction conference.* The contracting officer shall confer with the contractor and such subcontractors as the prime contractor designates to emphasize their labor standards obligations under the contract, when the prime contractor has not performed previous Government construction contracts or has experienced difficulty in complying with labor standards requirements on previous contracts, or when for other reasons the contracting officer considers such action warranted. Such conferences should be held prior to the beginning of construction. During the conference, the contracting officer should determine whether the contractor and his subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment. If the latter is indicated, the contractor shall be advised of the requirements of FAR 22.406–2.

222.406–6 Payrolls and statements.

(a) *Submission.* Contractors who do not use Department of Labor Form WH 347 or equivalent must submit a DD Form 879, Statement of Compliance, with each payroll report.

22.406–8 Investigations.

(a) (S–70) The investigator shall comply with the following.

(i) The contract shall be checked for inclusion of labor standards provisions and the wage determination. The contract file shall be checked for completeness of the following items, if applicable:

(A) List of subcontractors,

(B) Payrolls and payroll statements for the contractor and subcontractors,

(C) Approvals of additional classifications,

(D) Data regarding apprentices and trainees as required by FAR 22.406–4.

(E) Daily inspector's report or other inpsection reports,

(F) Employee interview statements, and

(G) Statement and Acknowledgment, Standard Form 1413.

(ii) Contractors' and subcontractors' weekly payrolls and payroll statements should be checked for completeness and accuracy with respect to the following items:

(A) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period,

(B) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract,

(C) Computation of daily and weekly hours,

(D) Computation of time-and-one-half for work in excess of 40 hours per week in accordance with FAR 22.406–2(c),

(E) Gross weekly wages,

(F) Deductions,

(G) Computation of net weekly wages paid to each employee,

(H) Ratio of helpers, apprentices and trainees to laborers and mechanics,

(I) Apprenticeship and trainee registration and ratios, and

(J) Computation of fringe benefits payments

(iii) The contractor shall be informed in advance by the investigator that he is investigating compliance with pertinent contract labor standards provisions, and outline the general scope of the investigation, which includes examining paertinent records and interviewing employees. The names of the employees

to be interviewed shall not be divulged to the contractor. At this time, the investigator shall verify the exact legal name of the firm, its address, and the names and titles of principal officers. If verification of the investigator's authority is requested, he shall provide an appropriate letter from the contracting officer to the contractor.

(iv) Complaint investigations shall include an interview with the complainant, except when this is impractical. The interview shall cover all aspects of the complaint to ensure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, its omission shall be explained in the investigator's report.

(v) Contractor and subcontractor records such as basic time cards, books, cancelled payroll checks and fringe benefits payments records shall be compared with submitted payrolls. When discrepancies are found, pertinent excerpts or copies of the records shall be included in the investigation report as provided in paragraph (a)(S–70)(vi) below together with a statement of the discrepancy and any explanation obtained by the investigator. In cases where wages include contributions or anticipated costs for fringe payments requiring approval of the Secretary of Labor as provided in FAR 22.406–2(a)(3), the contractor's records shall be examined to ensure that such approval has been obtained and that any requirements specified in the approval have been met.

(vi) The contractor's records shall be transcribed whenever they contain information at variance with payrolls or other submitted documents. The transcriptions shall be made in sufficient detail to permit them to be used to check computations of restitutions and to determine amounts to be withheld from the contractor. Transcriptions shall follow the form used by the contractor. Comments or explanations concerning the transcriptions shall be placed on separate memoranda or in the narrative report.

(vii) The investigator shall interview a sufficient number of employees or former employees, representative of all classifications, to develop information regarding method and amount of payments, deductions, hours worked and type of work performed. Standard Form 1445, "Labor Standards Interview," shall be used for employee interviews. Employees shall be interviewed during working hours at the job site if the interview can be conducted privately. Former employees or others may be interviewed elsewhere. Interviews shall be arranged to cause the least inconvenience to the employer and the employee. When personal interviews are impractical, information may be obtained by mail. The investigator shall not disclose to the employee any information finding, recommendation or conclusion relating to the investigation, except to the extent necessary to obtain the required information. An employee's statement shall not be divulged to his employer, nor to anyone other than Government representatives working on the case, without the employee's written permission. The investigator shall request the employee to sign his statement, and to initial any changes thereto, and shall indicate his evaluation of the employee's credibility.

(viii) An interview of the foreman serves to provide information concerning the contractor's compliance with the labor standards provisions with respect to the employee under the foreman's supervision, and the correctness of the foreman's classification as a supervisory employee. All the conditions established for conduct of employee interviews, and the recording and use of data obtained, also apply to foreman interviews.

(ix) The investigator shall determine whether the wage determination decision, any modifications thereto, and any additional classifications are posted as required.

(x) Whenever information indicating possible violations has been develolped, the investigator shall interview the contractor involved. At the outset of the interview, the contractor shall be advised that the purpose of the interview is only to obtain such data the contractor may desire to present in connection with the investigation, and that the interview does not mean that a violation has been found or that a requirement for corrective action exists. During the interview the investigator shall not disclose the identity of any individual who filed a complaint, or whom he has interviewed.

(a) (S–71) The investigator's report shall include at least the following:

(i) Basis for the investigation, including the name of the complainant,

(ii) Names and addresses of prime contractors and subcontractors involved, and names and titles of their principal officers,

(iii) Contract number, date, dollar value of prime contract, and date and name of wage determination therein,

(iv) Description of the contract and subcontract work involved,

(v) Summary of the findings with respect to each of the items listed in 222.406–8(a) (S–70),

(vi) Concluding statement concerning:

(A) The types of violations including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Davis-Bacon Act, or underpayments and liquidated damages under the Contract Work Hours and Safety Standards Act,

(B) Whether violations are considered to be willful, or due to the negligence of the contractor or his agent,

(C) The amount of funds withheld from the contractor, and

(D) Other aspects of violations found.

(vii) The exhibition portion of the report, indexed and appropriately tabbed, including copies of the following when applicable:

(A) Complaint letter,

(B) Contract wage determination,

(C) Preconstruction letter and memorandum of preconstruction conference,

(D) Payrolls and statements indicating violations,

(E) Transcripts of pertinent records of the contractor, and approvals of fringe benefits payments,

(F) Employee interview statements,

(G) Foreman interview statements,

(H) Statements of others interviewed, including Government personnel,

(I) Detailed computations showing kickbacks, underpayments, and liquidated damages,

(J) Summary of all payments date to each employee or to a fund plan or program, and liquidated damages, and

(K) Receipts and cancelled checks.

(c)(4) Where a notification to the contractor informs the contractor of his liability for Contract Work Hours and Safety Standards Act (CWHSSA) liquidated damages, the contractor shall be advised that pursuant to 40 U.S.C. 330(c), a contractor has 60 days after such notice in which he may request relief from an assessment of liquidated damages. The contractors's appeal must demonstrate that the CWHSSA violations did not occur, were improperly computed, or occurred inadvertently notwithstanding the exercise of due care. The notification shall be provided the contractor by certified mail.

(d)(1) The contracting officer shall forward, in accordance with (d)(2) (S–70) below, a report in duplicate which shall include at least the following:

(i) Standard Form 1446, "Labor Standards Investigation Summary Sheet,"

(ii) His findings,

(iii) Statement as to the disposition of any contractor rebuttal to the findings,

(iv) Statement as to whether the contractor has accepted the findings and

has paid any restitution or liquidated damages,

(v) Statement as to the disposition of funds available,

(vi) Recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction, waiver, or assessment of liquidated damages, whether the contractor should be debarred and whether the file should be referred for possible criminal prosecution), and

(vii) The exhibit portion of the report which shall include, when applicable:

(A) Investigator's report,

(B) Copy of contractor's written rebuttal or a summary of the oral rebuttal of the contracting officer findings,

(C) Copies of correspondence between the contractor and contracting officer, including a statement of specific violations found, corrective action requested, and contractor's letter of acceptance or rejection,

(D) Evidence of payment by the contractor of restitution or liquidated damages, such as copies of receipts, cancelled checks, or supplemental payrolls, and

(E) Letter from the contractor requesting relief from the liquidated damages provisions of the CWHSSA.

(d)(2) (S–70) Contracting officers shall forward detailed enforcement reports or summary reports through channels as specified in paragraphs (d)(2) (S–70) (A) through (D) below. When the contracting officer concludes that a criminal statute has been violated, he shall forward one extra copy of the report through the channels specified.

(A) *Army contracts.* The report, together with the recommendation of the Head of the Contracting Activity, shall be forwarded through channels to the Labor Advisor.

(B) *Navy contracts.* On contracts of Naval Facilities Engineering Command, the report shall be forwarded through channels to the Commander. On contracts of other contracting activities, the report shall be forwarded through channels to the Office of the Assistant Secretary of the Navy, Attention: CBM–CM.

(C) *Air Force contracts.* The report shall be forwarded to the appropriate Air Force Regional Industrial Relations Office for review and evaluation. The Air Force Regional Industrial Relations Office shall forward it, with the finding and recommendations, to HQ AFCMD/PDC, Attention: Director, Air Force Industrial Relations, for evaluation and final disposition. Reports involving criminal violations shall be referred to the nearest office of Special Investigations District Officer for review and disposition.

(D) *Defense Logistics Agency contracts.* The report shall be forwarded together with the recommendation of the Head of the Contracting Activity to Headquarters, Defense Logistics Agency, Attention: DLA–AP.

222.406–9 Withholding from or suspension of contract payments.

(a)(S–70) When payments due a contractor are not available to satisfy that contractor's liability for Davis-Bacon Act and/or CWHSSA wage underpayments or liquidated damages, the contracting officer shall contact the Departmental Labor Advisor (see listing at 222.101–1(S–74) is assistance is needed.

(c)(1) *Forwarding wage underpayments to the Comptroller General.* The Standard Form 1093 shall be sent to: U.S. General Accounting Office, Claims Group/GGD, Payment Branch, 441 G Street, NW., Washington, DC 20548.

(c)(3) The Department of Labor has given blanket approval to forward withheld funds to the Comptroller General pending completion of an investigation or other administrative proceedings, when disposition of withheld funds remains the final action necessary to close out a contract.

(c)(4) *Liquidated damages.* Whenever the sum of liquidated damages is $500 or less, and the violations are found to be nonwillfull, or inadvertent, and to have occurred notwithstanding the exercise of due care by the contractor or his agent, or the sum is incorrect, the agency head or his designee may waive or adjust such liquidated damages. Whenever the liquidated damages exceed $500, the agency head or his designee may recommend to the Administrator, Wage and Hour Division, that assessed liquidated damages be adjusted because incorrect, or waived because the violation was nonwillful, or inadvertent, and occurred notwithstanding the exercise of due care.

222.406–10 Disposition of disputes concerning construction contract labor standards enforcement.

(d) The contracting officer's finding and the contractor's statement to the Administrator, Wage and Hour Division, shall be forwarded through the Departmental Labor Advisor (see listing at 222.101–1(S–74)).

222.406–13 Semiannual enforcement reports.

The report shall not include information from investigations conducted by the Department of Labor. The report shall contain the following information, as applicable, for construction work subject to the Davis Bacon Act and the CWHSSA:

(a) Period covered,

(b) Number of prime contracts awarded,

(c) Total dollar amount of prime contracts awarded,

(d) Number of contractors/subcontractors against whom complaints were received,

(e) Number of contractors/subcontractors found in violation,

(f) Amount of wage restitution found due under:

(1) Davis-Bacon Act,

(2) CWHSSA,

(g) Number of employees due wage restitution under:

(1) Davis-Bacon Act,

(2) CWHSSA,

(h) Amount of liquidated damages assessed under the CWHSSA,

(i) Prework activities:

(1) Number of compliance checks performed,

(2) Preconstruction letters sent.

Reports shall be forwarded through the HCA to the Departmental Labor Advisor (see listing at 222.101–1 (S–74)) within 15 days following the end of the reporting period.

222.407 Contract clauses.

(S–70) *Contracts with a state or political subdivision.* In the case of construction contracts with a State or political subdivision thereof, the contract clauses prescribed in this Subpart shall be inserted therein, but shall be prefaced by the following provisions: "The contractor agrees to comply with the requirements of the Contract Work Hours and Safety Standards Act and to insert the following clauses in all subcontracts hereunder with private persons or firms."

[FR Doc. 88–22435 Filed 9–30–88; 8:45 am]
BILLING CODE 3810–01–M

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48 CFR Parts 247 and 252

Department of Defense Federal Acquisition Regulation Supplement; Transportation

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is considering revisions to the DoD Federal Acquisition

Regulation Supplement (DFARS) to delete the clause at 252.213–7000 as it is duplicative of proposed FAR clause 52.225–14; to relocate the clause at 252.213–7001 to 252.247–7201; to provide prescriptive language for the clause in Part 247; and to extend the use of the clause to contracts using other than small purchase procedures.

DATE: Comments on the proposed revisions should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before December 2, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 87–129D, in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, Attn: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD (P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

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

SUPPLEMENTARY INFORMATION: .

A. Background

The DFARS prescribed the clause at 252.213–7001 entitled "Returnable Gas Cylinders" for use only in contracts awarded using small purchase procedures. However, the Defense Acquisition Regulation did not so limit the clause's application. This proposed change will renumber the clause and extend the use of the clause to contracts using other than small purchase procedures. The clause at 252.213–7000 is proposed for deletion as the clause is being proposed for inclusion in the Federal Acquisition Regulation at 52.225–14 as a result of a proposed rule published at 53 FR 32558 dated August 25, 1988.

B. Regulatory Flexibility Act Information

The proposed rule is not a significant revision within the meaning of FAR 1.501–1, in that it will not have a significant cost or administrative impact on contractors or offerors. The clause is already prescribed for use, when applicable, to contracts awarded using small purchase procedures. This rule only proposes to make the clause available for use in all contracts. Accordingly, and consistent with section 1212 of Pub. L. 98–577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5 Agency and Public Participation), solicitation of agency and public views is not required. Since such solicitation is not required, the Regulatory Flexibility Act (Pub. L. 96–354) does not apply. Comments are invited. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610D in correspondence.

C. Paperwork Reduction Act Information

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Parts 247 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 247 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 247 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 247—TRANSPORTATION

2. Section 247.305–70 is added to read as follows:

247.305–70 Returnable gas cylinders.

The contracting officer shall insert the clause at 252.247–7201, Returnable Gas Cylinders, in a solicitation and contract whenever the contract involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders. The contracting officer may modify the thirty-day time period specified in the clause to comply with customary commercial practice.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.213–7000 [Removed and Reserved]

3. Section 252.213–7000 is removed and reserved.

4. Section 252.213–7001 is redesignated as 252.247–7201 and the redesignated section is revised to read as follows; and the previous section 252.213–7001 is reserved.

252.247–7201 Returnable gas cylinders.

As prescribed in 247.305–70, insert the following clause:

RETURNABLE GAS CYLINDERS (OCT 1966)

(a) Cylinders shall remain the property of the Contractor but will be loaned without charge to the Government for a period of thirty (30) days after the date of delivery of the cylinders to the f.o.b. point specified in the contract. Beginning with the first day after the expiration of the thirty (30) day loan period to and including the day the cylinders are delivered to the Contractor where the original was f.o.b. origin, or to and including the date the cylinders are delivered or are made available for delivery to the Contractor's designated carrier in the case where the original delivery was f.o.b. destination, the Government shall pay the Contractor a rental of _____ dollars ($_____) per cylinder per day, regardless of type of capacity.

(b) This rental charge will be computed separately for cylinders of differing types, sizes, and capacities, and for each point of delivery named in the contract. A credit of thirty (30) cylinder days will accrue to the Government for each cylinder, regardless of type of capacity, delivered by the Contractor. A debit of one (1) cylinder day will accrue to the Government for each cylinder for each day after delivery to the f.o.b. point specified in this contract. At the end of the contract, if the total number of debits exceeds the total number of credits, rental shall be charged for the difference. If the total number of credits equals or exceeds the total number of debits, no rental charges will be made for the cylinders. No rental shall accrue to the Contractor in excess of the replacement value per cylinder specified in (c) below.

(c) For each cylinder lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid therefor:

(i) Oxygen cylinders of 100–110 cubic foot capacity $_____;

(ii) Oxygen cylinders of 200–220 cubic foot capacity $_____;

(iii) Acetylene cylinders of 100–150 cubic foot capacity $_____; and

(iv) Acetylene cylinders of 230–300 cubic foot capacity $_____.

(d) Cylinders lost, or damaged beyond repair, and paid for by the Government shall become the property of the Government, subject to the following: If any lost cylinder is located within _____ (insert period of time) after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government an amount equal to the replacement value, less rental computed in accordance with (a) above, beginning at the expiration of the thirty (30) day loan period specified in (a) above, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

[FR Doc. 88–22582 Filed 9–30–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Changes in Appendices to Endangered Species Convention

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed amendments in appendices.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates trade in certain animal and plant species. Appendices I, II, and III to the Convention list those species for which trade is controlled. Any nation that is a Party to the Convention may propose amendments to Appendices I and II for consideration by the other Parties. Previous actions of the Parties have adopted the transfer of populations of the Nile Crocodile (*Crocodylus niloticus*) in specific countries from Appendix I to Appendix II subject to specified annual export quotas adopted by the Parties. The Democratic Republic of Madagascar and The Republic of Malawi have proposed an increase in their export quotas for the Nile crocodile in their countries. These proposals are being considered under the postal voting procedures provided in the Convention. The Service requests information and comments on this proposal.

DATES: Comments received by October 12, 1988, will be considered for submission to the Convention's Secretariat. Comments received by November 4, 1988, will be considered in arriving at a decision as to whether to object to one or both of the proposals, and as to how to vote on the proposal if either proposal is submitted to actual vote, and whether to enter reservations if ultimately adopted.

ADDRESSES: Please send correspondence concerning this notice to the Office of Scientific Authority; Mail stop: Room 527, Matomic Building; U.S. Fish and Wildlife Service; Washington, DC 20240. The full text of the proposed amendments and notification from the Convention's Secretariat, as well as materials received, will be available for public inspectdion from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 537, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane at the address given above (telephone 202–653–5948).

SUPPLEMENTARY INFORMATION:

Background

Postal procedures for amending the lists of animal and plant species included in Appendices I and II of the Convention are provided in Article XV. Under this article, any Party may propose an amendment for consideration between the meetings of the Conference of the Parties. In response, any Party may transmit comments, information, and data to the CITES Secretariat within 60 days of the date when the Secretariat communicated its recommendations on such a proposal to the Parties. As soon as possible thereafter, the Secretariat will communicate the replies received together with its own recommendations to the Parties. If the Secretariat receives no objection within 30 days of communicating these replies and recommendations, the proposal is adopted and enters into effect 90 days later. If any Party objects during the 30-day period, the proposal then could be adopted only by a two-thirds majority of those Parties casting an affirmative or negative vote, provided that at least one-half of all parties cast a vote or indicate their abstention within 60 days.

If these proposed amendments were adopted by the Parties, Article XV of the Convention enables any Party to enter a reservation with respect to any amendment. Parties that enter reservations will be treated as States not a party to the Convention with respect to trade in the species concerned. Resolution Conf. 4.25 adopted by the Conference of the Parties addresses the issue that Parties entering reservations on a transfer of species from Appendix II to Appendix I or additions to Appendix I are to treat the species as if on Appendix II. The significance of a reservation on an amendment to change the quota is uncertain.

Regardless of whether or not the United States were to enter a reservation, this would not alter the status of the species under the U.S. Endangered Species Act of 1973, as amended. Therefore, these stricter domestic measures would continue to apply to possession and trade in this species. In the case of a nation that is a Party at the time an amendment is adopted, a reservation may be entered only during the period of 90 days after the Parties voted to place the species in Appendix I or II.

The Democratic Republic of Madagascar and The Republic of Malawi have submitted proposals, for consideration under the postal procedures, to revise the listing of the Nile crocodile (*Crocodylus niloticus*) in Appendix II, i.e. to increase the export quotas authorized in 1988 and 1989. The Secretariat sent these proposals, together with its own recommendations, to the Parties on August 18, 1988. The closing date for receipt of information and comments by the Secretariat is October 17, 1988.

Information in the Proposal and Secretariat Comments

The Nile crocodile is on Appendix I of CITES, except that populations in certain nations, including Madagascar and Malawi, are on Appendix II subject to export quotas adopted by the Secretariat. Currently, this quota for Madagascar is 1,000 in 1988 and 1,000 in 1989, and for Malawi the quota is 1,000 in 1988 and 1,300 in 1989. Madagascar now has proposed increasing its quota to 3,784 specimens in 1988, and Malawi has proposed increases to 1,700 in 1988 and 2,300 in 1989.

The Secretariat has supported the requests of both nations and recommended adoption of their proposed amendments. The Secretariat has indicated that these measures would be biologically sound and would not adversely affect wild crocodile populations. Although the species has declined in Madagascar during the 20th century, it evidently remains common in some places. The area in which commercial exploitation occurs is estimated to contain 20,000–30,000 individuals, and is only a small part of the total range of the species in the country. Moreover, Madagascar's request for an increased quota was made primarily to allow export of skins already stockpiled, and which have been measured and marked by the Secretariat's representatives. According to the Secretariat, Madagascar recently has taken several steps towards crocodile conservation and protection, as it was requested to do by the Convention's Conference of the Parties in July 1987.

The Malawi proposal would affect only the population on a ranch. The request for an increased quota is considered justified by a higher ranching production than expected. The portion of the quota consisting of wild animals will remain unchanged, i.e., 700 specimens.

Comments Sought

The Service requests any information or comments that might be useful in developing a response to the Secretariat, and in developing the final United States position on the proposed amendments and on possible reservations. Please transmit such

information and comments to the Service on or before the dates given above. The Service is especially interested in whether the conservation steps recommended to the Democratic Republic of Madagascar by the Parties have been completed. The Service will develop a position as to whether to support or oppose the propsal or abstain from voting on the best available biological and trade information, including information or comments received in response to this notice, and any further comments transmitted by the Secretariat. If these amendments are ultimately adopted by the Parties, the Service, at present, proposes not to recommend any reservations. It would do so only if evidence is presented to show that implementation of the amendment would be contrary to the interests or law of the United States.

This notice was prepared by Ronald Nowak, Office of Scientific Authority, under authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

List of Subjects in 50 CR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Dated: September 27, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–22602 Filed 9–30–88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 53, No. 191
Monday, October 3, 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

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: This notice announces the proposed establishment of a system of records under the U.S. Department of Agriculture (USDA) Drug-Free Workplace Plan. Executive Order (E.O.) 12564, signed by the President on September 15, 1986, established the goal of a drug-free Federal workplace. The Department of Agriculture is responsible for protecting our national food supply, the agricultural economy, and many of the natural resources of this country. USDA establishes and enforces policies which affect every aspect of agriculture. Illegal drug use by USDA employees can have a negative impact on the production, marketing, and safety of agricultural commodities and natural resources.

Therefore, USDA has an obligation to eliminate illegal drug use and its effects from our workplace and is implementing its Drug-Free Workplace Plan ("USDA Plan" also promulgated as Department Personnel Manual Supplement 792–3) pursuant to E.O. 12564 to accomplish this goal. One component of the USDA Plan is the establishment of a drug testing program which incorporates random testing of USDA employees occupying testing designated positions and other appropriate types of testing (e.g., applicants for safety-related positions, employees suspected of using illegal drugs, employees involved in safety-related incidents, employees who volunteer for drug testing, and employees who have been referred to counseling or rehabilitation programs). Selection of testing designated positions was based on the criteria set forth in E.O. 12564 and identified in Appendix A of the USDA Plan. Employees who are reported to have verified positive test results will be subject to disciplinary action and referral to an employee counseling services program.

DATE: This notice will be adopted without further publication in the **Federal Register** on November 2, 1988, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before November 2, 1988, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Larry Wilson, Director, Office of Finance and Management, (202) 447–8345.

USDA/OFM–1

SYSTEM NAME:

Drug-Free Federal Workplace Records.

SYSTEM LOCATION:

U.S. Department of Agriculture (USDA), Office of Finance and Management, Safety and Health Management Division, 14th and Independence Avenue SW., Washington, DC 20250; USDA Agency headquarters offices; and offices of contractors who perform functions such as collection of urine specimens, laboratory analysis, and medical review of confirmed positive laboratory findings.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USDA employees, Farm Credit System Assistance Board employees, and persons who have applied to USDA for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the selection, notification, and testing of covered individuals; collection and chain of custody of urine specimens; urine specimens; drug test results information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12564, dated September 15, 1986, "Drug-Free Federal Workplace"; Pub. L. No. 100–71, section 503, July 11, 1987.

PURPOSES:

The system is established to maintain records relating to the selection and testing of Federal employees and applicants for Federal employment for use of illegal drugs. The records will provide the basis for taking appropriate action in reference to employees who test positive for use of illegal drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records other than drug testing results may be disclosed:

(1) To drug testing laboratories under contract with USDA or other U.S. Government agencies to perform tests on urine specimens provided by selected USDA employees and applicants for employment;

(2) To the Medical Review Officers under contract with USDA or other U.S. Government agencies for verification of the results received from the testing laboratories; or

(3) In a judicial or administrative proceeding where required by the United States Government to defend against any challenge against any adverse personnel action.

Disclosures of Drug Test Results. Pursuant to Pub. L. No. 100–71, section 503, July 11, 1987, the results of a drug test of a Federal employee will be disclosed only:

(1) To the employee's medical review officer;

(2) To the administrator of any employee counseling services program in which the employee is receiving counseling or treatment or is otherwise participating;

(3) To any supervisory or management official within the employee's agency having authority to take the adverse personnel action against such employee; or

(4) Pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES AND PRACTICIES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Records are maintained on magnetic disk and in paper form.

RETRIEVABILITY:

Records are retrieved by name of agency, name of employee or applicant, position title, Social Security Number,

employee ID number, date of birth, or any combination of these.

SAFEGUARDS:

Records are maintained in a secured area or on automated media with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Generally, records are retained for two years and then destroyed by shredding, burning, or erasure in the case of magnetic media.

SYSTEM MANAGER AND ADDRESS:

Chief, Safety and Health Management Division, Office of Finance and Management, 14th and Independence Avenue, SW., Washington, DC 20250.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system contains records about them should contact their USDA Agency Headquarters Office or the Chief, Safety and Health Management Division, Office of Finance and Management. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social Security Number.
d. Identification number (if known).
e. Approximate date of record.
f. USDA agency and position title.

RECORD ACCESS PROCEDURES:

Individuals should contact the Chief, Safety and Health Management Division, Office of Finance and Management, 14th and Independence Avenue, SW., Washington, DC 20250.

RECORD SOURCE CATEGORIES:

Records in this system are obtained from:

a. The individual to whom the records pertain.
b. Agency employees involved in the selection and notification of individuals to be tested.
c. Laboratories that test urine specimens for the presence of illegal drugs.
d. Supervisors, managers and other agency officials.

PROVISIONS FROM WHICH THE SYSTEM HAS BEEN EXEMPTED:

None.

Signed at Washington, DC, on September 27, 1988.

Peter C. Myers,

Acting Secretary of Agriculture.

[FR Doc. 88-22733 Filed 9-30-88; 8:45 am]

BILLING CODE 3410-90-M

Food and Nutrition Service

National Advisory Council on Commodity Distribution; Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that the National Advisory Council on Commodity Distribution, established by section 3(a)(3) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100-37) to assist the Secretary of Agriculture in the development of commodity specifications, has scheduled a meeting for October 18-20, 1988.

DATE: The meeting will take place from 8:30 a.m. to 5:00 pm. on Tuesday and Wednesday, October 18 and 19 and from 8:00 a.m. to 10:30 a.m. on Thursday, October 20.

ADDRESS: The meeting will be held at the Radisson Park Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly King, Deputy Director, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756-3682.

SUPPLEMENTARY INFORMATION: This is the first meeting of the National Advisory Council on Commodity Distribution, as established by section 3(a)(3) of Pub. L. 100-237. The purpose of the Council is to provide guidance to the Secretary of Agriculture on regulations and policy development with respect to specifications for commodities. If time permits, the general public will be allowed to participate in the discussions. The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to Ms. Alberta C. Frost, Executive Secretary, National Advisory Council on Commodity Distribution, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 502, Alexandria, Virginia 22302. Comments may be filed with the Council before or after the meeting.

Date: September 27, 1988.

Anna Kondratas,

Administrator, Food and Nutrition Service.

[FR Doc. 88-22630 Filed 9-30-88; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Intention To Prepare Environmental Impact Statement; Nez Perce National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Nez Perce National Forest, Idaho, announced (50 FR 46326, November 7, 1985) its intent to prepare an environmental impact statement on development activities in the Wing Creek/Twentymile Area. A draft was to have been available in March 1986, but because of delays in the release of the final Forest Plan to which it is tiered, the draft was not issued until March 1988. The final environmental impact statement is expected to be completed by January 1989.

The original Notice of Intent identified Tom Kovalicky, Nez Perce Forest Supervisor, as the responsible official. That has been changed. The responsible officials are now Steve Solem, District Ranger, Clearwater Ranger District, Route 2, Box 475, Grangeville, ID 83530, and Jim Weibush, District Ranger, Elk City Ranger District, Box 416, Elk City, ID 83525.

FOR FURTHER INFORMATION CONTACT: Rodney Windell, Clearwater Ranger District, Route 2, Box 475, Grangeville, ID 83530.

Dated: September 15, 1988.

Steve Solem,

District Ranger.

Jim Wiebush,

District Ranger.

[FR Doc. 88-22596 Filed 9-30-88; 8:45 am]

BILLING CODE 3410-11-M

Shady Beach Fire Recovery Project, Willamette National Forest, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement for the Shady Beach Fire Recovery Project, on the Willamette National Forest, Eugene, Oregon. The agency invites written comments and suggestions on the scope of the analysis in addition to that already received as a result of local public participation activities. The agency also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they

may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by October 31, 1988.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Forest Supervisor, Willamette National Forest, P.O. Box 10607, Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and Environmental Impact Statement to Bob Leonard, Timber Staff, Willamette National Forest, Eugene, Oregon 97440, phone, 503 687–6603.

SUPPLEMENTARY INFORMATION: In preparing the Environmental Impact Statement (EIS), the Forest Service will identify and consider a range of alternatives for this project. One of these is no action. Other alternatives will consider various intensities for harvest of fire-killed and/or damaged timber and recovery of the forest resources such as planting of trees and other stream protecting vegetation.

Forest Supervisor, Willamette National Forest, Eugene, Oregon, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the Draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Draft EIS is expected to be filed with the Environmental Agency (EPA) and to be available for public review by January 1989. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.** It is very important that those interested in the Shady Beach Fire Recovery Project participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alert an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC,* 435 U.S. 519 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the Final Environmental Impact Statement. *Wisconsin Heritages, Inc. v. Harris,* 490 F. Supp. 1334 (E. D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the Draft EIS the comments will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement. The Final EIS is scheduled to be completed by May 1989. In the Final EIS the Forest Service is required to respond to the comments and responses received during the comment period on environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies in making a decision regarding this project. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Date: September 26, 1988.

Michael S. Edrington,

Deputy Forest Supervisor.

[FR Doc. 88–22638 Filed 9–30–88; 8:45 am]

BILLING CODE 3410-11-M

Six Regions; Fee Schedule for Communication Uses

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy; extension of comment period.

SUMMARY: The Forest Service is extending the comment period on six proposed Regional policies to revise procedures governing the determination of rental fees for communication uses on National Forest System lands. The Regional proposals for communication use fee schedules were published in six separate documents in the **Federal Register.** The proposed policy for the Southern Region was published on July 26, 1988 (53 FR 28026). The proposed policies for the Northern Region, Rocky Mountain Region, Southwestern Region, Intermountain Region, and Pacific Southwest Region were published on July 28, 1988 (53 FR 28606). Comments on the proposals were originally due September 26, 1988.

In order to allow interested individuals and organizations additional time to review and comment on the six proposals, the Forest Service is extending the public comment period 60 days.

DATE: Comments must be received in writing by December 2, 1988.

ADDRESSES: Send written comments to:

1. Northern Region: John W. Mumma, Regional Forester, Northern Region, USDA Forest Service, Federal Building, 200 East Broadway, P.O. Box 7660, Missoula, MT 59807

2. Rocky Mountain Region: Gary E. Cargill, Regional Forester, Rocky Mountain Region, USDA Forest Service, 11177 West 8th Avenue, Box 25127, Lake Wood, CO 80255

3. Southwestern Region: Sotero Muniz, Regional Forester, Southwestern Region, USDA Forest Service, 517 Gold Avenue, SW., Albuquerque, NM 87102

4. Intermountain Region: J.S. Tixier, Regional Forester, Intermountain Region, USDA Forest Service, 324 25th Street, Ogden, UT 84401

5. Pacific Southwest Region: Paul F. Barker, Regional Forester, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111

6. Southern Region: John E. Alcock, Regional Forester, Southern Region, USDA Forest Service, 1720 Peachtree Street, NW., Atlanta, GA 30367

The public may inspect comments received on each Regional proposal at the office addresses listed above for the Region during regular business hours.

FOR FURTHER INFORMATION CONTACT:

1. Northern Region: Jim Shoenbaum or Jim Hathaway of the Lands Staff, (406) 329–3601.

2. Rocky Mountain Region: Eugene F. Ecker of the Recreation and Lands Staff, (303) 236–9512.

3. Southwestern Region: Art Maynard of the Recreation Staff, (505) 842–3444.

4. Intermountain Region: Frank Elder or Lynn Bidlack of the Recreation and Lands Staff, (801) 625–5150.

5. Pacific Southwest Region: Adele Goss of the Land Uses Group, (415) 556–3415.

6. Southern Region: Vince McCormack or George Hemingway of the Lands Staff, (404) 347–2595.

Date: September 26, 1988.

George M. Leonard,

Associate Chief.

[FR Doc. 88-22614 Filed 9-30-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

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

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

Agency: Bureau of the Census.

Title: 1988 Census of Horticulture Specialties.

Form Number: 88-A19.1, 88-A19.2.

Type of Request: New

Burden: 14,060 hours.

Average Hours Per Response: 24.8 minutes.

Needs And Uses: This census will update data on the horticulture industry in the United States. The results will provide statistics on the types and numbers of plants grown, wholesale and retail values of sales, and other related data concerning the horticulture establishment. Federal agencies, universities, horticulture industries, and producers will use the data.

Affected Public: Farms.

Frequency: Every 10 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395-7340.

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

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 27, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-22609 Filed 9-30-88; 8:45 am]

BILLING CODE 3510-07-M

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

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

Agency: National Oceanic and Atmospheric Administration.

Title: Southern California Sportfish Economic Survey.

Form Number: None.

Type of Request: New Collection.

Burden: 2,000 respondents; 840 reporting hours; average hours per response—.42 hours.

Needs and Uses: Selected recreational fishermen will be asked to complete a questionnaire on their recent saltwater fishing trips. The data will be used by the National Marine Fisheries Service in their fishery management activities.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: John Griffen, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 27, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-22610 Filed 9-30-88; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Information Product User Fees

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The U.S. and Foreign Commercial Service (US&FCS), U.S. Department of Commerce, is revising user fee rates for its Agent/Distributor Service (ADS), and World Traders Data Reports (WTDR). The ADS provides names and addresses of potential overseas agents and/or distributors for specified products; WTDR's provide commercial market and financial information on foreign firms. The revised rates are as follows:

Agent/Distributor Service	$125
World Traders Data Report	$100

EFFECTIVE DATE: October 15, 1988.

FOR FURTHER INFORMATION CONTACT: Edward S. Shore, Office of Commercial Information Management, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Telephone (202) 377-5291.

SUPPLEMENTARY INFORMATION: Although the Department of Commerce is not legally required to issue this notice of fees under 15 U.S.C. 1525, this notice is being issued as a matter of general policy.

Authority: 15 U.S.C. 175 and 15 U.S.C. 1525.

Lew W. Cramer,

Acting Director General, U.S. and Foreign Commercial Service.

[FR Doc. 88-22608 Filed 9-30-88; 8:45 am]

BILLING CODE 3510-FP-M

National Oceanic and Atmospheric Administration

Pacific Fishery Mangement Council; Meeting Rescheduled

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The public meeting of the Pacific Fishery Management Council's Limited Entry Workshop Committee, to be convened on September 29, 1988, at 10 a.m., at the Pacific Fishery Management Council's Conference Room, has been rescheduled for October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Cetner, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221-6352.

Date: September 27, 1988.

Joe P. Clem,

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

[FR Doc. 88-22586 Filed 9-30-88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Meeting Cancellation

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The separate public meetings of the South Atlantic Fishery Management Council's Shrimp Committee and Plan Development Team (PDT), Red Drum PDT, and Red Drum Committee, to be convened at the Council's Headquarters, on October 3, 1988, at 1 p.m., October 13, 1988, at 1 p.m., and October 11, 1988, at 1 p.m., respectively, have been cancelled. Rescheduling if any for the public meetings will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Carrie R. F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Date: September 27, 1988.

Joe P. Clem,

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

[FR Doc. 88–22587 Filed 9–30–88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Coastal Migratory Pelagics; Public Hearings

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of public hearings and provide a comment period to solicit public input for proposed Amendments 3 and 4 to the Coastal Migratory Pelagic Resources Fishery Management Plan (FMP). Measures to prohibit the use of purse seines and run-around gill nets for the Atlantic migratory group of king mackerel; prohibit the use of drift gill nets for all coastal migratory pelagics (Amendment 3); and reallocate the division of Atlantic migratory group Spanish mackerel equally between the recreational and commercial user groups (Amendment 4) will be discussed.

DATES: See **"SUPPLEMENTARY INFORMATION"** for dates and locations of the hearings. All hearings will begin at 7:00 p.m. The public comment period will close November 14, 1988.

ADDRESS: All written comments should be addressed to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, 803–571–4366.

SUPPLEMENTARY INFORMATION: Amendment 3 to the FMP will prohibit the use of purse seines and run-around gill nets for the Atlantic migratory group of king mackerel. It will also prohibit the use of drift gill nets for all coastal migratory pelagics (i.e., king and Spanish mackerel, cobia, cero mackerel, little tunny, dolphins, and, in the Gulf of Mexico, bluefish). This amendment would help minimize waste and bycatch in the fishery as well as curtail the use of non-traditional gear on this over-utilized resource.

Amendment 4 to the FMP would reallocate the division of Atlantic migratory group Spanish mackerel equally between the two user groups. As a result of this reallocation, commercial fishermen and recreational fishermen would each receive 50 percent of the annual total allowable catch (TAC). The FMP currently allocates 76 percent of the TAC of Atlantic migratory group Spanish mackerel to the commercial fishery and 24 percent to the recreational fishery.

The Spanish mackerel reallocation would occur only as the TAC is increased, by providing the increase to the gaining group until the new ratio is established. No reduction in any group's quota would occur unless the TAC were subsequently reduced, in which case the new ratio existing at that time would apply. However, the ratio will adjust to the 50/50 split by 1994.

Amendment 4 would provide appropriate distribution of allowable catch to users because it is felt that the current allocations between users may not reflect adequately historic distribution of the resource.

The dates and locations of the public hearings are scheduled as follows:

Monday, October 17, 1988
- American Legion Hall, Junior College Road, Stock Island, Florida

Tuesday, October 18, 1988
- Ft. Pierce Elementary School, 1100–1200 Delaware Avenue, Ft. Pierce, Florida

Wednesday, October 19, 1988
- Holiday Inn—Oceanfront (Oceanview II Room), 1617 First Street North, Jacksonville, Florida

Thursday, October 20, 1988
- Quality Inn, (Riverbend II Room) 490 New Jesup Highway, Brunswick, Georgia

Friday, October 21, 1988
- Thunderbolt Town Hall, 2702 Mechanics Avenue, Thunderbolt, Georgia

Monday, October 24, 1988
- Murrells Inlet Community Center, Murrells Inlet Road, Murrells Inlet, South Carolina
- Marine Resources Center, Airport Road, Manteo, North Carolina

Tuesday, October 25, 1988
- Island Recreation Center, 20 Wilborn Road, Hilton Head, South Carolina
- New Hanover County Courthouse, 320 Chestnut Street, Room 317, Wilmington, North Carolina.

Due to the distribution of Gulf migratory group king mackerel along the Atlantic coast of Florida during the months of November through March, the public hearings scheduled for Stock Island and Ft. Pierce will be conducted as joint hearings with the Gulf of Mexico Fishery Management Council.

Dated: September 27, 1988.

Joe P. Clem,

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

[FR Doc. 88–22584 Filed 9–30–88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

September 26, 1988.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest: Douglas J. Campion, Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6–506,482 (4,765,486) Method for Obtaining a Purified Fraction From a Mixture Using A Magnetic Field

SN 7–042,920 (4,764,366) Persistent Attractants for the Mediterranean Fruit Fly, the Method of Preparation and Method of Use

SN 7–207,591 6,12-Dimethylpentadecan-2-One and Its Use in Monitoring and Controlling the Banded Cucumber Beetle

SN 7–217,994 Transgenic Avian Line Resistant to Avian Leukosis Virus

SN 7–220,181 A Simple System for Decomposing Atrazine in Wastewater

Department of Commerce

SN 7–015,577 (4,771,022) High Pressure Process for Producing Transformation Toughened Ceramics

SN 7–067,400 (4,765,668) Robot End Effector (Continuation of 6–829,052)

Department of Health and Human Services

SN 6–687,370 (4,764,459) Enzyme-Linked Immunosorbent Assay (ELISA) for Determining Antibodies Against Herpes Simplex Virus (HSV) Types I and II in Human Sera
SN 6–847,714 (4,765,972) Vinca Alkaloid Photoactive Analogs and Their Uses
SN 6–874,637 (4,762,710) Novel Method of Preparing Toxoid
E–259–88 Esters of 3-Demethylthiocolchicine and N-Acyl Analogs
E–369–87 Thin Film Environmental Monitor

Department of the Army

SN 7–215,081 Method of Overcoating a High Current Density Cathode
SN 7–224,980 Method of Making a Long Life High Current Density Cathode From Tungsten and Irridium Powders Using a Low Melting Point Impregnant
SN 7–225,439 High Temperature Superconducting Thin Film Structure and Method of Making
SN 7–227,044 Microstrip Phase Scan Antenna Array
SN 7–228,361 Method of Indicating the State of a Charge of a Battery

Department of the Interior

SN 6–718,975 (4,765,564) Solid State Apparatus for Imaging with Improved Resolution
SN 7–005,041 (4,765,415) Isoelectric Drilling Method

Environmental Protection Agency

SN 6–883,785 (4,675,464) Chemical Destruction of Halogenated Aliphatic Hydrocarbons

[FR Doc. 88–22699 Filed 9–30–88; 8:45 am]
BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

September 28, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending limits.

EFFECTIVE DATE: October 5, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The Governments of the Untied States and the People's Republic of China have agreed to amend the current limits for Categories 218, 226, 313, 314, 315 and 317/326. Also, the Group III limit is being adjusted.

A copy of the current bilateral textile agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1998.

A description of the textile categories in terms of T.S.U.S.A. number 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 55, published on January 4, 1988.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

September 28, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on October 5, 1988, the directive of December 30, 1987 is amended further to include amended limits for the following categories:

Category	Amended 12-mo. limit [1]
218	11,000,000 square yards.
226	10,055,446 square yards.
313	41,432,610 square yards.
314	46,686,520 square yards.
315	169,636,370 square yards.
317/326	18,293,986 square yards.
Group III 201, 220, 222–225, 227, 229, 362, 369–0,[2] 400, 414, 464–469, 600, 603, 604–0,[3] 606, 618–622, 624–627, 628, 629, 665, 666, 669–0,[4] and 670–0,[5] as a group.	329,009,000 square yards equivalent.

[1] The limits have not been adjusted to account for imports exported after December 31, 1987.
[2] In Category 369–0, all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860 in Cateory 369–D; 706.3640 and 706.4106 in Category 369–H; 706.3210, 706.3650 and 706.4111 in Category 369–L; and 366.2840 in Category 369–S.
[3] In Category 604–0, all TSUSA numbers except 310.5049 and 310.6045.
[4] In Category 669–0, all TSUSA numbers except 385.5300 in Category 669–P.
[5] In Category 670–0 all TSUSA numbers except 706.3415, 706.4130 and 706.4135 in Category 670–L.

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,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–22648 Filed 9–30–88; 8:45 am]
BILLING CODE 3510-DR-M

Amendment of the Group II Coverage for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

September 28, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs excluding certain categories from the Group II limit.

EFFECTIVE DATE: October 5, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION: Under the terms of the current bilateral agreement between the Governments of the United States and India, Categories 353, 354, 653 and 654 are being removed from Group II and are no longer subject to the Group II limit.

A copy of the current agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1998.

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 58, published on January 4, 1988.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

September 28, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on October 5, 1988, the directive of December 30, 1987 is amended to exclude cotton and man-made fiber textile products in Categories 353, 354, 653, 654 from the current Group II limit. These categories are no longer subject to the Group II limit. As a result, Group II shall consist of Categories 200, 201, 219–229, 239, 300, 301, 314, 317, 326, 330–334, 345, 349–352, 359–362, 369–S [1], 369–0 [2], 600–607, 611–635, 637–652, 659, 665pt.[3], 666–670 and 831–859, as a group. The 1988 limit, as amended, remains the same.

There are no imports in Categories 353, 354, 653 and 654 for the period January 1, 1988 through July 31, 1988.

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,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–22647 Filed 9–30–88; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 369–S, only TSUSA number 366.2840.

[2] In Category 369–0, all TSUSA numbers except 360.2000, 360.7600, 361.5420 and 366.2840.

[3] In Category 665pt., all TSUSA numbers except 360.7800, and 361.5426.

Announcement of Import Restraint Levels and Guaranteed Access Levels for Certain Cotton, Man-Made Fiber and Other Vegetable Fiber Textile Products from Jamaica

Correction

September 28, 1988.

In the table in the letter to the Commissioner of Customs published on December 30, 1987 (page 49186, second column), add TSUSA number 384.2306 to the TSUSA's for Category 640 pt.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–22646 Filed 9–30–88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 21, 1988.

The USAF Scientific Advisory Board Fall General Board Meeting will meet on 18–20 October 1988, from 8:00 am to 5:00 pm, at Ft. Lesley J. McNair, Washington DC.

The purpose of this meeting is to provide briefings on the result of the SAB Summer Studies and presentations from the Air Force operational commands. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–22631 Filed 9–30–88; 8:45 am]

BILLING CODE 3910-01-M

Defense Communications Agency

Membership of the Defense Communications Agency Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Communications Agency, DOD.

ACTION: Notice of membership of the Defense Communications Agency SES Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the SES Performance Review Board (PRB) of the Defense Communication Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and partial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Communications Agency.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Painter, Position Classification and SES Branch, Civilian Personnel Division, Personnel and Administration Directorate, Defense Communications Agency, Washington, DC, 20305–2000, (201) 692–2794.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the Senior Executive Service Performance Review Board. The members will serve a one-year renewable term, effective August 1, 1988.

Michael F. Slawson, Deputy Director for Personnel and Administration, (Code H300)

George J. Hoffman, Deputy Director for Resource Management, (Code H600)

David T. Signori, Jr., Director, Center for Command and Control and Communciations Systems, (Code A100)

Phillip E. Bracher, Brigadier General, USAF, Director, Defense Communications System Organization, (Code B100)

Glenwood M. Stevener, Director, Joint Data Systems Support Center, (Code C100)

Benham E. Morriss, Deputy Manager, National Communications System, (Code Q100)

Director, Joint Tactical Command, Control and Communications Agency, (Code J100)

James A Rhoads,

Chief, Civilian Personnel Division.

[FR Doc. 88–22606 Filed 9–30–88; 8:45 am]

BILLING CODE 3610-05-M

DEPARTMENT OF EDUCATION

Office of Elementary And Secondary Education

Intention To Repay to the New Jersey State Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the New Jersey State Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATE: All written comments must be received on or before November 2, 1988.

ADDRESS: All comments should be addressed to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043), Washington, DC 20202–6132.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 732–4692.

SUPPLEMENTARY INFORMATION: .

A. Background

The Department has recovered $557,500 from the SEA in satisfaction of claims arising from two State audits and one Federal audit of Federal programs covering fiscal years (FYs) 1978–80.

The claims involved the SEA's administration of Title I of the Elementary and Secondary Education Act of 1965 (Title I), the Vocational Education Act of 1963, and Part B of the Education of the Handicapped Act. Specifically, the Department's final audit determination found Federal funds had been spent in violation of the cost principles found in 45 CFR Part 74, Appendix C, Part II, B.10.b (1979), which required that records be kept to reflect time and effort of employees assigned to more than one program. Of the $557,500 repaid to the Department, $352,056 was for misspent Title I funds.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234(e)(a), provides that whenever the Secretary has covered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or local educational agency (LEA) affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $264,042 and has submitted a plan for use of the grantback funds to carry out administrative responsibilities for programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1), 20 U.S.C. 3801 *et seq.* This amount represents 75 percent of the funds recovered for improper expenditures of Title I funds. Since Chapter 1 has superseded Title I, the SEA's proposal reflects the requirements for administering Chapter 1—a program, similar to Title I, designed to serve educationally deprived children in low-income areas.

The SEA's plan proposes that the SEA will use the grantback funds to supplement the level of administrative support services provided by the 1988–89 Chapter 1 grant to the SEA for State administration. As a result of the supplementary funds, staff members will be able to provide additional services in the areas of application development, review for approval of applications and amendments to applications, review of evaluation summary reports, on-site monitoring, and providing technical assistance to LEAs.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the New Jersey SEA under a grantback arrangement. The grantback award would be in the amount of $264,042, which is 75 percent—the maximum percentage authorized by the statute—of the Title I funds recovered by the Department as a result of the audits.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA agrees to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1990 in accordance with section 456(c) of GEPA.

(3) The SEA will, not later than January 1, 1991, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Dated: September 28, 1988.

(Catalog of Federal Domestic Assistance Number 84.012, Educationally Deprived Children—State Administration)

Linus Wright,

Acting Secretary of Education.

[FR Doc. 88-22655 Filed 9-30-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP88-821-000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural gas certificate filings

September 28, 1988.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP88-821-000]

Take notice that on September 19, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-821-000 an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act for authorization to (1) increase its firm natural gas sales service to East Tennessee Natural Gas Company (ETNG) under Tennessee's CD-1 Rate Schedule and (2) construct and operate the facilities necessary to deliver these quantities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to increase its firm natural gas sales service to ETNG under Tennessee's CD-1 Rate Schedule to allow for a change in ETNG's Maximum Daily Quantity from 334,188 dekatherm (dt) equivalent of natural gas per day to 364,968 dt equivalent of natural gas per day and for a change in ETNG's Annual Quantity Limitation from 99,160,434 dt equivalent of natural gas to 108,293,491 dt equivalent of natural gas.

Tennessee indicates that to implement the above changes in sales levels it would be required to modify two sales meters at an estimated cost of $469,000, which would be financed from funds on hand, funds generated internally, borrowing under revolving credit agreements or short-term financing which would be rolled into permanent financing.

Comment date: October 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP88-820-000]

Take notice that on September 19, 1988, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP88-820-000 an application pursuant to section 7 of the Natural Gas Act for a blanket certificate of public convenience and necessity authorizing AER to transport natural gas on behalf of others as specified in Subpart G of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER states that the blanket certificate would permit it to offer transportation services to interstate pipelines and to other shippers pursuant to § 284.222 and 284.223 of the Commission's Regulations, respectively. AER would provide such services pursuant to Rate Schedules IT and FT of AER's FERC Gas Tariff as filed in Docket No. RP88-45-000. The transportation would comply with the regulations and requirements of § 284.221(c) of the Regulations, it is stated.

Comment date: October 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP88-818-000]

Take notice that on September 16, 1988, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP88-818-000 an application pursuant to sections 7 (b) and (c) of the Natural Gas Act to approve the abandonment of 96,000 MMBtu per day of sales service to Texas Eastern Transmission Corporation (Texas Eastern) and to authorize the transportation of up to 96,000 MMBtu per day on a firm basis for Texas Eastern, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that by order issued December 17, 1962 in Docket No. CP61-247, 28 FPC 1035, Texas Gas was authorized to sell up to 295,856 MMBtu per day to Texas Eastern along with the construction of certain related facilities.[1] It is alleged that the Texas Gas and Texas Eastern entered into a service agreement dated October 17, 1962, which has a primary term of 20 years from the effective date of November 1, 1962, with a provision for extension on a year-to-year basis after the expiration of the primary term, unless such agreement was terminated by either party upon 12 months prior written notice. Texas Gas seeks approval to abandon a portion of Texas Eastern's sales contract demand in the amount of 96,000 MMBtu per day and execute a new sales service agreement with Texas Eastern with a contract demand of 199,856 MMBtu per day. No abandonment of facilities is contemplated under the application.

Texas Gas also seeks authority to transport up to 96,000 MMBtu per day of natural gas for Texas Eastern on a firm basis for a primary term of fifteen years, and year to year thereafter unless cancelled by either party upon twelve months prior written notice. Texas Gas would receive such gas from Texas Eastern at an existing interconnection between Texas Gas and Texas Eastern in Evangeline Parish, Lousiana and deliver such gas at the current delivery point under the Texas Gas/Texas Eastern sales service agreement near Lebanon, Ohio.

It is stated that Texas Eastern would pay Texas Gas a firm transportation rate consisting of a monthly reservation charge which is the sum of (a) the transportation demand as specified in the transportation agreement, multiplied by the application D-1 rate per MMBtu (such rate is currently $3.37), and (b) the Monthly D-2 Billing Demand (1/12 of Annual D-2 Billing Qauntity as specified in the transportation agreement), multiplied by the applicable D-2 rate per MMBtu, which is currently 9.7 cents. In addition to the monthly reservation charge, Texas Eastern would pay Texas Gas the maximum commodity charge which is currently 15.34 cents per MMBtu for each MMBtu delivered as well as the legally-effective ACA charge which is currently .2 cents per MMBtu.

It is also alleged that Texas Gas requests authorization for certain future conversions already agreed to by Texas Gas and Texas Eastern, to be implemented at certain specified intervals.

Comment date: October 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date, file with the Federal Energy

[1] A temporary certificate in Docket No. CP61-247 was issued on October 26, 1962.

Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22662 Filed 9-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. MT88-6-001, et al.]

Texas Gas Transmission Co., et al.; Natural Gas Pipeline Rate Filings

September 28, 1988.

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Company

[Docket No. MT88-6-001]

Take notice that on September 23, 1988, Texas Gas Transmission Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Substitute Original Sheet No. 76A
Substitute First Revised Sheet No. 126
Substitute Original Sheet No. 127
Substitute Original Sheet No. 128
Substitute Original Sheet No. 129
Substitute Original Sheet No. 139A
Substitute Original Sheet No. 139B
Substitute Original Sheet No. 139C
Substitute Original Sheet No. 139D
Substitute Original Sheet No. 139E
Substitute Original Sheet No. 139F
Substitute Original Sheet No. 139G
Substitute Original Sheet No. 139H
Substitute Original Sheet No. 139I
Substitute Original Sheet No. 139J
Substitute Original Sheet No. 139K
Substitute Original Sheet No. 139L
Substitute Original Sheet No. 139M
Substitute Original Sheet No. 139N
Substitute Original Sheet No. 139O
Substitute Original Sheet No. 139P
Substitute Original Sheet No. 139Q

Comment date: October 5, 1988, in accordance with Standard Paragraph K at the end of this notice.

2. Western Transmission Corporation

[Docket No. MT88-39-001]

Take notice that on September 23, 1988, Western Transmission Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 17A, Superseding Original Sheet No. 17A
First Revised Sheet No. 17A.1, Superseding Original Sheet No. 17A.1
First Revised Sheet No. 17A.2, Superseding Original Sheet No. 17A.2
First Revised Sheet No. 17A.3, Superseding Original Sheet No. 17A.3
Original Sheet Nos. 17A.4 through 17A.9

Comment date: October 5, 1988, in accordance with Standard Paragraph K at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. MT88-9-001]

Take notice that on September 23, 1988, Texas Eastern Transmission Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Fifth Revised Volume No. 1:

Substitute Revised Original Sheet No. 305A
Substitute Revised Second Revised Sheet No. 330
Substitute Revised Original Sheet No. 330A
Substitute Revised Third Revised Sheet No. 492-495
Substitute Revised Third Revised Sheet No. 497
Substitute Revised Third Revised Sheet No. 502
Substitute Revised Third Revised Sheet No. 505-507
Substitute Revised Third Revised Sheet No. 509
Substitute Revised Third Revised Sheet Nos. 514-519

Comment date: October 5, 1988, in accordance with Standard Paragraph K at the end of this notice.

[Docket No. MT88-3-002]

Take notice that on September 23, 1988, Transcontinental Gas Pipe Line Company tendered the following tariff sheets for filing § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Third Revised Sheet No. 195
Substitute Third Revised Sheet No. 196
Substitute Second Revised Sheet No. 196-A
Substitute Second Revised Sheet No. 196-B
Substitute First Revised Sheet No. 196-C
Substitute Original Sheet No. 196-D
Substitute Original Sheet No. 196-E
Substitute First Revised Sheet No. 199-N
Substitute First Revised Sheet No. 199-O
Substitute First Revised Sheet No. 199-P
Substitute First Revised Sheet No. 199-Q
Substitute First Revised Sheet No. 199-R
Substitute Original Sheet No. 199-R1
Substitute Original Sheet No. 199-R2
Substitute First Revised Sheet No. 202
Substitute Second Substitute Original Sheet No. 262
Substitute Original Sheet No. 270
Substitute Original Sheet No. 271
Substitute Original Sheet No. 272
Substitute Original Sheet No. 273

Comment date: October 5, 1988, in accordance with Standard Paragraph K at the end of this notice.

Standard Paragraph

K. Any person desiring to be heard or to protest the subject 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 18 CFR § 385.214 and 385.211. Protests will be considered by the Commission 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 must file a motion with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22663 Filed 9-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF88-507-000]

U.S. Army Corps of Engineers; Application For Commission Certification of Qualifying Status of a Small Power Production Facility

September 27, 1988.

On September 2, 1988, the U.S. Army Corps of Engineers (Applicant), of Louisville District, P.O. Box 59, Louisville, Kentucky 40201-0059, ATTN: CEORL-OC, Room 702, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 75 KW hydroelectric facility is located on the East Fork Whitewater river in Brookville, Indiana.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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 petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22658 Filed 9-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 28, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 23, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1988:

One hundred and thirtieth Revised Sheet No. 16
Eighteenth Revised Sheet No. 16A2
Thirty-fifth Revised Sheet No. 64A

Columbia states that the sales rates set forth on One hundred and thirtieth Revised Sheet No. 16 reflect an overall increase of 14.24¢ per Dth in the Commodity rate, and decreases of $.139 per Dth in the Demand-1 rate and .64¢ per Dth in the Demand-2 rate. In addition, the transporation rates set forth on Eighteenth Revised Sheet No. 16A2 reflect an increase in the Fuel Charge component of .39¢ per Dth.

Columbia states that the purpose of the revised tariff sheets is to implement an out of cycle Purchased Gas Cost Adjustment filing to be effective as of October 1, 1988. The rates reflected in the instant filing are proposed to be in effect for a 31 day period until November 1, 1988, at which time Columbia's next quarterly PGA filing is scheduled to become effective.

Copies of the filing were served upon the Company's jurisdictional customers 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, Union Center Plaza Building, 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 October 6, 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22660 Filed 9-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-620-000]

Connecticut Light and Power Co.; Filing

September 28, 1988.

Take notice that on September 1, 1988, Connecticut Light and Power Company (CL&P) tendered for filing proposed Sales Agreements with Respect to Slice-of-System Units, for the sale of entitlements in a group of units representative of CL&P's generating system, between CL&P and the United Illuminating Company, Public Service Company of New Hampshire, Canal Electric Company and Montaup Electric Company, (Buyers) dated as of August 1, 1988.

CL&P states that the Sales Agreements provide for a sale to Buyers of capacity and energy from CL&P's Slice of System (the Units) during the period November 1, 1988 to October 31, 1989, together with related transmission service. CL&P states that the capacity, energy, transmission and station service charge rate for the proposed service are based on cost-of-service formulas.

CL&P requests that the Commission permit the rate schedules to become effective on November 1, 1988.

CL&P states that a copy of the rate schedules have been mailed or delivered to Buyers.

CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 7, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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,

Secretary.

[FR Doc. 88-22656 Filed 9-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-53-000]

K N Energy, Inc.; Tariff filing

September 28, 1988.

On September 22, 1988, K N Energy, Inc. ("K N") tendered for filing the following revised tariff sheets:

Third Revised Volume No. 1

Thirty-Fifth Revised Sheet No. 4
Fourteenth Revised Sheet No. 4B

K N states that these tariff sheets reflect the Commission's revised Annual Charge Adjustment (ACA) unit charge and requests that the tariff sheets be made effective on October 1, 1988.

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 918 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 6, 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,

Secretary.

[FR Doc. 88-22661 Filed 9-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-759-000]

National Fuel Gas Supply Corp.; Petition To Amend

September 28, 1988.

Take notice that on September 2, 1988, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP88-759-000, a petition to amend its certificates of public convenience and necessity in Docket Nos. CP85-608-011 and CP88-71-000, so as to authorize, for an additional one-year period commencing December 23, 1988, the interruptible transportation of up to 105,339 Mcf of natural gas per day on behalf of National Fuel Gas Distribution Corporation (Distribution) for the account of 64 of its existing end-user customers. National Fuel also seeks authorization to transport up to 7,293 Mcf of natural gas per day for the account of 19 additional customers of Distribution for a like term. Further, National Fuel seeks authorization to increase presently authorized transportation volumes and modify receipt points with respect to certain end-users covered by National Fuel's certificates in Docket Nos. CP88-225-000 and CP87-389-000, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that National Fuel was authorized on December 23, 1987, in Docket Nos. CP-85-608-011 and CP88-71-000, to transport up to 69,163 Mcf/day and up to 37,787 Mcf/day, respectively, on behalf of Distribution for the account of 33 and 61 existing end-user customers.

National Fuel hereby requests to amend the certificates issued in Docket Nos. CP85-608-011 and CP88-71-000, so as to extend the term of the interruptible transportation of up to 105,339 Mcf/day on behalf of Distribution for the account of 64 of the original end-user customers (Appendix A) and to add 19 new end-user customers using up to 7,293 Mcf/day (Appendix B).

In addition, National Fuel requests authorization to modify existing certificates in Docket Nos. CP88-225-000 and CP87-389-000, issued April 27, 1988 and September 25, 1987, respectively, in order to increase the transportation volumes authorized therein for 5 end-user customers (Appendix C(1)) by up to 612 Mcf/day and to change receipt points for 75 end-user customers (Appendix C(2)). Details such as receipt points and sellers are available in National Fuel's application.

National Fuel states that it would receive the subject transportation volumes at existing receipt points and would deliver the volumes to Distribution at existing points of delivery. National Fuel adds that it would charge Distribution pursuant to its Rate Schedule T-1 which currently provides for a rate of 31.28 cents per Mcf and 2 percent shrinkage.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 19, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

Appendix A

END-USERS SEEKING AN EXTENSION OF TRANSPORTATION SERVICE AUTHORIZED IN DOCKET NOS. CP85-608-011 AND CP88-71-000

End user	Presently authorized maximum daily volume (MCF)	Proposed maximum daily volume (MCF)
1. Altech Specialty Steel, Dunkirk, NY	2,750	2,750
2. Angelica Healthcare Service Group, Batavia	250	250
3. American Brass, Buffalo, NY	3,000	3,000
4. Amherst Sewage Treatment, Amherst, NY	200	400
5. Arcata Graphics, Cheektowaga, NY	1,325	1,500
6. Associated Springs, Barnes Group Inc., Corry, PA	500	500
7. Associated Textile Rental Services Inc., Niagara Falls, NY	150	150
8. Bethlehem Steel Corp., Buffalo, NY	9,500	9,500
9. Buffalo Batt & Felt Corp., Buffalo, NY	100	100
10. Buffalo Color Corp., Buffalo, NY	2,200	2,200
Boiler plant	2,500	2,500
Indigo plant	200	200
11. Buffalo Crushed Stone, Buffalo, NY:		
Wehrle Drive Plant	500	500
Woodlawn Plant	1,000	1,000
Como Park Plant	1,000	1,000
12. Buffalo General Hospital, Buffalo, NY:		
Buffalo General Hospital, Buffalo, NY	62	62
Buffalo General Hospital, Buffalo, NY	50	50
13. Buffalo Weaving & Belting, Buffalo, NY	300	300
14. Cadet Cleaners, Buffalo, NY	100	100
15. Carbon/Graphite Group (FKA Airco Carbon):		
St. Mary's Plant	3,300	3,300
Niagara Falls Plant	2,500	2,500
16. Cascades Niagara, Niagara Falls, NY	1,200	1,500
17. Chautauqua Hardware Corp., Jamestown, NY	215	215
18. Children's Hospital, Buffalo, NY	1,328	1,328
19. Coca Cola Bottling, Tonawanda, NY	40	40
20. Columbus McKinnon Corp., Tonawanda, NY	200	200
21. Comstock Foods, Oakfield, NY	412	412
22. Darling & Co., Buffalo, NY	300	450
23. Dunlop Tire Corp., Tonawanda, NY	3,000	3,000
24. Erie Wastewater Treatment Plant, Erie, PA	777	777
25. EMI Co., Erie, PA	400	500

END-USERS SEEKING AN EXTENSION OF TRANSPORTATION SERVICE AUTHORIZED IN DOCKET NOS. CP85-608-011 AND CP88-71-000—Continued

End user	Presently authorized maximum daily volume (MCF)	Proposed maximum daily volume (MCF)
26. Ferro Corp., Buffalo, NY	800	800
27. Fisher Price Toys, East Aurora, NY	200	200
28. Ford Corp., Buffalo, NY:		
Stamping Plant	1,000	1,000
Power Plant	1,000	1,000
29. Freezer Queen Foods, Inc., Buffalo, NY	250	250
30. Goldome FSB, Buffalo, NY:		
Goldome Cir	175	175
Western Bldg	100	100
31. Goodyear Tire & Rubber Co., Niagara Falls, NY	1,500	1,500
32. Great Lakes Carbon Corp., Niagara Falls, NY	1,047	1,600
33. Hammermill Paper Group, Erie, PA	6,280	12,000
34. Hopes Architectural Products Inc., Jamestown, NY	300	300
35. IA Construction Corp. (FKA Asphalt & Paving), Franklin, PA	300	500
36. Jamestown Metal Mfg. Corp., Jamestown, NY	110	100
37. Kaiser Aluminum & Chemical Corp., Erie, PA	980	1,500
38. Kaufman's Bakery, Buffalo, NY	280	280
39. Kenmore Development, Buffalo, NY:		
Sanders Road	75	75
Hinds Street	85	85
Delaware Ave	150	150
40. Marine Drive Apartments, Buffalo, NY	250	250
41. McInnes Steel Corp., Corry, PA	1,500	1,500
42. Millcreek Township School District, Erie, PA	245	400
43. Millard Fillmore Hospital, Buffalo, NY	100	100
44. Modern Industries, Inc., Erie, PA	140	450
45. Morgan Services Inc., Buffalo, NY	167	200
46. National Forge Co., Erie & Irvine, PA	3,333	6,500
47. Neville-Synthesis (FNA Koppers Inc.), Oil City, PA	1,750	1,750
48. Niacet Corp., Niagara Falls, NY	2,000	2,000
49. Niagara Cold Dawn, Buffalo, NY	166	300
50. O-AT-KA Milk Products Corp., Batavia, NY	700	700
51. Occidental Chemical Corp.:		
Niagara Falls, NY	648	700
Niagara Falls, NY	10,000	10,000
North Tonawanda	1,500	1,500
52. Pillsbury Co., Buffalo, NY	230	230
53. Pendrick Laundry, Buffalo, NY	250	250
54. PPG Industries, Pittsburgh, PA	7,000	7,500
55. Pure Corbon Co., St. Marys, PA	166	300

END-USERS SEEKING AN EXTENSION OF TRANSPORTATION SERVICE AUTHORIZED IN DOCKET NOS. CP85-608-011 AND CP88-71-000—Continued

End user	Presently authorized maximum daily volume (MCF)	Proposed maximum daily volume (MCF)
56. Roswell Park Memorial Inst., Buffalo, NY	3,500	3,500
57. Royal Bedding Co., Buffalo, NY	85	85
58. Sorrento Cheese Co., Buffalo, NY	760	760
59. Spaulding Fibre Co. Inc., Tonawanda, NY	2,000	2,000
60. Special Metals Corp., Dunkirk, NY	640	640
61. Stackpole Corp., St. Marys, PA	1,800	1,800
62. Talon Inc., Meadville, PA	210	210
63. Tam Ceramics Inc., Niagara Falls, NY	593	600
64. Trico Products Corp., Buffalo, NY:		
Main St	418	418
Washington St	297	297
Total MCF		105,339

Appendix B

ADDITIONAL END-USERS PROPOSED TO BE SERVED IN DOCKET NO. CP88-759-000

End user	Proposed maximum daily volume (MCF)
1. Blades Construction, Hornell, NY	250
2. Burke-Parsons-Bowlby Corp., DuBois, PA	150
3. Cuba Memorial, Cuba, NY	50
4. Damascus Tubular, Greenville, PA	300
5. Erie Press Systems, Erie, PA	200
6. H. Hyman Drum & Barrel, Buffalo, NY	150
7. Hegedus Aluminum, Oil City, PA	300
8. Lake Shore Hospt., Angola, NY	50
9. Mercy Hospital, Buffalo, NY	1,463
10. Penntech Paper, Johnsonburg, PA	1,500
11. R. D. Werner, Greenville, PA	1,000
12. St. Jerome Hospt., Batavia, NY	200
13. Schaffstall Manuf., North Collins, NY	150
14. SOHIO Inc., Niagara Falls, NY	400
15. Top Roc Precast Corp., Erie, PA	150
16. Union National, Jamestown, NY	125
17. Westfield Memorial Hosp., Westfield, NY	55
18. West Vaco, Buffalo, NY	500
19. Zippo Manf., Bradford, PA	300

(1) End Users Increasing Daily Maximum Volumes:

End user	Presently authorized maximum daily volume (MCF)	Proposed maximum daily volume (MCF)
1. Mayer Brothers Cons., Erie, PA	300	400
2. Parker White Metal, Fairview, PA	535	600
3. Reed Manufacturing Erie, PA	125	150
4. Skinner Engine Comp., Erie, PA:		
12th Street	200	250
Greengarden	138	150
5. Zurn, Erie, PA:		
Hydromechanics Div	195	300
General Air	70	100
Corporate Headquarters	25	50
Corp. Communications	50	100
Cast Metals Div	200	250
Bay City Forge Div	200	300

Modification to Authorization Granted in Docket Nos. CP88-225-000 and CP87-398-000

(1) End Users for Which National Fuel Seeks Additional Receipt Points:

End User

1. American Locker Group, Ellicottville, NY
2. American Stone Mix, Batavia, NY
3. Applied Design, Buffalo, NY
4. BTL Specialty Resins, Niagara Falls, NY
5. Better Baker Food, Inc., Westfield, NY
6. Bison Food Co., Buffalo, NY
7. Blackstone Corp., Jamestown, NY
8. Brockway Pressed Metals, Brockway, PA
9. Brooks Memorial Hosp., Dunkirk, NY
10. Buffalo Board of Education, Buffalo, NY
11. Buffalo Sewer Authority, Buffalo, NY
12. Canisius College, Buffalo, NY
13. Catholic Diocese of Buffalo, NY
14. Cliffstar Corp., Dunkirk, NY
15. County Line Stone, Arkon, NY
16. Cummins Engine Company, Jamestown, NY
17. Cytemp Steel, Titusville, PA
18. Dahlstrom, Jamestown, NY
19. Degraff Momorial Hosp. North Tonawanda, NY
20. Dunbar Slag, Sharon, PA
21. Dunkirk Ice Cream, Dunkirk, NY
22. E.I. Dupont, Buffalo, NY, Niagara Falls, NY
23. Electro Minerals (US) Inc., Niagara Falls, NY
24. Empire cheese Inc., Cuba, NY
25. Erie Tool Works, Erie, PA
26. Exolon-ESK Comp., Tonawanda, NY
27. Falconer Metals, Lakewood, NY
28. Fedco Corp., Buffalo, NY
29. Fibercel Corp., Portville, NY
30. Fred Kock Brewery, Buffalo, NY
31. Frontier Foundaries, Niagara Falls, NY, Titusville, PA
32. General Motors, Buffalo, NY, Tonawanda, NY
33. General Mills, Buffalo, NY
34. Gibraltar Steel Corp., Buffalo, NY
35. Graphic Controls, Buffalo, NY
36. Growers Co-op, Westfield, NY
37. Houghton College, Houghton, NY

38. J.N. Adams Development, Perrysburg, NY
39. Jamestown Electro Plating, Jamestown, NY
40. Joy Mfg. Corp., Franklin, PA
41. Kenmore Mercy Hosp., Kenmore, NY
42. Keystone Carbon, St. Marys, PA
43. L.Tec Welding/Cutting, Buffalo, NY
44. Lakeview Forge, Erie, PA
45. Lenders Bagels, Buffalo, NY
46. Marthon Petroleum, Tonawanda, NY
47. McGraw-Edison, Olean, NY
48. Meadville Medical Ctrs., Meadville, PA
49. Molded Fiberglass Tray, Linesville, PA
50. Mooney Chemical Co., Franklin, PA
51. MCR Bearings, Jamestown, NY, Falconer, NY
52. Nabisco Brands, Buffalo, NY, Niagara Falls, NY
53. N.Y. Wire Mills, Tonawanda, NY
54. Olean General Hospital, Olean, NY
55. PVS Chemicals, Buffalo, NY
56. Penna. Pressed Metals, Emporium, PA
57. Pohlman Foundry, Buffalo, NY
58. Redwing Co., Dunkirk, NY
59. Ridgeway Color Co., Ridgeway, PA
60. Russer Foods, Buffalo, NY
61. St. Joseph Intercommunity Hospital, Cheektowaga, NY
62. Sharon Tube, Sharon, PA
63. Shenango Inc., Sharpsville, PA
64. Sphar Roses Inc., Attica, NY
65. Stratcor Corp., Niagara Falls, NY
66. Suny @ Alfred, Alfred, NY
67. Sunny @ Buffalo, Buffalo, NY
68. Suny @ Fredonia, Fredonia, NY
69. Tri-County Memorial, Gowanda, NY
70. Upstate Dary, Buffalo, NY, Jamestown, NH
71. VAC Air Alloys, Frewsburg, NY
72. W.A.C. Hospital, Jamestown, NY
73. W&F Manufacturing, Buffalo, NY
74. Wheatland Tube, Wheatland, PA
75. Zurn Corp., Erie, PA

[FR Doc. 88-22657 Filed 9-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-256-000]

West Texas Gas, Inc., Motion for Extension of Time and Waiver of Regulations

September 28, 1988.

Take notice that on September 21, 1988, West Texas Gas, Inc. (WTG) filed a motion requesting a 30-day extension of time in which to file tariff sheets as required by § 154.303(e) of the Commission's regulations for the purpose of restating its rates to establish new base tariff rates. In addition, in accordance with Section 154.51 of the Commission's regulations, WTG requests that the Commission waive the 30-day notice requirement for WTG's tariff filing thereby permitting WTG's restated rates to take effect October 21, 1988.

WTG states that because of negotiations regarding the sale of its jurisdictional facilities, WTG has not had an opportunity to complete its general rate filing. WTG states that now that the necessary agreements with a purchaser appear to have been finalized, and barring any last-minute complications, WTG will be able to devote their attention to preparing its rate filing.

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 (1988)). All such motions or protests should be filed on or before October 6, 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,

Secretary.

[FR Doc. 88-22659 Filed 9-30-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of July 1 Through July 8, 1988

During the Week of July 1 through July 8, 1988, the applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

September 23, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 1 through July 8, 1988]

Date	Name and location of applicant	Case No.	Type of submission
July 1, 1988	Mobil/Faulkton Farmers Elevator Co., Faulkton, SD.	RR225-33, RR225-34, RR225-35, RR225-36	Request for Modification/Rescission. If granted: The November 28, 1986 Decision and Order issued to Faulkton Farmers Elevator Company (Case Nos. RF225-2253, RF225-2254, RF225-2255, RF225-2256) would be modified, regarding the firm's application in the Mobil Oil refund proceeding.
July 5, 1988	Coline, National Helium, Pennzoil, Amoco/Pennsylvania, Harrisburg, PA.	RM2-115, RM3-116, RM10-117, RM251-118	Request for Modification/Rescission. If granted: The August 13, 1987 Decision and Order issued to Pennsylvania would be modified, regarding the state's application in the Coline, National Helium, Pennzoil and Amoco second stage refund proceedings.
July 8, 1988	Ladd Petroleum Corp., Washington, DC	KEF-0112	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V in connection with a July 27, 1987 judgment entered by the U.S. District Court for Southeastern Louisiana.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/Name of refund application	Case No.
Apr. 6, 1988	Jack L. Grace	RF225-11040
June 24, 1988	Lawrence A. Palmer	RF225-11041
June 3, 1988	Paul & Wayne's Inc	RF265-2708
June 30, 1988	Brown & Root, Inc	RF305-12
Do	Proctor Gas, Inc	RF299-86
July 1, 1988	Vickers/Illinois	RQ1-464
Do	Eddyville Oil Company, Inc	RF265-2711
July 1, 1988 thru July 8, 1988.	Crude Oil Refund Applications Received	RF272-67767 thru RF272-73969
Do	Gulf Oil Refund Applications Received	RF300-9381 thru RF300-10338
Do	Arco Refund Applications Received	RF304-3349 thru RF304-3417
July 5, 1988	Village Mobil	RF225-11039
July 6, 1988	Atchison, Topeka, Santa Fe	RF265-2705
Do	Brink's Incorporated	RF250-2746
Do	Johnson Cheker Service	RF250-2747
July 7, 1988	Benden Brothers Oil Company	RF265-2702
Do	Farm Supply, Inc	RF265-2703
Do	Gibson LP, Inc	RF265-2704
July 11, 1988	Williams Gas Service	RF139-177
Do	Hutcheson Oil Company	RF265-2706
Do	Hutcheson Oil Company	RF265-2707
July 13, 1988	Twin City Oil Company	RF310-1
Do	Twin City Oil Company	RF83-164
July 15, 1988	Augurson Jesse, Jr	RF250-2748
July 18, 1988	Skelgas Lacrosse	RF265-2710
July 19, 1988	Skelgas Laof Crawfordsville	RF265-2709
July 26, 1988	Hi-Lo Corporation	RF292-7
July 27, 1988	Benden Brothers Oil Company	RF265-2712
Do	Farm Supply, Inc	RF265-2714
Do	Gibson LP, Inc	RF265-2713

[FR Doc. 88-22719 Filed 9-30-88; 8:45 am]
BILLING CODE 6450-01-M

Cases Filed; Week of July 29 Through August 5, 1988

During the week of July 29 through August 5, 1988, the applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 23, 1988.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 29, through Aug. 5, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 2, 1988	Coral Petroleum, Inc., Washington, DC	KEF-0114	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the February 8, 1988 Settlement Agreement that the DOE entered into with Coral Petroleum, Inc.
Aug. 2, 1988	International Crude Corp./Gregg Pritchard, Washington, D.C.	KEF-0115	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the July 1, 1985 Consent Order that the DOE entered into with International Crude Corp. and Gregg Pritchard.
Aug. 3, 1988	King Petroleum, Inc., Washington, D.C.	KRX-0054	Supplemental order. If granted: The Office of Hearings and Appeals would clarify the July 29, 1988 Decision and Order issued to King Petroleum, Inc. (Case No. KRO-0640) and would modify the interest provision in the ordering paragraph.
Aug. 3, 1988	World Oil Company, Los Angeles, CA	KFX-0055	Supplemental order. If granted: The ordering paragraphs in the July 7, 1988 Decision and Order implementing special refund procedures for World Oil Company (Case No. KEF-0005) would be modified.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of July 29, through Aug. 5, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 4, 1988	Amoco/North Carolina, Raleigh, NC	RM251-123	Request for modification/rescission.If granted: The March 2, 1988 Decision and Order issued to North Carolina would be modified regarding the state's plan submitted in the Amoco second-stage refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of July 29 to Aug. 5, 1988]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
July 29, 1988 thru Aug. 5, 1988.	Crude Oil Refund, Applications Received	RF272-74532 thru RF272-64626
Do	Atlantic Richfield Refund, Applications Received	RF304-4008 thru RF304-4072
Do	Gulf Oil Refund, Applications Received	RF300-10479 thru RF300-10491
Do	Exxon Refund, Applications Received	RF307-2702 thru RF307-3354
Aug. 1, 1988	Amerada Hess Corporation	RF139-178
Do	Admiral Petroleum Company	RF310-76
Do	Rons Sport Shoppe	RF310-77
Do	Shaw Oil Company	RF310-78
Do	Pappys Party Store	RF310-79
Do	United Petroleum Company	RF310-80
Do	Quality Oil Company	RF310-81
Do	United Petroleum Corporation	RF310-82
Do	Nepera, Inc	RD272-48661
Do	GAF Corporation	RD272-48671
Do	Burrows Paper Corporation	RD272-49243
Do	Avtex Fibers Front Royal, Inc	RD272-49245
Do	Elk Corporation of America	RD272-54958
Do	Hollingsworth & Vose Company	RD272-55119
Do	Edward Lowe Industries, Inc	RD272-55306
Do	Compania Chilena de Navegacio	RD272-55538
Do	Delta Asphalt Paving	RD272-55648
Do	Avondale Mills, Inc	RD272-55836
Do	Minn-Dak Farmers Cooperatives	RD272-55847
Do	Browning-Ferris, Inc	RD272-56110
Do	Bird, Inc	RD272-56223
Do	Jefferson Smurfit Corporation	RD272-56240
Do	Williams Real Estate Co., Inc	RD272-56288
Do	Anglo Canadian Shipping Co	RD272-56336
Do	Reed and Graham, Inc	RD272-56389
Do	Windsor Services, Inc	RD272-56538
Do	Frye Copysystems, Inc	RD272-56551
Do	W.E. Bartholow & Son Construction	RD272-56928
Do	Commonwealth Roofing Company	RD272-57456
Do	General Asphalt Company	RD272-57618
Do	R.L. Coats	RD272-58500
Do	Fritzen-Halcyon Lijn, Inc	RD272-58634
Do	McMahan-O'Conner Construction	RD272-59144
Do	Blythe Industries	RD272-59165
Do	Marine Fueling Service, Inc	RD272-59180
Do	Farm Fresh, Inc	RD272-59256
Do	Companhia de Navegacao Lloyd	RD272-59732
Do	Ford Construction	RD272-59832
Do	Great Southern Paper Company	RD272-59891
Do	Big Chief Roofing Company	RD272-60244
Do	Mago Construction	RD272-60495
Do	China Ocean Shipping Company	RD272-60953
Do	J.H. Shear's Sons, Inc	RD272-49003
Do	Wells Fargo Armored Serv. Co	RD272-49244
Do	Arrow Road Construction	RD272-49264
Do	Cargill, Inc	RD272-54938
Do	Robert L. Helms Construction	RD272-55236
Do	Constructors United	RD272-55758
Do	Adams Construction Corporation	RD272-55888
Do	Lafarge Corporation	RD272-56211
Do	Heinz U.S.A.	RD272-56467
Do	The Olympic Homecare Products	RD272-57183
Do	St. Croix Petrochemical Corp	RD272-58649

REFUND APPLICATIONS RECEIVED—Continued

[Week of July 29 to Aug. 5, 1988]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
Do	Couch, Inc	RD272-59000
Do	Salem Carpet Mills, Inc	RD272-59167
Do	Plains Transport of Kansas, Inc	RD272-59782
Do	Eddie Steamship Co. Ltd	RD272-59818
Do	United Paving	RD272-60215
Do	NTC of America, Inc	RD272-60664
Do	Terminal Taxi	RD272-55462
Do	Republic Taxi Company	RD272-55465
Do	Penrod Drilling Company	RD272-56208
Do	Congoleum Corporation	RD272-56224
Do	Warner-Lambert Company	RD272-57572
Do	Acme Resin Corporation	RD272-58053
Do	Texas Instruments, Inc	RD272-58118
Do	Copolymer Rubber & Chem. Corp	RD272-58418
Do	Digital Equipment	RD272-58469
Do	Fairchild Industries	RD272-58630
Do	BTL Specialty Resins	RD272-58631
Do	RTE Corporation	RD272-58992
Do	Noble Drilling Corporation	RD272-60527
Do	Dow Corning Corporation	RD272-60665
Do	Shift Eckrich, Inc	RD272-60956
Aug. 2, 1988	Jim's Skelly Service	RF265-2719
Do	Thoman's Skelly Service	RF265-2720
Do	Thoman's Skelly Service	RF265-2721
Do	Thoman's Skelly Service	RF265-2722
Do	So-Lo Oil Company, Inc	RF310-83
Do	Camp Oil Company	RF310-84
Do	Walker Oil Company	RF310-85
Do	Landwehr Oil	RF310-86
Do	Platner Oil Company	RF310-87
Do	Tri-City Oil Company	RF310-88
Do	Quest Petro. Co., Inc	RF310-89
Do	Vets APCO Service	RF310-90
Do	Moody Oil Company, Inc	RF310-91
Do	O & B Oil Company, Inc	RF310-92
Do	L.W. Green Company	RF310-93
Do	Criswell Petroleum Products Co	RF310-94
Do	Lawler Oil Company	RF310-95
Do	Dave's APCO Service	RF310-96
Do	Nerland Oil Company	RF310-97
Do	Midway Service	RF310-98
Do	Northland Company	RF310-99
Do	Bunke's Service, Inc	RF310-100
Do	Franks APCO Service	RF310-101
Do	Yuska Oil Company	RF310-102
Do	Sorensen Tire & Auto	RF310-103
Do	Kenny's APCO Station	RF310-104
Do	Lemmen Pontiac	RF310-105
Do	Stechschulte Gas & Oil	RF310-106

[FR Doc. 88-22720 Filed 9-30-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of July 25 Through July 29, 1988

During the week of July 25 through July 29, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Jerry O. Campbell, 07/29/88, KFA-0182

Jerry O. Campbell filed an Appeal from a partial denial by the Office of the Inspector General (IG) of a Request for Information that he submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the Department of Energy (DOE) found that the names of investigators, the names of people who cooperated in an IG investigation and names of the people who were investigated were properly withheld pursuant to Exemption 7(C) of the FOIA, which allows personal information involving law enforcement operations to be withheld. The DOE also found, however, that dates, places and the names of inanimate objects could not be withheld under this exemption, because they had no privacy interest to protect. The DOE thus remanded the matter to the IG to determine whether release of this information would implicate any person's privacy interests. In addition, the DOE determined that the IG had given an insufficient reason for withholding the name of an Assistant U.S. Attorney who had declined prosecution based on the information produced by the IG investigation.

Mary Ellen Walsh, 07/25/88, KFA-0190

Mary Ellen Walsh, Managing Editor of *The Niskayuna/Scotia Glenville Journal*, filed an Appeal from a denial by the Office of Naval Reactors (ONR) of a Request for Information which she had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that a letter that does not release requested information constitutes an

appealable adverse determination, even if the letter is not a formal denial. The DOE further found that ONR had made an inadequate determination of Ms. Walsh's request. Consequently, the case was remanded to ONR for further consideration. Importation determinations in the Decision and Order were: (i) The Privacy Act may not be used as a reason for withholding information under the FOIA, (ii) responsive information must be released to the requester even if the information is scattered over many documents, (iii) information may not be withheld under Exemption 3 of the FOIA, unless there is a statute that specifically allows for non-disclosure under the FOIA, and (iv) members of the media may only be assessed copying fees if the request generates more than 400 pages of paper records.

Remedial Order

King Petroleum, Inc., Richard C. King, Dewveall Petroleum, Inc., Willard C. Dewveall, 7/29/88, KRO-0604

The Economic Regulatory Administration issued a Proposed Remedial Order to King Petroleum, Inc., Richard C. King, Dewveall Petroleum, Inc., and Willard C. Dewveall (King and Dewveall). The ERA alleged that they violated the Mandatory Petroleum Price Regulations between August 1, 1980 and January 27, 1981, by miscertifying crude oil, and by reselling crude oil at a markup without providing traditional and historical reseller services. The PRO also alleged that Richard C. King and Willard C. Dewveall should be held personally liable for the companies' violations because they were the central figures in the violations. The PRO provided that King and Dewveall be held jointly liable for $10,615,108.23 plus interest for layering violations which were not attributable to one or the other, due to a failure by King and Dewveall to provide invoices documenting their trades with each other. In addition, the PRO provided that King Petroleum and Richard C. King be held jointly liable for $2,140,129.86 plus interest for overcharges related to layering violations directly attributable to him. King and Dewveall filed Notices of Objection to the PRO but failed to file a Statement of Objections. The DOE determined that the PRO established a prima facie case of violations and that King and Dewveall had not rebutted that case in their Notices of Objection. Accordingly, the PRO was issued as a final Remedial Order of the Department of Energy.

Refund Applications

Aminoil U.S.A., Inc./Elkins Butane-Propane Company, et al., 07/29/88, RF139-97, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by eight claimants in the Aminoil U.S.A., Inc. special refund proceeding. Four applicants were resellers and retailers who elected to limit their claims to $5,000, two others were end-users, and the remaining two applicants were utilities who stated that the refunds would be passed through to their customers, and that they would notify the appropriate regulatory body regarding the funds received. These types of applicants are not required to demonstrate injury. After examining the firms' applications and supporting documentation, the DOE concluded that they should receive refunds totaling $148,220, representing $96,621 in principal and $51,599 in interest.

Aminoil U.S.A., Inc./Ever Ready Gas Company, et al., 07/25/88, RF139-104, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by four reseller/retailers in the Aminoil U.S.A., Inc. special refund proceeding. The firms demonstrated cost banks in excess of their refund claims and submitted market price comparisons in support of their claims for refunds based on an injury showing. After examining the firms' applications and supporting documentation, the DOE concluded that they should receive refunds totaling $481,165, representing $313,787 in principal and $167,378 in interest.

Aminoil U.S.A., Inc./Harper Industries, Inc., et al., 07/28/88, RF139-127, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by four reseller/retailers in the Aminoil U.S.A., Inc. special refund proceeding. The firms demonstrated cost banks in excess of their refund claims and submitted market price comparisons in support of their claims for refunds based on a showing of injury. After examining the firms' applications and supporting documentation, the DOE concluded that they should receive refunds totaling $311,676, representing $203,257 in principal and $108,419 in interest.

Aminoil U.S.A., Inc./Small's LP Gas Company, 07/26/88, RF139-3

The DOE issued a Decision and Order concerning Applications for Refund filed by Small's LP Gas Company, a reseller/retailer of propane covered by a Consent Order that the DOE entered into with Aminoil U.S.A., Inc. Small submitted documentation substantiating that during the consent order period it maintained banks of unrecovered costs. Small also submitted purchase cost data for propane for the relevant period. Using the competitive disadvantage methodology, the DOE determined that Small suffered significant injury and that a refund of the full volumetric amount for propane was appropriate. The total refund approved in this Decision is $635,007, representing $361,779 in principal and $273,228 in accrued interests.

Beacon Oil Co./Spartan Tank Lines, Inc., 07/26/88, RF238-50

The DOE issued a Decision and Order concerning Applications for Refund filed by Spartan Tank Lines, Inc. in the Beacon Oil Company special refund proceeding. In reviewing the application, the DOE found that the firm had not shown injury according to the procedures established for distributing the Beacon consent order fund. The DOE found, however, that the firm was eligible to receive a small claim refund of $5,000. Therefore, the DOE granted the firm a refund of $10,703, representing $5,000 in principal and $5,703 in interest.

Conoco Inc./Delmarva Power, 07/26/88, RF220-7

The DOE issued a Decision and Order concerning Applications for Refund from the Conoco Inc. consent order fund filed by Delmarva Power, an electric utility. The refund claim was based on Delmarva's purchases of crude oil during the period from August 19, 1973 through January 27, 1981. Delmarva used the crude oil in the generation of electricity, submitted its actual purchase volumes in support of its Application, and certified that the refund would be passed through to its customers. The refund granted in this Decision is $194,027.

Getty Oil Company/Benden Brothers Oil Company, RF265-2702; Gibson LP, Inc., RF265-2703; Farm Supply, Inc., 07/26/88, RF265-2704

The DOE issued a Supplemental Order concerning Applications for Refund filed by three firms from a consent order fund made available by Getty Oil Company. The DOE adjusted the amounts of interest that the three firms received. The refunds totalled $30,618, representing $15,000 in principal and $15,618 in accrued interest.

Getty Oil Company/Bob Holmen Oil Company, et al., 07/29/88, RF265-1692, et al.

The DOE issued a Decision and Order concerning six Applications for Refund

filed by resellers or retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty refined petroleum products purchased during the consent order period. In five claims, the applicants were eligible for a refund below the small claims threshold of $5,000. In the remaining claim, the applicant elected to limit his claim to $5,000. The total amount of the refunds approved in the Decision and Order is $21,960, representing $10,741 in principal and $11,219 in accrued interest.

Getty Oil Company/James Baltus, et al., 07/27/88, RF265–2701, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed by resellers or retailers of product covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty propane or motor gasoline purchased during the consent order period. Six claims of the applicants were eligible for a refund below the small claims threshold of $5,000. The remaining two applicants elected to limit their claims to $5,000. The total amount of the refunds approved in the Decision and Order is $51,773, representing $25,321 in principal and $26,452 in accrued interest.

Husky Oil Company/Evergreen Oil Company, S-M Petroleum Properties, Inc., 07/26/88, RF161–53; RF161–54

The DOE issued a Decision and Order concerning Applications for Refund filed by Evergreen Oil Company and S-M Petroleum Properties, Inc., both reseller-retailers of Husky motor gasoline. S-M submitted information which indicated that it purchased 34,852,708 gallons of motor gasoline from Husky during the consent order period and the firm demonstrated that it was injured by the alleged overcharges associated with these Husky purchases. Evergreen submitted information which indicated that it purchased 19,319,803 gallons of motor gasoline from Husky during the consent order period. The information submitted by Evergreen indicated that while the firm eventually passed through to its customers the alleged overcharges associated with its Husky purchases through April 1980, it did absorb the alleged overcharges in its purchases from May 1980 through January 27, 1981. Accordingly, S-M was granted a refund of $23,247, representing $15,893 in principal and $7,354 in accrued interest, and Evergreen was granted a refund of $2,246, representing $1,535 in principal and $711 in accrued interest.

Joe D. Jones, 07/29/88, RF272–12073

The DOE issued a Decision and Order granting Joe D. Jones' Application for Refund in the DOE's Subpart V crude oil refund proceeding. Jones was an end-user of the petroleum products he purchased and thus was eligible for a refund. However, he submitted his total purchases of diesel fuel in dollar amounts, rather than in gallons. In order to convert the applicant's total dollars purchased into gallons, the DOE derived a national average price for No. 2 diesel fuel using information available from the Energy Information Agency and *Platt's Oil Price Handbook and Oilmanac*. The national average price for No. 2 diesel (excluding taxes) during the crude oil price control period was $0.458683/gal. This information allowed the DOE to estimate Mr. Jones' total diesel consumption to be 49,376 gallons. The total refund granted in this Decision and Order is $10.

Marathon Petroleum Co./Acme Oil Co., Lang Oil, Inc., 7/28/88, RF250–2475, RF250–2476, RF250–2496, RF250–2497

The DOE considered Applications for Refund filed by Acme Oil Company and Lang Oil, Inc., seeking funds in the Marathon Petroleum Company refund proceeding. The DOE found that the applicants, both resellers of Marathon gasoline, suffered competitive injury as a result of the alleged Marathon overcharges. Acme was granted a refund of $16,311, consisting of $14,213 principal and $2,098 interest. Lang was granted a refund of $10,391, consisting of $9,055 principal and $1,366 interest.

Mobil Oil Corporation/O.K. Oil Service, et al., 7/28/88, RF225–7958, et al.

The DOE issued a Decision granting three Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each of the applicants elected to apply for a refund based upon the presumptions set forth in the *Mobil* implementation order. The applicants were therefore granted refunds based on the purchase volumes documented in their applications. The refunds totaled $6,725 ($5,386 principal plus $1,339 interest).

Mobil Oil Corporation/Sparkle Quick Auto Wash, 7/28/88, RF225–5477

The DOE issued a Decision granting in part an Application for Refund from the Mobil Oil Corporation escrow account filed by Sparkle Quick Auto Wash, a retailer of Mobil refined petroleum products. In its application, Sparkle Quick requested a per-gallon refund in excess of the volumetric refund amount. The firm based its claim upon its contention that Mobil had improperly discontinued a two cent per gallon competitive allowance that it had provided to Sparkle Quick on May 15, 1973. In reaching its determination that Sparkle Quick was not entitled to a per gallon refund above the volumetric level, the DOE noted that the firm had failed to demonstrate that an alleged overcharge had occurred as a result of Mobil's action. Furthermore, the DOE reasoned that even if an alleged overcharge had occurred, Sparkle Quick had not submitted evidence that it was injured as a result of Mobil's actions. The DOE therefore determined that the maximum per-gallon refund amount to which Sparkle Quick was entitled was the volumetric refund amount of $0.000402, plus accrued interest. Accordingly, the DOE granted Sparkle Quick a refund of $541, representing $433 in principal plus $108 in interest.

Olmos Construction Co., et al., 7/28/88, RF272–4044, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to four applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed to have been injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $3,740.

Plaquemines Oil Sales Corp./Brown and Root USA Inc., 7/25/88, RF305–12

The DOE issued a Decision and Order approving the Application for Refund filed by Brown and Root USA Inc., an end-user of Plaquemines Oil Sales Corp. No. 2 diesel fuel. After examining the application and supporting information, the DOE granted the firm a refund of $8,529 ($5,964 principal plus $2,565 interest).

Vickers Energy Corp./Illinois, 7/26/88, RQ1–464

The DOE issued a Decision and Order approving a second-stage refund application submitted by the State of Illinois in the Vickers Energy Corporation special refund proceeding. Since the pending Vickers litigation has been resolved, the DOE determined that the Vickers funds previously granted to Illinois could be disbursed to the State. Accordingly, the DOE granted Illinois a total of $3,537 ($1,936 in principal plus $1,601 in interest) for use in the previously approved Alternative Transportation Fuel Program.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
A. Martin Marburger et al	RF272-8551	07/26/88	150	$7,573
Anderson Apiaries et al	RF272-12346	07/28/88	50	2,691
Edward D. Fiveash et al	RF272-31400	07/28/88	146	3,936
H.L. Parker & Sons et al	RF272-31000	07/28/88	163	4,558
Harold E. Ulman et al	RF272-24400	07/26/88	113	3,477
Industrial Burners, Inc. et al	RF272-27806	07/26/88	97	3,827
John Spain et al	RF272-10000	07/26/88	150	3,493
Kenneth Mailloux et al	RF272-226000	07/28/88	184	4,194
M&M Construction et al	RF272-31600	07/28/88	112	3,147
Melvern Goering et al	RF272-22800	07/28/88	141	4,007
Miami Valley Regional Transit Authority et al	RF272-201	07/28/88	17	24,026
Michael D. Lyons et al	RF272-30200	07/28/88	178	4,348
Pepsi Cola Bottling Co., Denver et al	RF272-151	07/28/88	23	14,225
Pittman & Harper Farms et al	RF272-6893	07/26/88	89	2,635
Robert Drewes et al	RF272-23601	07/26/88	156	3,874
Rogers Patterson et al	RF272-26400	07/26/88	137	3,637
Troy Hills Village et al	RF272-2548	07/26/88	146	12,954
U.S. Fidelity & Guaranty Co. et al	RF272-4464	07/26/88	23	8,919
William F. Miller et al	RF272-31200	07/28/88	167	3,996

Dismissals

The following submissions were dismissed:

Name	Case No.
Bank of America, Automotive Services # 3045	RF272-42259
Bar VT Ranch, Inc	RF272-54945
Barry Matthews	RF272-47131
Bekemeyer Enterprises	RF272-45867
C. Worrall Sons, Inc	RF272-38154
CAB Management Corp	RF272-55382
Centre Realty Co	RF272-43119
Charles D. Cribb	RF272-42282
Chasen Dairy Farm	RF272-11044
City of Hutchinson	RF272-27969
City of Mendota Heights	RF272-23836
City of Oak Park, Michigan	RF272-55892
City of Waseca, Minnesota	RF272-43689
Columbia Forest Products, Inc	RF272-55954
East Islip Schools	RF272-45003
Gayman Boats, Inc	RF272-58162
George W. Sparks Const	RF272-45220
Gill-Montague Regional School District	RF272-56459
Harborfields Central School District	RF272-41933
Harbot Die Casting	RF272-53470
Hawaii State Hospital	RF272-56218
Ideal Dairy Farms, Inc	RF272-48365
Johnson Ready Mix	RF272-18419
Mele Manufacturing	RF272-48608
Mobil Teria Catering Co., Inc	RF272-57381
Mount Sinai Hospital	RF272-45591
North Pacific Lumber Co	RF272-44987
O.K. Oil Service	RF272-10845
Passaic Valley Sewerage Comms	RF272-54669
Randolph Electric Membership Corp	RF272-41481
St. Agnes Hospital	RF272-54451
School District of Escambia	RF272-48842
Sheridan County School District	RF272-44107
Shuster's Transportation, Inc	RF272-39251
South Huntington Union Free School District	RF272-44851
Spring Branch I.S.D	RF272-42174
Stathatos & Co., Ltd	RF272-23222
Stokes-Reynolds Memorial Hospital	RF272-12862
Super Concrete Corporation	RF272-47800
Unified School District	RF272-16418
Upper Keyes Marine Construction	RF272-45124
William Muirhead Construction Co., Inc	RF272-59020
Worchester memorial Hospital	RF272-32845

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 100 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 23, 1988.

[FR Doc. 88-22722 Filed 9-30-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of August 1 Through August 5, 1988

During the week of August 1 through August 5, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Arkansas, 8/5/88, KEA-0001

The DOE issued a Decision and Order concerning an Appeal filed by the Arkansas Industrial Development Commission (Arkansas). Arkansas sought administrative review of a determination issued by the DOE's Dallas Support Office (Dallas), which denied in part Arkansas' request to use oil overcharge funds obtained from Exxon Corporation for a grid-interactive photovoltaic demonstration project conducted as part of its State Energy Conservation Program. After reviewing the Appeal, the DOE determined that Arkansas failed to establish that the Dallas determination was either erroneous in fact or in law, or was arbitrary or capricious. Accordingly, the Appeal was denied.

Chuck Hansen, 8/2/88, KFA-0101

Chuck Hansen filed an Appeal from a denial by the Director, DOE Office of Classifiation, of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the documents at issue were properly withheld under Exemption 3. The issue considered in the Decision and Order involved whether the explosive yields from 82 U.S. atmospheric nuclear tests were still properly classified as Confidential Formerly Restricted Data.

Cigna Insurance Company, 8/5/88, KFA-0200

CIGNA Insurance Company (CIGNA) filed an Appeal from a denial by the DOE Office of Procurement Operations

(OPO) of a request for information which it had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that certain reports of the Tennessee Valley Authority (TVA) sought by CIGNA did not exist for the period of time in question. The DOE also found that the release of existing TVA reports to CIGNA through a subsequent discovery process had rendered inadequate the OPO's justification for withholding similar technical and financial data pursuant to Exemption 4. Accordingly, the matter was remanded to the OPO with instructions for it to review and revise its determination concerning the withheld Exemption 4 materials.

Harold Fine, 8/5/88, KFA-0194

Harold Fine filed an Appeal from a Freedom of Information Act (FOIA) determination issued to him by the Inspector General (IG) of the DOE. The IG withheld six documents in their entirety and released 26 documents with deletions pursuant to Exemptions 2, 4, 5, 6, and 7(C) of the FOIA. In considering the Appeal, the DOE found that (i) the IG failed to provide an adequate description of the documents withheld in their entirety, and (ii) that the justifications provided by the IG for withholding information pursuant to Exemptions 2, 4, 5, 6 and 7(C) were generally inadequate. Therefore, the determination was remanded to the IG.

Refund Applications

Anwelt Corporation, et al., 8/5/88, RF272-13103, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 19 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various activities. Each applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $12,280.

Art Omine Auto Service, et al., 8/5/88, RF272-32013, et al.

The DOE issued a Decision and Order denying twenty-three Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant was either a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were ineligible for a crude oil refund.

Bruce Kirby, et al., 8/5/88, RF272-14362, et al.

The DOE issued a Decision and Order denying twenty-nine Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant was either a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were ineligible for a crude oil refund.

City of Grenola, 8/5/88, RF272-73078

The DOE issued a Decision and Order denying a refund to City of Grenola (Grenola), Case No RF272-28001. *U.S.D. #379, et al.*, 17 DOE ¶———— (Case Nos. RF272-28000, *et al.*, (July 21, 1988). Subsequently, the DOE determined that this refund was a duplicate of the refund granted to Grenola, Case No. RF272-17082, on July 15, 1988. *James Dentlinger, et al.*, 17 DOE ¶———— (Case Nos. RF272-17000, *et al.*, (July 15, 1988). Accordingly, the DOE issued a Supplemental Order rescinding the refund granted to Grenola in U.S.D. #379, *et al.*

Eagle-Picher Industries, Inc., Electronics Division, Eagle-Picher Industries, Inc., Minerals Division, 8/4/88, RF272-3659, RF272-4529

The DOE issued a Decision and Order granting two Applicants for Refund from crude oil overcharge funds based on the Applicants' purchases of refined petroleum products from August 19, 1973 through January 27, 1981. The DOE noted that although the two applicants are affiliates, they are eligible for their entire allocable shares because none of their claimed volumes are duplicative. The sum of the refunds granted in this Decision is $987.

Getty Oil Company/Armstrong's Stores, Inc., Skelgas of Crawfordsville, 8/4/88, RF265-2647, RF265-2709

The DOE issued a Decision and Order concerning two Applications for Refund filed by retailers of propane covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty propane purchased during the consent order period. Under the procedures outlined in *Getty Oil Corp.*, 15 DOE ¶ 85,064 (1968), the applicants elected to utilize the 60 percent presumptive level for propane. The total amount of the refunds approved in the Decision and Order is $25,008, representing $12,232 in principal and $12,776 in interest.

Getty Oil Company/Benden Brothers Oil Company, Gibson LP, Inc., Farm Supply, Inc., 8/4/88, RF265-2712, RF265-2713, RF265-2714

The DOE issued a Supplemental Order concerning Applications for Refund filed by three firms from a consent order fund made available by Getty Oil Company. As resellers-retailers applying for small claims refunds, these firms were presumed to have been injured. The DOE concluded that these firms should receive refunds totalling $30,618, representing $15,000 in principal and $15,618 in accrued interest.

Husky Oil Company/Calder's Gas 'N' Go, 8/3/88, RF161-20

The DOE issued a Decision and Order concerning an Application for Refund filed by Calder's Gas 'N' Go, a retailer of Husky motor gasoline and diesel fuel. Under the refund procedures established in *Husky Oil Co.*, 13 DOE ¶ 85,045 (1985), Calder's purchase volume corresponded to a volumetric share exceeding the $5,000 small claims threshold level. However, the firm elected to limit its refund claim to $5,000, and was therefore not required to submit a detailed showing of injury. Accordingly, Calder's was granted a refund of $7,314, representing $5,000 in principal and $2,314 in accrued interest.

Indianapolis Public Transportation Corporation, 8/2/88, RF272-7938

Indianapolis Public Transportation Corporation (IPTC) filed an Application for Refund in the Subpart V crude oil refund proceedings. A group of utilities, transporters, and manufcturers filed objections to IPTC's application, claiming that the applicant should not be eligible to receive a refund because it was not an injured end-user. The objectors also claimed that as a governmental authority IPTC is ineligible for a refund from the 20 percent of the crude oil overcharge funds reserved to pay Subpart V claims. The DOE rejected the objectors' arguments. With respect to the latter, the DOE held that the Stripper Well Settlement Agreement does not prohibit a state from filing a claim for direct restitution. With respect to the former argument, the DOE found that the objectors had not met the burden of going forward with evidence to rebut the end-user presumption of injury. Accordingly, the application was approved and IPTC was granted a refund of $2,584.

Jo Jo's Country Store, et al., 8/5/88, RF272-17696, et al.

The DOE issued a Decision and Order denying 27 Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant was either a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were ineligible for a crude oil refund.

Marathon Petroleum Company/Jesse Augurson Jr., 8/5/88, RF250-2748

The DOE issued a Decision and Order concerning an Application for Refund filed by a purchaser of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The Applicant demonstrated the volume of its Marathon purchases, and its refund request was smaller than the $5,000 small claims refund amount. The refund approved in this Decision is $534 in principal and $95 in interest.

Marathon Petroleum Co./Rogers Oil Co., 8/1/88, RF250-2459

This Decision and Order concerns an Application for Refund filed by Rogers Oil Company in the Marathon Petroleum Company refund proceeding. Rogers was a reseller of Marathon products during the Marathon consent order period. The DOE found that the applicant failed to make a conclusive showing of competitive injury. Rogers was granted a presumption of injury refund of $11,541, which equaled 35% of the firm's volumetric refund share. Rogers will also receive $1,704 accrued interest.

Mobil Oil Corporation/Cantro Petroleum Corporation, 8/2/88, RF225-6740

The DOE issued a Decision and Order regarding an Application for Refund from the Mobil Oil Corporation escrow account filed by Cantro Petroleum Corporation, a reseller of Mobil refined petroleum products during the Mobil consent order period. In its application, Cantro claimed that it was entitled to a per-gallon refund in excess of the volumetric refund amount because Mobil had improperly terminated an early payment discount that Cantro alleged Mobil was required to provide to Cantro under the Mandatory Petroleum Price Regulations. In its Decision, the DOE held that although it appeared that Cantro may have experienced an alleged overcharge in excess of the volumetric refund amount as a result of Mobil's action, Cantro had not submitted the cost bank information and pricing data needed to demonstrate that it was injured by Mobil's action. Lacking the information needed to determine whether Cantro experienced injury as a result of Mobil's action, the DOE concluded that Cantro could not be granted an above-volumetric refund. Accordingly, Cantro was granted a refund of $5,815 ($4,657 principal plus $1,158 interest).

Mobil Oil Corp./John Nau, 8/11/88, RF225-6409

The DOE issued a Decision and Order approving a refund application in the Mobil Oil Corp. special refund proceeding filed by John Nau, a retailer of Mobil motor gasoline and greases. Mr. Nau elected to use the presumption method to calculate his refund. Therefore, in accordance with the procedures outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), Mr. Nau was granted a refund totaling $1,9176 ($1,048 in principal plus $869 in accrued interest).

Standard Oil Co. (Indiana)/New Hampshire, RM251-111; Coline Gasoline Corp./New Hampshire, RM2-112; National Helium Corp./New Hampshire, RM3-113; Northeast Petroleum Industries/New Hampshire, 8/2/88, RM25-114

The DOE issued a Decision and Order approving the Motions for Modification filed by the State of New Hampshire in the Standard Oil Co. (Indiana), Coline Gasoline Corp., National Helium Corp. and Northeast Petroleum Industries refund proceedings. New Hampshire requested permission to use $4,000 in funds previously approved in the above proceedings and $3,359 in interest that had accrued on those funds to distribute a video on window insulation techniques. The State also requested permission to spend $1,100 in accrued interest on an advertising campaign designed to promote energy conservation. The DOE found that New Hampshire's programs would lead to a wider dissemination of energy conservation information, and therefore approved the State's proposed modification.

States RR272-1; Greater Richmond Transit Co., RR272-2; Ft. Wayne Public Transportation Co., RR272-3; Utah Transit Authority, 8/4/88, RF272-61790, RF272-61791, RF272-61792

The DOE considered a Motion for Reconsideration filed by 33 States and territories (States). The States objected to several of the procedures that were used in granting crude oil overcharge refunds to Greater Richmond Transit Company, Ft. Wayne Public Transportation Corporation and Utah Transit Authority. After finding that there was no basis for any modification of those procedures, the DOE determined that crude oil overcharge refunds should be paid to the three firms. The amounts of the refunds were $2,650.52 (Greater Richmond); $3,186.51 (Utah Transit) and $727.92 (Fort Wayne).

Suburban Propane Gas Corporation/Proctor Gas, Inc., 8/1/88, RF299-86

The DOE issued a Decision and Order granting the application filed by Proctor Gas, Inc., requesting a refund from the Suburban Propane Gas Corporation consent order fund. According to the procedures set forth in *Suburban Propane Gas Corporation*, 16 DOE ¶ 85,382 (1987), Proctor Gas Inc., a retailer of Suburban products, was found to be eligible for a refund based on the volume of propane it purchased from Suburban. The amount of the refund approved in this Decision is $1,579, representing $1,388 in principal plus $191 in accrued interest.

Wichita County Road Dept., 8/4/88, RF272-73077

The DOE issued a Decision and Order granting a refund to Wichita County Road Department (Wichita), Case No. RF272-14958. *Alfred Riebe, Jr., et al.*, 17 DOE ¶ _____ (Case Nos. RF272-14800, *et al.* (July 11, 1988). Subsequently, the DOE determined that this refund was a duplicate of the refund granted to Wichita, Case No. RF272-16472, on June 30, 1988. *Colfax County Highway Department, et al.*, 17 DOE ¶ _____ (Case Nos. RF272-16401, *et al.* (June 30, 1988). Accordingly, the DOE issued a Supplemental Order rescinding the refund granted to Wichita in Alfred Riebe, Jr., *et al.*

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Earl H. Forsch et al	RF272-24601	8/2/88	169	$3,631
Johnny F. Mastny et al	RF272-24802	8/4/88	141	3,844
Town of Farmington et al	RF272-7725	8/5/88	6	924

Dismissals

The following submissions were dismissed:

Name	Case No.
Andy's Texaco	RF265-2168
B. Zaitz and Sons Co	RF272-58379
Bangor Hydro-Electric Co	RF272-56282
Blair Oil Co	RF265-399
Boulevard Getty	RF265-1198
Boyertown Area School District	RF272-45080
Carl W. Valentine	RF272-47279
Century Furniture Company	RF272-9644
Charlie & Dale Pettyjohn	RF265-2598
	RF265-2599
Cherry Hill Getty	RF265-2082
Circle Getty	RF265-2182
City of Mesquite	RF272-58101
Claycomo Skelly Service	RF265-1142
Cousin's Getty	RF265-1914
D&P Getty	RF265-1003
Demers & Sons Citgo	RF265-633
	RF265-664
Don's Travel Inn	RF265-1157
Ervin C. Cahlin	RF265-515
	RF265-516
Halbur Oil Company	RF265-2391
	RF265-2578
Harman's Getty	RF265-795
Honokaa Hospital	RF272-56215
Howard Butane Propane Co., Inc	RF139-160
J. Fred Smith Skelly	RF265-1849
J.P. Oil Company	RF265-2600
	RF265-2601
Jeffery Oil Company	RF265-1542
	RF265-1543
	RF265-1545
John's Getty Servicenter	RF265-2272
Kohala Hospital	RF272-56219
Lehman-Roberts Company	RF272-54624
Leland Community Unit School District #1.	RF272-51855
Pardee Oil Company	RF265-1795
Penco Oil Company	RF265-1397
Rosewall's Getty	RF265-909
Roy Matthees Skelly	RF265-2032
	RF265-2033
	RF265-2034
Samuel Mahelona Memorial Hospital.	RF272-56222
Southern Union Co	RF272-29839
Stanley Morris Oil Company	RF265-62
	RF265-63
State of Hawaii Dags	RF272-56220
Valley Oil Company	RF265-2304
	RF265-2305
Viking Truck Stop, Inc	RF265-1558
Vulcan Steam Forging Co	RF272-50172
Zimmerman Getty	RF265-10
Zumbro Planting Co., Inc	RF272-50765

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

Septemer 7, 1988.

[RF Doc. 88-22723 Filed 9-30-88; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Boulder Canyon Project Proposed Power Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of extension of consultation and comment period for a proposed power rate adjustment.

SUMMARY: The Western Area Power Administration (Western) announced in the **Federal Register** published June 22, 1988 (53 FR 23446), a proposed adjustment of the rates for power and energy from the Boulder Canyon Project (BCP). In that notice, Western scheduled a public information forum for June 30, 1988, with the consultation and comment period to end August 8, 1988. Western also stated that consideration would be given to an extension of the consultation and comment period if requested by customers or interested parties.

Western received several requests for an extension of 45 days to the originally published consultation and comment period. The basis for the extension was to allow all interested parties an opportunity to review and analyze a new energy forecast, a new method of forecasting future replacement requirements, and new rate calculations.

After reviewing those requests for extension, Western concurred with the requests and rescheduled for September 7, 1988, the public comment forum previously scheduled for July 22, 1988. In addition, the ending date of the consultation and comment period was changed to September 22, 1988. This was noticed in the **Federal Register** at 53 FR 29085, August 2, 1988.

An additional public comment forum has been scheduled. This will allow time for Western to further provide information and for the customers and other interested parties to prepare their comments. Also, the consultation and comment period has been extended.

DATES: The consultation and comment period which began with the notification of the BCP rate adjustment (53 FR 23446, June 22, 1988) will end November 14, 1988. A public comment forum will be held at 10 a.m. on October 28, 1988.

ADDRESSES: The public comment forum will be held at the Boulder City Area Office, 3 miles south on Buchanan Road, Boulder City, Nevada, on the dates and times cited above. Written comments may be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3255.

FOR FURTHER INFORMATION CONTACT: Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3255.

Issued at Golden, Colorado, September 23, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88-22721 Filed 9-30-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3457-7]

Sole Source Designation of the Cedar Valley Aquifer, King County, WA

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final determination.

SUMMARY: Pursuant to section 1424(e) of the Safe Drinking Water Act, the Region 10 Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Cedar Valley Aquifer in King County, Washington is the principal source of drinking water for the area and that the aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, federal financially-assisted projects constructed in the project review area will be subject to EPA review to ensure that these projects are design and constructed so that they do

not create a significant hazard to public health.

EFFECTIVE DATE: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time on October 17, 1988.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the Renton City Library, 100 Mill Ave., Renton Washington; King County Library, Maple Valley Branch, 23730 Maple Valley Rd. SE; Maple Valley, Washington; King County Library, Fairwood Branch, 17009 140th SE; Renton, Washington, and EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Jonathan Williams at (206) 442-1541 or FTS 399-1541.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act [42 U.S.C., 300f, 300h-3(e), Pub. L. 93-523] the Region 10 Administrator of the U.S. Environmental Protection Agency has determined that the Cedar Valley Aquifer located in King County, Washington is the principal source of drinking water for the aquifer service area. Pursuant to section 1424(e), federal financially-assisted projects proposed for construction in the project review area will be subject to EPA review.

I. Background

Section 1424(e) of the Safe Drinking Water Act states: "If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of such notice, no commitment for federal financial assistance [through a grant, contract, loan guarantee, or otherwise] may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of the law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer."

On March 3, 1988, the city of Renton, Washington, submitted a petition reqesting that EPA designate the Cedar Valley Aquifer as a sole source aquifer. The petition states that the city of Renton initiated a program to protect its principal source of drinking water in 1983, and considers sole source designation a step which "would support the goals of the aquifer protection program already underway." In order to obtain public comment, EPA issued a press release on May 2, 1988, which stated that (1) the EPA Regional Office was considering designation of the Cedar Valley Aquifer as a sole source aquifer, (2) copies of the petition and a complementary summary document were available for review, (3) a public hearing was scheduled for May 26, 1988, and (4) public comment was sought through June 2, 1988. Legal notices, announcing the availability of the petition and summary document, announcing the public hearing, and requesting public comment until June 2, 1988, were printed in the Valley Daily News (Renton Edition), the Seattle Times, and the Seattle Post-Intelligencer, on May 9, 1988.

II. Basis For Determination

Among the determinations which the Regional Administration must make in connection with the designation of an area under section 1424(e) are: (1) Whether the aquifer is the sole or principal sources of drinking water in the area, and (2) whether, if contaminated, a significant hazard to public health would result. Based on the information available to this Agency, the Regional Administrator has made the following findings, which are the bases for the determination noted above.

1. The Cedar Valley Aquifer supplies at least 80 percent of the drinking water used in the aquifer service area, and possibly almost 90 percent.

2. No economically feasible alternative drinking water sources, as defined by EPA guidelines, exist within the area or nearby.

3. Since the aquifer represents the principal source of drinking water for the aquifer service area, contamination of the aquifer would pose a significant hazard to public health.

III. Description of the Cedar Valley acquifer

(Information in this section represents an unfootnoted summary of material from: *Support Document for Designation of the Cedar Valley Aquifer as a Sole Source Aquifer*, issued in September of 1988 by the Region 10 Office of Ground Water.)

The Cedar Valley Aquifer consists of recent (post-Vashon glaciation) alluvium deposited by the Cedar River. These sand and gravel deposits cover the low-lying areas of the Cedar River Valley to a depth of less than 100 feet. The aquifer thickness ranges from 70 to 90 feet within the city of Renton wellfield. The alluvium overlies unconsolidated glacial deposits which, in turn, overlie folded and faulted Eocene to Oligocene sedimentary rocks.

The aquifer materials extend upgradient (east) almost continuously upstream to Cedar Falls. Downgradient (northwest, west, and southwest) from Renton, the sand and gravel deposits fan radially outward and become complexly interlayered with finer-grained material of the ancentral Cedar River Delta before grading into the fine-grained sediments associated with Lake Washington and the Duwamish Valley. Laterally, the aquifer materials abutt against older strata along steep walls of the Cedar River Valley.

Water moves easily through the sand and gavel deposits which form a large portion of the Cedar Valley Aquifer. Water-filled pore space between sand and gravel clasts occupy about 25 percent of the aquifer volume. Ground water in the Renton wellfield area generally moves at the rapid rate of about 20 feet per day. Movement of up to 160 feet per day may occur locally. Groundwater moves down gradient through the aquifer in a direction which parallels the general course of the Cedar River.

Aquifer recharge originates as precipitation over the approximately 186 square mile Cedar River drainage area. Rainfall around Renton averages about 39 inches each year, and evaporation only consumes 16 to 22 inches annually. Therefore, 17 to 23 inches of precipitation each year becomes runoff or infiltrates to the ground-water system. Precipitation rates are even higher, and evaporation rates lower, in the higher elevation areas of the drainage basin.

Aquifer recharge occurs from precipitation upon the aquifer surface, subsurface inflow from adjoining strata, surface runoff and seepage from the valley walls, and the Cedar River. No studies which attempt to calculate the relative amounts of recharge from these sources have been published. Water which reaches the surface of the aquifer generally infiltrates easily to the water table because of the preponderance of coarse-grained material in the valley fill. Likewise, sand and gravel within the saturated portion of the valley fill will readily accept water from adjoining strata [although some of the bounding strata will not transmit water easily]. Relatively little water enters the aquifer from bounding strata where the aquifer has cut into bedrock or glacial till. In

contrast, saturated glacial outwash units in contact with the valley fill may transmit great amounts of water to the aquifer. Recharge from the Cedar River probably only occurs during flood stage upstream of the bedrock narrows (about 1 mile east of I–405) judging from water levels in wells near the river. Downstream from the bedrock narrows, the river is inferred to recharge the aquifer since the river level is generally 5 to 10 feet above the water table.

The difference between surface and ground water elevations in the Renton area suggests that a hydrologic impediment exists locally beneath the Cedar River. In fact, thin layers of peat and clay have been reported near the surface on some borehole logs. Pumping tests for the city of Renton indicate that ground water in the wellfield area moves as in a semi-confined aquifer. Pump test results also suggest that pumping the well field influences ground-water movement on the opposite side of the Cedar River rather than drawing water directly from the river. Ultimately, however, the Cedar River and the aquifer both depend upon precipitation within the Cedar River drainage basin for their recharge.

Ground water from the Cedar Valley Aquifer naturally discharges to the Cedar River above the bedrock narrows, and to Lake Washington and the Duwamish River as underflow. Artifical discharge from the aquifer occurs mostly from the city of Renton's production wells. The city of Renton's wells, all located within a one quarter square mile area, pump at an average rate of 4375 gallons per minute (6.3. million gallons per day). The city reports that water levels in its wells generally drop less than five feet each summer and rebound completely during the winter months. No studies which attempt to calculate the relative amounts of discharge from the aquifer have been published.

The aquifer boundaries correspond to the areal extent of the post-Vashon alluvium of the lower Cedar River Valley. The aquifer materials, deposited by the Cedar River and tributary drainages, occur almost continuously between Renton and Cedar Falls, a distance of about 25 miles. In the Renton area, these Quaternary deposits are labeled Qac and Qas on a 1:24,000 scale map, published by the U.S. Geological Survey, which extends from the western margin of the aquifer to about three miles east of Renton. Outcrop relationships strongly suggest that these aquifer materials also coccur beneath artifical fill which covers much of the low-lying areas of Renton. Therefore, areas in Renton mapped as covered by artificial fill are considered part of the aquifer area. Further upstream, the aquifer materials are labeled Quaternary alluvium (Qa) on 1:24,000 scale maps of the Maple Valley and Hobart Quadrangles contained in a thesis at the University of Washington. Still further upstream, the aquifer materials are labeled Quaternary alluvium (Qa) on a 1:250,000 scale generalized geologic map of King County published by the U.S. Geological Survey.

Since water which recharges the Cedar Valley Aquifer may originate as precipitation anywhere in the Cedar Valley drainage basin, the streamflow source area includes the entire Cedar Valley drainage. In order to prevent federal financially-assisted projects from contaminating ground water, the project review area coincides with the boundaries of the streamflow source area.

Ground water withdrawn from the aquifer by the city of Renton has historically exceeded the public water supply quality standards established by the Washington Department of Social and Health Services (DSHS) and the U.S. Environmental Protection Agency (EPA). Recently, ground-water contamination has been observed in monitoring wells within Renton although not in any of the city's operating water supply wells. Monitoring wells have documented elevated levels of benzene suspected to have originated from leaking underground gasoline storage tanks.

The Cedar Valley Aquifer is highly vulnerable to contamination in the Renton area because of the shallow depth to ground water and the high number of potential sources of contamination in the urbanized area overlying the aquifer. Upgradient (east) of Renton, the lower population density presents fewer potential sources of contamination, but the water level generally lies closer to the surface. Potential sources of contamination include underground storage tank failure, improper storing, handling, or disposal of hazardous materials, accidental spills of hazardous material transported across the aquifer, septic tank effluent, storm runoff, pesticides, and chemical fertilizers. Numerous potential sources of contamination also exist off the surface of the aquifer but within the lower Cedar Valley drainage area. Since the Cedar River and the Cedar Valley Aquifer are hydrologically connected, sources which present a threat to the water quality of the river may also pose a threat to the aquifer.

The city of Renton has identified six potential alternative sources of drinking water: The Cedar River, Green River, Lake Washington, Seattle Water Department, and glacial outwash aquifers beneath the Renton Highlands and Covington Drift Plain. Surface water appropriation restrictions prevent the city from developing the Cedar River, Green River, or Lake Washington as a source of municipal water. Developing ground-water resources within the Renton Highlands and Covington Drift Plain might provide an adequate alternative supply, but would likely double the typical ratepayer's water bill. The city of Renton petition states that the Seattle Water Department cannot guarantee enough water to replace that now consumed from the aquifer.

IV. Project Review

When the EPA publishes a determination for a sole or principal drinking water source, the consequence is that no commitment for federal financial assistance may be made if the Administrator finds that the federal financially-assisted project may contaminate the aquifer through a recharge zone so as to create a significant hazard to public health [Safe Drinking Water Act section 1424(e), 42 U.S.C. 300h-3(e)]. In many cases, these federal financially-assisted projects may also be analyzed in a National Environmental Policy Act (NEPA) document, 42 U.S.C. 4332 (2)(c).

To streamline EPA's review of the possible environmental impacts upon designated aquifers, when an action is analyzed in a NEPA document, the two reviews will be consolidated, and both authorities will be cited. The EPA review under the Safe Drinking Water Act of federal financially-assisted projects potentially affecting sole or principal source aquifers will be included in the EPA review of any NEPA document accompanying the same federal financially-assisted project. The letter transmitting EPA's comments on the final Environmental Impact Statement to the lead agency will be the vehicle for informing the lead agency of EPA's actions under section 1424(e).

V. Discussion of Public Comment

Comments were received from the King County Geologist, the Seattle Water Department, and the Seattle-King County Health Department. The County Geologist, an employee of a branch of the Public Works Department, submitted additional geological and hydrological information about nearby areas, and pointed out that the legal separation between surface and ground-water resources in the area should not be construed to mean that the resources are

physically distinct. The Seattle-King County Department of Public Health supported the proposed designation. The Seattle Water Department requested that EPA meet with the Department to discuss the implications of sole source designation.

In response to comments from the King County Geologist, EPA requested that the city of Renton submit an economic analysis for the Covington Drift Plain similar to one presented in the petition for the Renton Highlands. The additional information provided by the county was submitted to the city of Renton for that purpose. The analysis shows that adequate ground-water resources may be obtained from glacial outwash aquifers beneath the Covington Drift Plain but are economically infeasible according to EPA guidelines. EPA agrees that the surface water resources and the shallow ground-water resources of the Cedar Valley drainage basin are hydrologically connected. For this reason, EPA has incorporated the entire Cedar River drainage basin into the streamflow source area.

EPA has contacted the Seattle Water Department and will meet with the Department to discuss the sole source aquifer program and ground-water protection in general. The letter from the Seattle-King County Department of Public Health did not request or require a response.

VI. Summary

Today's action only affects the Cedar Valley Aquifer and its streamflow source area in King County, Washington. This action provides a review process to ensure that necessary ground-water protection measures are incorporated into federal financially-assisted projects.

Robie G. Russell,

Regional Administrator.

Date: June 8, 1988.

[FR Doc. 88-22621 Filed 9-30-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3457-8]

Sole Source Designation of the Lewiston Basin Aquifer, Asotin and Garfield Counties, WA, and Nez Perce and Lewis Counties, ID

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final determination.

SUMMARY: Pursuant to section 1414(e) of the Safe Drinking Water Act, the Region 10 Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Lewiston Basin Aquifer in parts of Idaho and Washington, is the principal source of drinking water for the Lewiston Basin and that the aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, federal financially-assisted projects proposed in the project review area will be subject to EPA review to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

EFFECTIVE DATE: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time on October 17, 1988.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the Asotin County Library, Main Branch, Sixth and Chestnut, Clarkston, Washington, Asotin County Library, Heights Branch, 2036 Fourth Avenue, Clarkson, Washington; Nez Perce County Library, Lapwai Branch, 103 Main Street, Lapwai, Idaho; Lewiston City Library, Tsceminicum Branch, 428 Thaine Road, Lewiston, Idaho; Lewiston City Library, Carnegie Branch, Pioneer Park, Lewiston, Idaho; EPA Idaho Operations Office, 422 West Washington Street, Boise, Idaho; and EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Jonathan Williams at (206) 442-1541 or FTS 399-1541.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act [42 U.S.C., 300f, 300h-3(e), Pub. L. 93-523] the Region 10 Administrator of the U.S. Environmental Protection Agency has determined that the Lewiston Basin Aquifer located in Asotin and Garfield Counties, Washington, and Nex Perce and Lewis Counties, Idaho, is the principal source of drinking water for much of the aquifer service area. Pursuant to section 1424(e), federal financially-assisted projects proposed for construction in the project review area will be subject to EPA review.

I. Background

Section 1424(e) of the Safe Drinking Water Act states: "If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register.** After the publication of such notice, no commitment for federal financial assistance [through a grant, contract, loan guarantee, or otherwise] may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of the law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer."

On December 27, 1987, the Region 10 Office of the U.S. Environmental Protection Agency (EPA) received a petition from the Asotin County Public Utility District (PUD) requesting that EPA designate the "Russell Aquifer" as a sole source aquifer. The PUD provided additional information through a revised petition which was received by EPA on February 1, 1988.

The "Russell Aquifer" was defined as the upper 800 feet of the Grande Ronde Formation within the Lewiston Basin by a hydrogeological report published in 1980. EPA has combined the Grande Ronde Formation with other water-bearing rocks of the Lewiston Basin and labeled the aquifer system as the Lewiston Basin Aquifer.

In order to obtain public comment, EPA distributed a press release on May 4, 1988, stating that (1) the EPA Regional Office was considering designation of the Lewiston Basin Aquifer as a sole source aquifer, (2) a Resource Document summarizing the bases for the proposal was available for review, (3) public comments were being requested, and (4) a public hearing was to be held on May 17, 1988. Legal notices, announcing distribution of the Resource Document, the public hearing, and the closure date for public comment, were printed in the Lewiston Tribune on May 9, 1988, and the Clarkston Valley American on May 11, 1988. The public hearing was held in Clarkston, Washington, as scheduled, and the public comment period remained open until June 2, 1988.

On May 31, 1988, EPA received a letter from the Idaho Water Resource Board which requested a 60 day extension of the public comment period. EPA granted the request. An additional public meeting was conducted in Lewiston, Idaho on July 19, 1988. Written testimony was received through August 5, 1988.

II. Basis For Determination

Among the determinations which the Regional Administrator must make in connection with the designation of an

area under section 1424(e) are: (1) Whether the aquifer is the sole or principal source of drinking water in the area, and (2) whether, if contaminated, a significant hazard to public health would result.

Based on the information available to this Agency, the Regional Administrator has made the following findings, which are the bases for the determination noted above:

1. The Lewiston Basin Aquifer directly supplies about 68 percent of the drinking water used in the area.

2. No economically feasible alternative drinking water sources exist within the area or nearby which could supply all those who now depend upon the aquifer as their source of drinking water.

3. Since the aquifer system represents the principal source of drinking water for the area, contamination of the aquifer would pose a significant hazard to public health.

III. Description of the Lewiston Basin Aquifer

(Information in this section represents an unfootnoted summary of material from: *Support Document for Designation of the Lewiston Basin Aquifer as a Sole Source Aquifer*, issued in September of 1988 by the Region 10 Office of Ground Water.)

The Lewiston Basin covers approximately 500 square miles of southeastern Washington and western north-central Idaho, including part of the Nez Perce Indian Reservation. The structural and topographic basin, bounded by faults and anticlinal folds, represents a ground-water basin within the Columbia Plateau.

Basalts of the Columbia River Group, and especially those of the Grande Ronde Formation, store and transmit most of the ground water in the Lewiston Basin. The basalt itself is dense and impermeable to water, but the basalt flows are fractured throughout. Most ground water moves laterally along flow tops (composed of vesicular and broken basalt formed by rapid cooling at the top of the flow), but some water also moves between flow tops through the entablature and colonnade. Very thin basalt flows may consist only of a flow top and an intensely fractured base which forms a good hydrologic connection with the underlying flow top. The center portions of thick flows, although not impermeable, may restrict vertical ground-water movement enough to act as confining beds.

Sedimetary deposits between basalt flows, called interbeds vary greatly in their thickness and ability to transmit water. Ground water moves easily through coarse-grained interbeds, but hardly at all through fine-grained units. Fine-grained interbeds, which act as confining units, occur commonly in the Wanapum and Saddle Mountains Formations but rarely between flows of the Grande Ronde Basalt.

Unconsolidated sedimentary material, composed mostly of gravel and sand with some silt, covers much of the triangular lowland at the confluence of the Snake and Clearwater Rivers, and parts of the Lapwai Valley. The unconsolidated sediments do transmit water to the underlying basalt and, where adequate recharge exists, form water table aquifers atop the basalt aquifer system.

Major faults and anticlinal folds form most of the hydrogeological boundaries of the Lewiston Basin. Faults act as ground-water barriers by offsetting highly permable flow tops. Also, the pulverized rock in the fault zone weathers to form a clay-rich plane for low permeability. Tight folds, caused by stress intense enough to severely deform the basalt, but not so strong as to offset the beds. Crush and compact the flow tops so that they transmit water much more slowly. Major anticlinal folds, where the strata dip downward from the fold axis, also act as regional ground-water divides. Faults and anticlinal folds, as mapped by the U.S. Geological Survey and Idaho Bureau of Mines and Geology, form all but the southwestern boundaries of the ground-water basin. The southwestern boundary has been drawn along a major topographic divide in the Blue Mountains which acts as a regional ground-water divide. No water budget studies for the basin, which would serve to check the hydrogeological significance of the boundaries, have been published.

Rivers and creeks flow across the structural barriers which act as boundaries for the ground-water basin. Federal financially assisted projects located in the drainage basins of surface streams which recharge ground water within the Lewiston Basin may constitute significant sources of contamination to the aquifer. While the entire streamflow source area includes all of the Snake River drainage upstream from Silcott, Washington, only a portion of the streamflow source area immediately adjacent to the ground-water basin has been delineated for project review purposes.

The boundaries of the project review area, which are shown on a 1,250,000 scale map in the Support Document, are as follows: Beginning west from the confluence of the Grande Ronde and Snake River up to the Grande Ronde River to Menatchee Creek; north up to Menatchee Creek to the ridge separating Menatchee Creek and Saddle Spring Creek; northwest along the ridge separating the two creek basins, over Mt. Horrible, to the unimproved road between Saddle Spring and Misery Spring; northwest along the road to Clearwater Range Station; north along the ridge road separating the Charley and Pataha Creek basins to the intersection of Washington state highway 128, about 2 miles west of Peola; nowthwest about three miles to the Sweeny Gulch Road; northwest on the Sweeny Gulch Road, which generally follows the ridge between the Pataha and Alphowa Creek basins, to U.S. Highway 12; east along Highway 12 to where the Vista Fault trace crosses the highway, about 1 mile east of the Head of Pow Wah Kee gulch and about 2 miles west of Silcott, Washington; northeast and east along the Vista Fault, as mapped by the U.S. Geological Survey, to a high-duty, mostly unimproved road which extends from U.S. Highway 195 to the north side of the Snake River; northeast along the road to U.S. Highway 195; southeast on U.S. Highway 195 to its intersection with U.S. Highway 95; northeast on U.S. highway 95 about 6 miles to the light-duty road which heads east to Catholic Creek; east, southeast, and east along the road to Catholic Creek; north along the Catholic Creek Road about 2 miles to its intersection with the road to Howard Gulch; east to Howard Gulch and then north along the Howard Gulch Road to the Nez Perce-Latah County line, east along the latitude of the county line about 7 miles, across Idaho state Highway 3, to the light-duty road which reaches the north bank of the Clearwater River about 1 mile downstream from the where Pine Creek meets the Clearwater; south on that road to the Clearwater River; southeast for 2 miles along a prominent ridge to the road between Cottonwood Creek and the town of Summit; south and east to Summit; south along the road through the towns of Gifford and Lookout to the town of Reuban; south along the railroad between Ruban and Craig Junction; generally southwest along an old railroad grade to its end about 4 miles southeast of Soldiers Meadow Reservoir; west along the unimproved road to Craig Mountain; south along the unimproved Craig Mountain Road, and then southwest to the Snake River along the unimproved road which reaches the river about 1 mile upstream from Shovel Creek Rapids; north to the confluence of the Grande Ronde and Snake Rivers, the point of beginning.

On a grand scale, ground water moves from the high elevation areas of the Lewiston Basin, mostly through the basalt flow tops, towards the lower elevation areas of the basin. Generalized water level contours for the Grande Ronde Basalt range from over 5000 feet near the crest of the Blue Mountains to less than 800 feet along the Snake River. However, geologic features within the basin act to intercept, direct, or dramatically slow the ground water as it moves through the gently sloping basalt beds.

Recharge to the Lewston Basin aquifer system occurs principally from streamflow infiltration. Streamflow infiltration to the basalt aquifers occurs mostly where rivers and creeks flow over basalt flow tops, which happens where basalt beds dip more steeply than the surface drainage gradient. Although no steamflow data have been obtained to measure the amount of recharge, water level records to deep wells in the Lewiston-Clarkston area suggest excellent hydrologic communication between surface water sources and the Grande Ronde Formation.

Precipitation easily recharges the basalt and unconsolidated sediment lying at or near the surface. At lower elevations, however, scant precipitation and high evaporation rates probably allow recharge via precipitation on a sporadic basis only. Precipitation may significantly recharge the basalt aquifers at higher elevations, but hydrogeologic impediments (canyons and dikes) may prevent much of that ground water from reaching the water supply wells in the Lewiston-Clarkston area.

Excess irrigation water, which recharges water table aquifers in the unconsolidated sediments, also partly recharges aquifers of the Wanapum and Saddle Mountains Formations in parts of the Lewiston-Clarkston area. Predominately lateral flow through the upper basalt and fine-grained interbeds combine to prevent most excess irrigation water from percolating to the Grande Ronde Basalt before reaching a discharge point.

Shallow ground water discharges mostly as springs along deeply incised surface drainages, whereas production wells tap much of the deeper ground water in the Lewiston-Clarkston area. Earlier investigations have identified areas where ground water from the Grande Ronde Formation discharged naturally to the Snake River before construction of Lower Granite Dam. However, with the filling of the Lower Granite Reservoir (February of 1975), the static water levels in wells near the river rose but remained below the elevation of the reservoir surface. Thus, it seems that the reservoir now provides partial recharge to the aquifer in the Lewiston-Clarkston area.

Rates of production (artificial discharge) from wells within the Grande Ronde Formation are considerably higher than those from the overlying basalt and unconsolidated sediments. The Asotin County PUD wells produce at rates of 1345 to 4220 gallons per minute (gpm) from the top 800 feet of the Grande Ronde Basalt. In contrast, wells completed in the Wanapum and Saddle Mountains Formations average 10 to 30 gpm.

Public water supply wells in the Lewiston-Clarkston area produce excellent quality water from the Grande Ronde Formation. The water typically contains fewer than 350 parts per million (ppm) total dissolved solids (TDS), and requires no treatment before drinking. The chemistry of water withdrawn from the Grande Ronde Formation appears typical for ground water from the Columbia River Basalt. Published reports have documented contaminated ground water in alluvial sediments of Lapwai Creek, probably from septic tank and drain field usage.

Aquifer units within the Lewiston Basin are vulnerable to contamination for one or more of the following reasons: (1) They occur at or near the surface, where precipitation, excess irrigation, and other artificial recharge can introduce contaminants to the subsurfaces; (2) they are extensively recharged by surface waters; (3) they are hydrologically connected to near-surface aquifers, either naturally or by wellbores.

The most valuable portion of the Lewiston Basin aquifer system from a drinking water standpoint, the upper 800 feet of the Grande Ronde Formation, is most vulnerable to contamination from surface water recharge. Therefore, any project or activity which would threaten the water quality of a possible surface water recharge area would pose a threat to the principal source of drinking water within the Lewiston Basin. The Grande Ronde Basalt aquifer could also suffer if the overlying water-bearing strata became contaminated.

Aquifers in the unconsolidated sediments and upper basalt units are susceptible to contamination from surface activity since they lie close to the surface in the most populous portions of the Lewiston Basin. Possible sources of contamination include improper storage, handling or disposal of hazardous materials, septic tank effluent, storm runoff, pesticides, and chemical fertilizers. Although the shallow aquifer units serve far fewer people than the Grande Ronde Formation, they do serve as the sole source of drinking water for numerous households. Also, they are hydrologically connected to the Grande Ronde Basalt (although poorly in many areas). But most importantly, they discharge to surface waters which, in turn, recharge the Grande Ronde Formation.

The Lewiston-Clarkston area accounts for most of the drinking water consumed in the Lewiston Basin. The city of Lewiston uses water withdrawn from the Clearwater River for most of its needs but depends upon wells which produce from the Grande Ronde Formation for about 17 percent of its consumption. All other public water purveyors in the Lewiston Basin depend entirely upon wells which produce from the Grande Ronde Formation. Private users, such as food processors, who depend upon large volumes of high quality water derive their supplies exclusively from wells completed in the Grande Ronde Basalt. Individual households which need only small quantities of ground-water utilize the basalts and sediments which overlie the Grande Ronde Formation. Overall, ground water supplies about 68 percent of the water consumed within the basin, which is well above the 50 percent required for sole source designation.

Surface water supplies capable of serving the Lewiston Basin are physically and legally available, but using the available surface water would be economically infeasible. The main water purveyors for the area, the city of Lewiston and the Asotin County PUD, have water rights which would allow them to legally withdraw enough surface water to supply the whole area. In fact, the Asotin County PUD alone has legal access to approximately 43 million gallons per day from the Snake River—enough to supply the peak water usage for the entire basin. However, public and private water purveyors have not fully utilized surface water sources because the Grande Ronde Basalt provides higher quality water at a far lower cost. Surface water from the Snake and Clearwater Rivers requires filtration and disinfection before municipal use. Also, surface water treatment, storage, transmission and distribution facilities cost considerably more to build and operate than systems using high quality ground water.

In order to be considered "economically feasible", according to EPA guidelines, an alternative water source must not cost the typical household more than 0.4 to 0.6 percent of the average annual household income for the area. Conservative cost estimates

generated by the Asotin County PUD indicate that the cost of using surface water render that alternative source economically infeasible for all the public water purveyors in the basin. The cost of replacng individual homeowner wells with a surface water supply would be considerably higher.

IV. Project Review

When EPA publishes a determination for a sole or principal drinking water source, the consequence is that no commitment for federal financial assistance may be made if the Administrator finds that the federal financially-assisted project may contaminate the aquifer through a recharge zone so as to create a significant hazard to public health [Safe Drinking Water Act section 1424(e), 42 U.S.C. 300h–3(e)]. In many cases, these federal financially-assisted projects may also be analyzed in a National Environmental Policy Act (NEPA) document, 42 U.S.C. 4332(2)(c).

To streamline EPA's review of the possible environmental impacts upon designated aquifers, when an action is analyzed in a NEPA document, the two reviews will be consolidated, and both authorities will be cited. The EPA review under the Safe Drinking Water Act of federal financially-assisted projects potentially affecting sole or principal source aquifers will be included in the EPA review of any NEPA document accompanying the same federal financially-assisted project. The letter transmitting EPA's comments on the final Environmental Impact Statement to the lead agency will be the vehicle for informing the lead agency of EPA's actions under section 1424(e).

V. Discussion of Public Comment

During the initial public comment period, comments were submitted by the Nez Perce Tribe, the Idaho Water Resource Board, and the Snake River Preservation Council. The Nez Perce Tribe submitted information by telephone about the present and expected population of the Lapwai Valley which suggests that ground water will become an increasingly valuable resource in the area, referred EPA to a state agency in an effort to document cases of ground-water contamination, and requested that implementation of the sole source program respect their sovereign status. The Idaho Water Resource Board requested that the public comment period remain open for an additional 60 days so that they could further evaluate the proposal. The Snake River Preservation Council wrote to express their support for the proposed designation.

The comments from the Nez Perce Tribe, although neither in support of or opposition to designation, are interpreted to underscore the value of ground-water protection in the Lewiston Basin. EPA will respect the Nez Perce Tribal authority and work appropriately with the Tribe on an equivalent basis as with state and local jurisdictions. Implementation of the project review portion of section 1424(e) of the Safe Drinking Water Act will occur through memoranda of Understanding (MOUs) between EPA and federal funding agencies. These MOUs will identify the types of projects EPA will review, and will specify timeframes for project reviews. Therefore, EPA will work directly through federal funding agencies on project review decisions and with local, state, and tribal governments on program coordination.

In response to the Idaho Water Resource Board, EPA reviewed its efforts to publicize the proposed action and make the Resource Document available to public officials, interested agencies, and the general public. The Agency is satisfied that appropriate steps were taken to enlist public comment. The technical criteria for evaluation of the aquifer for determination as a principal source of drinking water supply for the aquifer service area are well defined in EPA guidelines which were published in February 1987. The petitioners documented through their analysis that the aquifer meets the criteria for principal source definition. Region 10 offered to brief the Water Resource Board or its individual members. No new data were presented or suggested as being available. Nevertheless, EPA granted the request to extend the public comment period. Delaying the designation decision precluded local, state and tribal jurisdictions from eligibility to apply for sole source aquifer demonstration grants. To date, however, Congress has not appropriated any of the authorized funds.

During the extended public comment period, EPA received comments from the Nez Perce Tribe, the Asotin County Public Utility District (PUD), the Lewiston Orchards Irrigation District and the Idaho Water Resource Board. The Nez Perce Tribe confirmed in writing some of the comments submitted by telephone on June 2, 1988. The Asotin County PUD submitted a cost estimate addendum which demonstrates that the cost of replacing ground water with available surface water would be even higher than originally calculated. The Lewiston Orchards Irrigation District wrote in support of sole source designation, urging the Regional Administrator to make a determination by June 19, 1988. The Idaho Water Resource Board wrote to communicate continuing reservations about the proposed designation, although the Board stated that they "will not oppose" sole source designation of the Lewiston Basin Aquifer.

VI. Summary

Today's action only affects the Lewiston Basin Aquifer in Asotin and Garfield Counties, Washington, and Nez Perce and Lewis Counties, Idaho. This action provides a review process to ensure that necessary ground-water protection measures are incorporated into federal financially-assisted projects.

Robie G. Russell,

Regional Administrator.

Date: September 16, 1988.

[FR Doc. 88–22622 Filed 9–30–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

General Counsel's Opinion No. 2; Deposits Supporting Municipal Bond Issues

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of FDIC General Counsel's Opinion No. 2.

SUMMARY: The FDIC's Legal Division has been asked to interpret 12 CFR 330.1(b) in a manner which sets forth the Legal Division's position on how the FDIC's recordkeeping requirements can be satisfied so as to provide insurance coverage, on a pass-through basis, to the owners of municipal bonds which are supported by deposits in FDIC-insured banks. FDIC General Counsel's Opinion No. 2, which appears below, provides such an interpretation.

FOR FURTHER INFORMATION CONTACT: Claude A. Rollin, Attorney, Legal Division (202–898–3985), Room 4018, 550 17th Street, NW., Washington, DC 20429.

Opinion

The FDIC's Legal Division has received a number of requests for an interpretation of 12 CFR 330.1(b) which sets forth the Legal Division's position on how the FDIC's recordkeeping requirements can be satisfied so as to provide pass-through insurance coverage for the owners of municipal bonds which are supported by deposits in FDIC-insured banks ("deposit-backed bonds"). It is the position of the Legal Division that there are alternative

methods by which the FDIC's recordkeeping requirements can be satisfied so as to provide pass-through insurance coverage for the beneficial owners of deposit-backed bonds and those methods are outlined below.

The Legal Division has become aware that certain deposits in FDIC-insured banks support municipal bond issues in that they serve as the principal source for the payment of interest, and the repayment of principal, on the bonds. These deposits are commonly registered on the deposit account records of the depository bank as being owned by an FDIC-insured bank as trustee for the bondholders listed on the records of the trustee (the "registered bondholders"). The trustee's records often indicate that one or more financial institutions (i.e., securities broker/dealers, securities depositories, securities registration/transfer agents, FDIC-insured banks and other types of financial institutions) are registered bondholders. The FDIC recognizes that such financial institutions often register securities in "street name" when they are holding the securities as agent, nominee, custodian, trustee, or in some other fiduciary capacity, on behalf of their customers (who are the true beneficial owners of the bonds). This General Counsel's Opinion provides the Legal Division's position on how the FDIC's recordkeeping requirements can be satisfied so as to provide insurance coverage, on a pass-through basis, to those true beneficial owners of municipal bonds, given the manner in which the deposits supporting those bonds are commonly registered.

Section 330.1(b)(1) of the FDIC Rules and Regulations, 12 CFR 330.1(b)(1), provides as follows:

> (b) *Records.* (1) The deposit account records of the insured bank shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are deposited and on which a claim for insurance coverage is founded. Examples would be trustee, agent, custodian or executor. No claim for insurance based on such a relationship will be recognized in the absence of such disclosure.

Section 330.1(b)(2) of the FDIC Rules and Regulations, 12 CFR 330.1(b)(2), provides as follows:

> If the deposit account records of an insured bank disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interests of other parties in the account must be ascertainable either from the records of the bank or the records of the depositor maintained in good faith and in the regular course of business.

The Legal Division believes that these recordkeeping requirements would be satisfied if: (1) The deposit account records of the depository bank expressly indicate that the depositor (bond trustee) is acting in a fiduciary capacity (as trustee for the registered bondholders) and that the registered bondholders may be holding the bonds for their own accounts or as agents, nominees, custodians, trustees or in some other fiduciary capacity, on behalf of others; and (2) the records of the registered bondholders, maintained in good faith and in the regular course of business, expressly indicate the name(s) and interest(s) of the true beneficial owner(s) of the bonds. In the event there are additional levels of fiduciary relationships, then the possible existence of each such level must be reflected on the deposit account records of the depository bank. For example, when a bank serves as trustee for the bondholders listed on its records (the "registered bondholders"), and the registered bondholders may be holding the bonds for themselves and/or in some fiduciary capacity for others, who may, in turn, be holding the bonds for themselves or in some fiduciary capacity on behalf of the true beneficial owners of the bonds, the following designation would be sufficient to identify the possible existence of each of the aforementioned levels of fiduciary relationships and to provide pass-through insurance coverage for the true beneficial owners of the municipal bonds:

> ABC Bank, as trustee for the holders of the XYZ Municipal Bonds who are listed on the records of the trustee, each for itself and as agent, nominee, custodian or trustee for others, who may themselves be acting as agent, nominee, custodian, trustee, guardian, personal representative, executor or administrator for the beneficial owners of the XYZ Municipal Bonds.

The above-noted designation must appear on the face of a certificate of deposit, in correspondence maintained by the depository bank as part of its deposit account records or elsewhere in the deposit account records of the depository bank. In addition, the records at each of the various levels, maintained by the parties in good faith and in the regular course of business, must identify the party or parties for whom they are holding the bonds and must indicate their interest(s) therein.

The Legal Division believes that, in the alternative, § 330.1(b) (1) and (2) of our regulations, 12 CFR 330.1(b) (1) and (2), would be satisfied if (1) the deposit account records of the depository bank expressly indicate that the depositor (bond trustee) is acting in a fiduciary capacity (as trustee for the registered bondholders); and (2) the depositor's (bond trustee's) records expressly indicate that the registered bondholders may be holding the bonds for their own accounts or as agents, nominees, trustees, custodians or in some other fiduciary capacity, on behalf of others; and (3) the records of the registered bondholders, maintained in good faith and in the regular course of business, expressly indicate the name(s) and interest(s) of the true beneficial owner(s) of the bonds. If there are additional levels of fiduciary relationships, then the possible existence of each such level must be expressly noted on the depositor's (bond trustee's) records, which are deemed to include any correspondence maintained by the depositor in the regular course of business. In addition, the records at each of the various levels, maintained by the parties in good faith and in the regular course of business, must identify the party or parties for whom they are holding the bonds and must indicate their interest(s) therein. Assuming that these requirements are satisfied, the FDIC will follow the chain of records through each level to determine the name(s) and interest(s) of the true beneficial owner(s) of the bonds.

The foregoing represents the Legal Division's interpretation of 12 CFR 330.1(b) as it applies to deposits supporting municipal bonds. The opinions expressed above are applicable only in the specific factual context in which they were given and should not be applied in any other context.

Dated: September 27, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-22724 Filed 9-30-88; 8:45 am]

BILLING CODE 6714-01-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.: 203–011162–003
Title: PANAM Discussion Agreement
Parties: United States Atlantic and Gulf/Central American Freight Association, Lykes Bros. Steamship Co., Inc., Ecuadorian Line, Inc., Gran Golfo Express
Synopsis: The proposed modification would add Juno Marine as a party to the agreement.

Agreement No.: 203–011211–003
Title: Transpacific Discussion Agreement
Parties: Nippon Yusen Kaisha, American President Lines, Ltd., Mitsui O.S.K. Lines, Ltd., Sea-Land Service, Inc., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Evergreen Marine Corp. (Taiwan) Ltd., Yangming Marine Transport Corp., Neptune Orient Lines, Ltd., Hyundai Merchant Marine Co., Ltd., Nippon Liner System, Ltd., Hanjin Container Lines, Ltd.
Synopsis: The proposed modification would add Orient Overseas Container Line, Inc., as a party to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: September 28, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–22633 Filed 9–30–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200047–001.
Title: Georgia Ports Authority Terminal Agreement.
Parties:
Georgia Ports Authority
Hapag-Lloyd A.G.
Gulf Container Line BV
Campagnie Generale Maritime
Synopsis: The proposed agreement amends Agreement No. 224–200047 to permit all crane rental charges to be consolidated into a single unit rate listed on a rate schedule.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: September 28, 1988.

[FR Doc. 88–22732 Filed 9–30–88; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Board of Scientific Counselors; Open Meeting

ACTION: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following committee meeting.

Name: Board of Scientific Counselors, ATSDR.

Time and date: 2:00 pm–9:00 pm—October 20, 1988; 8:30 am–1:15 pm—October 21, 1988.

Place: Westin Peachtree Plaza Hotel, Peachtree at International Boulevard, Atlanta, Georgia 30343.

Status: Open.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize.

Agenda: The entire meeting will be open to the public. Written comments for consideration by the Board are welcomed and should be received by the Executive Secretary prior to the opening of the meeting. The meeting will include a review of ATSDR's proposed decision guide for identification of chemical specific data needs relevant to toxicological profiles. Also, the agenda will include a review of ATSDR-funded activities in human exposure assessment. Agenda items are subject to change as priorities dictate.

Contact person for more information: Charles Xintaras, Sc.D., Executive Secretary, Board of Scientific Counselors, ATSDR, Chamblee 27, Mail Stop F–38, 1600 Clifton Road, NE., Atlanta, Georgia 30033, Telephone: FTS: 236–4800; Commercial: 404–488–4800.

Dated: September 27, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 88–22613 Filed 9–30–88; 8:45 am]

BILLING CODE 4160–70–M

Centers for Disease Control

National Committee on Vital and Health Statistics Subcommittee on Long-Term Care Statistics; Open Meeting

ACTION: Notice of meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics Subcommittee on Long-Term Care Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting.

Name: National Committee on Vital and Health Statistics Subcommittee on Long-Term Care Statistics.

Time and Date: 10:00 am–5:00 pm—October 19, 1988; 8:30 am–3:30 pm—October 20, 1988.

Place: Hubert H. Humphrey Building, Room 303A–305A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to consider possible linkages of long-term care to mental health data bases and to initiate review of quality of life assessments in long-term care facilities.

Contact person for more information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Richard J. Havlik, M.D., Staff, National Committee on Vital and Health Statistics, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: September 27, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-22612 Filed 9-30-88; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1871]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C 3535(d).

Date: September 23, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Approval as a Participating Lender

Office: Housing

Description of the Need for the Information and Its Proposed Use: Lenders are required to file with HUD, financial statements plus the designated forms that provide information on their staffing and quality control plans in order to participate in HUD programs. HUD uses this information to determine whether or not the lenders are qualified to participate in HUD programs.

Form Number: HUD-92001, 92001B, 92001C, 92001D, 92001E, and 92001K

Respondents: Businesses or Other For-Profit

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden Hours
Application for Approval	1,150		1		.50		575
Title II application	2,090		1		.25		523
Application for loan correspondent	1,150		1		.50		575
Mortgage change application	12,840		1		.10		1,284

Total Estimated Burden Hours: 2,957

Status: Extension

Contact: David S. Callaway, HUD, (202) 426-3976; John Allison, OMB, (202) 395-6880

Date: September 15, 1988.

[FR Doc. 88-22619 Filed 9-30-88; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-88-1870]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regrding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its purposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of

an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 27, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Indian Housing Manager Certification—Application Requirements.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The information will be needed to select training organizations for a special Indian Housing Management Certification Program as a way of improving the management of Indian Housing Authorities. The information will be used by HUD to determine if the organizations meet the requirements set forth by HUD.

Form Number: None.

Respondents: Businesses or Other For-Profit and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Application	3		1		40		120

Total Estimated Burden Hours: 120.

Status: New.

Contact: Patricia S. Arnaudo, HUD, (202) 755–1015; John Allison, OMB, (202) 395–6880.

Date: September 19, 1988.

Proposal: Indian Housing Mutual Help Program—Mutual Help and Occupancy Agreement (FR–2538).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: This information is to be used to execute a standard contract in the Mutual Help Program. It will also be needed and used to conduct annual inspections for occupied Indian housing units.

Form Number: None.

Respondents: Non-Profit Institutions.

Frequency of Submission: On Occasion and Annually.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Agreement	1,200		1		.3		360
Inspections	65,000		1		3		195,000

Total Estimated Burden Hours: 195,360.

Status: New.

Contact: Patricia S. Arnaudo, HUD, (202) 755–1015; John Allison, OMB, (202) 395–6880.

Date: September 21, 1988.

Proposal: Loans for Housing for the Elderly or Handicapped—Section 202 Projects for Nonelderly Handicapped Families (FR–2476).

Office: Housing.

Description of the Need for the Information and its Proposed Use: This information is necessary to assist HUD in determining eligibility of nonprofit applicants and the capacity to develop housing for handicapped persons. The evaluation of applicants qualified for this program is essential to the selection of the best applicants in a competitive program and to protect the financial interest of the Government.

Form Number: HUD–92013.

Respondents: Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Application	1,300		1		76.1		98,930

Total Estimated Burden Hours: 98,930.

Status: Revision.

Contact: Margaret Milner, HUD, (202) 755–6742; John Allison, OMB, (202) 395–6880.

Date: September 21, 1988.

Proposal: Title I Refinancing Report.

Office: Administration.

Description of the Need for the Information and its Proposed Use: This form, Title I Refinancing Report, is used so that approved financial institutions, who have determined that orderly liquidation of an account cannot be maintained, can utilize the privilege of refinancing the unpaid balance. HUD needs the information to cancel an old loan from the files, produce an accurate insurance charge bill, reflect an accurate claim obligation and an accurate insurance charge, and generate the unearned portion of the insurance charge for rebate purposes.

Form Number: HUD–27029.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Title I refinancing report	10,000		2		.08		1,600

Total Estimated Burden Hours: 1,600.
Status: Extension.
Contact: Natalia Yee, HUD, (202) 755–0346; John Allison, OMB, (202) 395–6880.
Date: September 22, 1988.
Proposal: Single Family Mortgage Insurance on Indian Reservations and Other Restricted Lands (FR–1921).
Office: Housing.
Description of the Need for the Information and its Proposed Use: This information collection is needed for verification of mortgage security and certification of eviction procedures by Indian tribes. HUD also needed the information to satisfy requirements for single family mortgage insurance. The information is used by HUD in the event of mortgage foreclosure.
Form Number: None.
Respondents: State or Local Governments and Businesses or Other For-Profit.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Verification of lien	1,000		1		.5		500
Certification	200		1		.5		100
Appeal of field office	20		1		.5		10

Total Estimated Burden Hours: 610.
Status: Extension.
Contact: Joseph C. Bates, HUD, (202) 755–5676; John Allison, OMB, (202) 395–6880.
Date: September 26, 1988.
Proposal: Section 8 Moderate Rehabilitation—Single Room Occupancy Program (FR–2539).
Office: Housing.
Description of the Need for the Information and its Proposed Use: The purpose of the information request is to assist HUD in selecting applicants who meet program requirements. HUD will use the information to fund applications from public housing agencies which best demonstrate a need for the assistance and the ability to undertake and carry out the program.
Form Number: None.
Respondents: State or Local Governments and Non-Profit Institutions.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Application	100		1		25		2,500

Total Estimated Burden Hours: 2,5090.
Status: Extension.
Contact: Alfonso M. Bell, HUD, (202) 755–6650; John Allison, OMB, (202) 395–6880.
Date: September 27, 1988.

[FR Doc. 88–22620 Filed 9–30–88; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–08–4050–91]

Montana; Butte District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Grazing Advisory Board will be held Wednesday, October 19 in the conference room of the Townsend Ranger District office, 415 South Front Street, Townsend. The meeting will begin at 9:00 am. The agenda will include a discussion of range improvement projects and allotment management plans projected for FY 1989. Following the meeting will be a field tour of grazing allotments in the Townsend area to inspect riparian improvements work and the results of prescribed burning.

The meeting and field trip are open to the public. Interested persons may make oral statements to the board or file written statements for the board's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: James A. Moorhouse, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

September 14, 1988.

J.A. Moorhouse,

District Manager.

[FR Doc. 88–22598 Filed 9–30–88; 8:45 am]
BILLING CODE 4310–DN–M

[AZ–020–4212–11; AZA–23362]

Realty Action; Lease or Conveyance of Public Lands for Recreation and Public Purposes; Arizona

The following land, near the City of Coolidge, Pinal County, Arizona has been found suitable for lease or conveyance to the City of Coolidge for the use as a law enforcement shooting range and will be so classified under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 seq.):

Gila and Salt River Meridian, Arizona

T. 4 S., R. 8 E.,
Sec. 13, NE¼SE¼SW¼.
Containing 10.00 acres, more or less.

This land is not needed for federal purposes. Through the environmental

assessment process, it has been determined that the lease or conveyance of this land would not affect any BLM programs and would be in the public interest.

The lease or conveyance would be subject to the following conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

Upon publication of this Notice in the **Federal Register**, this land shall be segregated from all forms of appropriation under the Public Land Laws, including the General Mining Laws, except for the lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of the Notice, interested persons may submit comments regarding the lease/conveyance or classification of this land to the District Manager, Phoenix District, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior. Further information regarding this realty action can be obtained from the Phoenix Resource Area, Phoenix District (602–863–4464).

Henri R. Bisson,

District Manager.

Date: September 20, 1988.

[FR Doc. 88–22697 Filed 9–30–88; 8:45 am]

BILLING CODE 4310-32-M

[WY-940-08-4520-12]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of Plats of Survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., September 13, 1988.

Sixth Principal Meridian

T. 49 N., R. 70 W.

The plat representing the dependent resurvey of the east, west and north boundaries and the subdivisional lines, T. 49 N., R. 70 W., Sixth Principal Meridian, Wyoming, Group No. 463, was accepted September 8, 1988.

T. 49 N., R. 71 W.

The plat representing the dependent resurvey of the west and north boundaries and the subdivisional lines, T. 49 N., R. 71 W., Sixth Principal Meridian, Wyoming, Group No. 463, was accepted September 8, 1988.

T. 32 N., R. 93 W.

The plat representing the dependent resurvey of a portion of the Eighth Standard Parallel North, through Rs. 92 and 93 W., the Eleventh Auxiliary Meridian West, through T. 32 N., between Rs. 92 and 93 W., the south and west boundaries, and the subdivisional lines, T. 32 N., R. 93 W., Sixth Principal Meridian, Wyoming, Group No. 450, was accepted September 8, 1988.

T. 18 N., R. 107 W.

The plat, in two sheets, representing the dependent resurvey of a portion of the south and north boundaries, and a portion of the subdivisional lines, T. 18 N., R. 107 W., Sixth Principal Meridian, Wyoming, Group No. 456, was accepted September 8, 1988.

These surveys were executed to meet certain administrative needs of this Bureau.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: September 13, 1988.

Richard L. Oakes,

Chief, Branch of Cadastral Survey.

[FR Doc. 88–22725 Filed 9–30–88; 8:45 am]

BILLING CODE 4310-22-M

[ES-940-08-4520-13; ES-039057, Group 544]

Filing of Plat of Survey of Seven Islands,

September 14, 1988.

1. The plat, in four sheets, of the survey of seven islands in the St. Louis River, Township 48 North, Range 16 West, Fourth Principal Meridian, Minnesota, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on October 30, 1988.

2. The survey was made upon request submitted by the Manager of the Milwaukee District Office.

3. All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., October 30, 1988.

4. All inquiries concerning color-of-title claims should be filed with the Deputy State Director for Lands and Renewable Resources, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, after October 30, 1988.

5. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88–22597 Filed 9–30–88; 8:45 am]

BILLING CODE 4310-GJ-M

Fish and Wildlife Service

Environmental Impact Statement and Master Plan for the Upper Mississippi River National Wildlife and Fish Refuge.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Record of decision.

FOR FURTHER INFORMATION CONTACT: Mr. James Lennartson, Refuge Manager, Upper Mississippi River National Wildlife and Fish Refuge, 51 E. 4th Street, Winona, Minnesota 55987 (507) 452–4232.

This Record of Decision is based on the Environmental Impact Statement/Master Plan (Plan) for the Upper Mississippi River National Wildlife and Fish Refuge. It also considers the comments from the public received during the public review period on the draft Plan and the comments received on the final Plan.

This Plan was preceded by many interagency planning efforts regarding the Mississippi River, its tributaries, and its drainage basin. These previous plans significantly involved the public and dealt with the major interests of commercial navigation, recreation, and wildlife. This Plan has built upon these previous efforts and has considered them in developing the Plan's goals and objectives for the refuge.

The Fish and Wildlife Service (Service) began this Plan in 1980 by inventorying the physical, legal, and management history of the refuge; mapping natural resources; studying habitat suitability to meet the needs of various species; and analyzing conflicting land uses and threats to habitat and wildlife. The Service solicited written comments, met with agencies and organizations, and periodically distributed newsletters and

news releases throughout the planning process. Copies of the final Plan are now available to the public at the refuge headquarters in Winona, Minnesota.

The Plan considers five alternatives. The alternatives cover both the current situation and proposed changes. Alternative A describes the current management situation. No major changes would be made in staffing or funding, but minor changes in operation and initiation of new actions in response to various new programs and problems would continue to occur as they do now. Alternative B describes a number of needed improvements and includes most of Alternative A; Alternative C expands the wildlife actions and includes most of Alternatives A and B. Alternative D expands recreation actions and includes most of Alternatives A and B. The Preferred Alternative E combines portions of Alternatives A, B, C, and D, and it is the most environmentally preferable alternative. Proposals in Alternative E will slow environmental deterioration, improve water quality and habitat, and fulfill refuge objectives. An additional 36,570 acres of flood plain and bluff habitat will be protected by the proposed refuge boundary changes.

It is my decision to select Alternative E, the Preferred Alternative, for implementation as described in the final Environmental Impact Statement/Master Plan.

Date: September 13, 1988.

James C. Gritman,

Regional Director, Region 3, Fish and Wildlife Service.

[FR Doc. 88-22599 Filed 9-30-88; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Abandoned Shipwreck Act; Public Meetings

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of public meetings.

SUMMARY: This is to provide notice to Federal, State and local agencies, Indian tribes, sport divers, diveboat operators, salvors, archeologists, historic preservationists, fishermen and other interests that the National Park Service will be holding six additional public meetings prior to developing and publishing the advisory guidelines required under the Abandoned Shipwreck Act of 1987 (Pub. L. 100-298). The guidelines are to assist State and Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act. The Act requires that the Director of the National Park Service, acting on behalf of the Secretary of the Interior, develop the guidelines after consulting with appropriate public and private sector interests. Five public meetings have been held to provide an opportunity for input and advice from public and private sector interests. Six additional meetings are being held to provide further opportunities for public comment prior to development of the guidelines.

DATES: Participation is invited at public meetings to be held October 11, 1988; October 15, 1988; October 20, 1988; October 22, 1988; October 25, 1988; and October 28, 1988. See Supplementary Information below for details. In addition, written comments are invited and should be submitted on or before October 31, 1988.

ADDRESSES: Public meetings will be held in Colchester, Vermont; Lyndhurst, New Jersey; Madison, Wisconsin; Tampa, Florida; New Orleans, Louisiana; and Charleston, South Carolina. See Supplementary Information below for details. Any written comments should be addressed to Dr. Bennie C. Keel, Department Consulting Archeologist, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127, or delivered to Room 4127C, 1100 L Street NW., Washington, DC, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Michele C. Aubry, Office of the Departmental Consulting Archeologist, National Park Service, Washington, DC, at 202-343-1876 or FTS 343-1876. For specific meeting location information contact:

Giovanna Peebles, State Archeologist, Vermont Division for Historic Preservation, 58 East State Street, Montpelier, Vermont 05602, at 802-828-3226

David Anderson, Box 246, Route 129, Yorktown Heights, New York 10598, at 914-245-4757

David Cooper, Underwater Archeologist, State Historical Society of Wisconsin, 816 State Street, Madison, Wisconsin 53706, at 608-262-0160

Jim Dunbar, Archeology Field Supervisor, Bureau of Archaeological Research, Department of State, The Capitol, Tallahassee, Florida 32399-0250, at 904-487-2299

Ric Anuskiewicz, Underwater Archeologist, Minerals Management Service, LE-5-2, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, at 504-736-2796

Christopher Amer, Head UW, South Carolina Institute of Archaeology and Anthropology, 1321 Pendleton Street, Columbia, South Carolina 29208, at 803-777-8170

SUPPLEMENTARY INFORMATION: On August 22, 1988, the National Park Service announced (53 FR 31941) that it intended to hold public meetings in Washington, DC, on September 7, 1988; San Francisco, California, on September 13, 1988; Seattle, Washington, on September 14, 1988; Austin, Texas, on September 19, 1988; and Beaufort, North Carolina, on October 6, 1988. The purpose of those meetings was to afford an opportunity for direct public input regarding the various provisions of Pub. L. 100-298 prior to developing and publishing proposed advisory guidelines.

It is the intent of the National Park Service to seek out ideas, comments and suggestions from public and private interest groups across the country. Accordingly, six additional public meetings have been scheduled as follows:

Colchester, Vermont—October 11, 1988, 2:00 p.m. to 6:00 p.m. Marble Island Resort, Colchester, Vermont. Host: Vermont Division for Historic Preservation

Lyndhurst, New Jersey—October 15, 1988, 2:30 p.m. to 6:30 p.m. Meadowlands Environment Center, Auditorium, 2 DeKourt Park Plaza. Host: David Anderson (sport diver)

Madison, Wisconsin—October 20, 1988, 1:30 p.m. to 5:30 p.m. State Historical Society of Wisconsin, Auditorium, 816 State Street. Host: State Historical Society of Wisconsin

Tampa, Florida—October 22, 1988, 1:00 p.m. to 5:00 p.m. University of South Florida campus, Ferguson Hall, Room BSN-1100. Host: Bureau of Archaeological Research, Division of Historical Resources, Florida Department of State

New Orleans, Louisiana—October 25, 1988, 3:30 p.m. to 7:30 p.m. Minerals Management Service, 1201 Elmwood Park Boulevard, Room 115. Host: Minerals Management Service

Charleston, South Carolina—October 28, 1988, 3:30 p.m. to 7:30 p.m. Patriot's Point, aboard U.S.S. *Yorktown*, Theater. Host: South Carolina Institute of Archaeology and Anthropology

Public Meeting Procedures

Any individual may appear and speak on his or her own behalf or, if so authorized, on behalf of a Federal, State or local Government, Indian tribe, civic group, business, club, association or private group, subject to the rules provided below. Each organization may

have one authorized speaker. The Moderator will announce any specific rules to govern the meeting as required at the beginning of the meeting.

Individuals desiring to speak at the public meeting are encouraged to pre-register by writing to or calling the appropriate contact person below. Before the meeting begins, individuals also may register to speak by notifying the Court Reporter, who will be making a transcript of the meeting.

Elected and other public and tribal officials will be heard first, followed by representatives of other organizations. Persons registered to speak on their own behalf will then be called in the order in which they registered.

Speakers should give their name and address or, if representing an organization, their name and the organization's name and address.

Speakers representing organizations will be limited to ten (10) minutes, and individuals to five (5) minutes. Additional prepared statements pertaining to the subject may be submitted to the Court Reporter at the public meeting or to Dr. Bennie C. Keel at the above address.

As stated in the August 22, 1988, public meeting notice (53 FR 31941), the National Park Service has identified the following issues to be of major interest and in need of discussion at the public meetings and in any written comments:

1. How should an historic shipwreck be defined?

2. Should the States retain title to all artifacts and materials recovered from abandoned historic shipwrecks? If not, what portion should be retained?

3. What, if any, restrictions should be placed on sport divers, salvors, fishermen, scientific researchers, and others desiring access to abandoned historic shipwreck sites?

4. What, if any, restrictions should be placed on sport divers, salvors, fishermen, scientific researchers, and others on removal of artifacts from abandoned historic shipwreck sites?

5. What, if any, penalties or fines should be assessed against sport divers, salvors, fishermen, scientific researchers, and others who violate provisions in a State's program to manage historic shipwrecks?

6. Should monetary rewards or other incentives be made available for reporting the discovery of historic shipwreck sites or the violation of provisions in a State's program?

7. Should the States provide training courses to sport divers on archelogical methods that would lead to paraprofessional certification?

8. Should the States encourage and use sport diver volunteers during the conduct of archeological surveys and excavations of historic shipwreck sites?

Persons who are unable to attend one of the meetings, or who do not wish to speak at a meeting, may send written comments to Dr. Bennie C. Keel at the address noted above. All written comments must be submitted on or before October 31, 1988, to be considered during development of the guidelines.

In addition, persons wishing to receive a copy of the draft guidelines for review and comment should send their name and mailing address to Dr. Keel. The National Park Service plans to develop and publish draft guidelines by January 27, 1989, for public comment.

Background

Upon enactment of the Abandoned Shipwreck Act of 1987 (the Act, 43 U.S.C. 2101 *et seq.*), the United States immediately asserted title to three classes of abandoned shipwrecks that are located in or on the submerged lands of a State. Specifically, the United States asserted title to any abandoned shipwreck that is:

(1) Embedded in a State's submerged lands;

(2) Embeded in coralline formations protected by a State on its submerged land; or

(3) On a State's submerged lands and included in or determined eligible for inclusion in the National Register of Historic Places.

The Act removes the three classes of abandoned shipwreck from the jurisdiction of the law of salvage and the law of finds.

With two exceptions, simultaneously with the U.S. assertion of title, the United States transferred title of the three classes of abandoned shipwreck to the State in or on whose submerged lands the shipwreck is located. The exceptions relate to any abandoned shipwreck that is located in or on public (meaning Federal) lands or Indian lands. The Act states that any abandoned shipwreck that is located in or on public lands remains the property of the United States Government while any abandoned shipwreck that is located in or on Indian lands remains the property of the Indian tribe owning such lands.

In transferring title of the three classes of abandoned shipwreck to the States, the Act states that it is the intent of the Congress that the States manage shipwreck in a manner that will:

(1) Protect natural resources and habitat areas;

(2) Guarantee recreational exploration of shipwreck sites; and

(3) Allow for appropriate public and private sector recovery of shipwrecks, consistent with the protection of historical values and the environmental integrity of the shipwreck and the sites.

In addition, States are encouraged to establish underwater parks or areas to provide additional protection for shipwreck sites. States also are directed to make funds available, in accordance with the provisions of the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), from the Historic Preservation Fund for the study, interpretation, protection, and preservation of historic shipwrecks.

Section 5 of the Act directs the Secretary of the Interior, acting through the Director of the National Park Service, to prepare and publish guidelines to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act. The Act states that the guidelines shall seek to:

(1) Maximize the enhancement of cultural resources;

(2) Foster a partner among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States;

(3) Facilitate access and utilization by recreational interests; and

(4) Recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

The Act stipulates that the guidelines are to be developed after consultation with appropriate public and private sector interests, including the Secretary of Commerce, the Advisory Council on Historic Preservation, State Historic Preservation Officers, sport divers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen. It also stipulates that the guidelines are to be published in the **Federal Register** within nine months after the date of enactment of the Act.

William Penn Mott, Jr.,

Director, National Park Service.

Dated: September 28, 1988.

[FR Doc. 88-22731 Filed 9-30-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Portugal as part of A.I.D.'s

development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Portugal. The Government of Portugal has authorized A.I.D. to request proposals from eligible investors. The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

Government of Portugal

Project: 150–HG–005—$25,000,000, Attention: Dr. J. Coutinho Pais, President, Instituto Nacional de Habitacao, Av. Columbano Bordalo Pinheiro, 5, 8th Floor, 1000 Lisboa Codex, Portugal, Telex No.: 64641 INH P, Telephone No.: 351/(1) 726–2608 or 4944

Interested investors should submit their bids to the Borrower's representative on October 12, 1988 no later than 10:00 a.m. New York Time. Bids should remain open for 48 hours. Copies of all bids should be simultaneously sent to the following addresses:

Mr. David Leibson, Housing and Urban Development Officer, Embaixada dos Estados Unidos, Av. das Forcas Armadas, 12507 Lisboa Codex, Lisbon, Portugal, Telex No.: 12528 AMEMB P, Telephone No.: 351/(1) 726–6600 or 6659, 8880, 8670, Telefax No.: 351/(1) 726–8814

Michael G. Kitay, Agency for International Development, GC/PRE, Room 3328 N. S., Washington, DC 20523, Telex No.: 892703 AID WSA, Telefax No.: 202/647–4958 (preferred communication)

Each proposal should consider the following terms:

(a) *Amount:* U.S. $25 million.

(b) *Term:* Up to 30 years.

(c) *Grace Period on Principal:* 10 years on repayment of principal.

(d) *Interest Rate:* Proposals will be made on the basis of fixed, variable rate, variable rate with interest rate cap and/or variable rate with Borrower's option to convert to fixed rate.

(e) *Draw Down:* Net proceeds from borrowing should be disbursed to Borrower upon signing.

(g) *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by Borrower, if pricing is not materially affected.

(h) *Fees:* Payable at closing from proceeds of loan.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or association wholly owned by U.S. citizens.

To be eligible for an A.I.D. quaranty, the loans must repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 315, SA–18C, Washington, DC 20523, Telephone: 703/875–4808

Date: September 29, 1988.

Fredrik A. Hansen,

Deputy Director, Office of Housing and Urban Programs, Agency for International Development.

[FR Doc. 88–22825 Filed 9–30–88; 8:50 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[332–261]

Ethyl Alcohol and Mixtures Thereof; Assessment Regarding the Indigenous Percentage Requirements for Imports

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and notice of public hearing.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Wanser (telephone 202–252–1363).

EFFECTIVE DATE: September 23, 1988.

Background and Scope of Investigation: The Commission on September 23, 1988, instituted investigation No. 332–261 following passage of the Omnibus Trade and Competitiveness Act of 1988 which directs the Commission to conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to determine whether the definition of indigenous ethyl alcohol used in applying section 423 of the Tax Reform Act of 1986 is consistent with the objectives of the Caribbean Basin Economic Recovery Act legislation.

Public Hearings: The Commission will hold a public hearing on this investigation at the United States International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on October 27, 1988. All persons shall have the right to appear in person or be represented by counsel, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than noon, October 20, 1988. Persons with mobility impairments who will need special assistance in gaining access to the Commission building should contact the Office of the Secretary at (202) 252–1000. Post-hearing briefs are due by November 15, 1988.

Written Submissions: Interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on November 15, 1988. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submisssions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 27, 1988.

[FR Doc. 88-22607 Filed 9-30-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-297 (Preliminary) and 731-TA-422 (Preliminary)]

New Steel Rails from Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-297 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 UL.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of new steel rails [1] that are alleged to be subsidized by the Government of Canada.

The Commission hereby also gives notice of the institution of preliminary antidumping investigation No. 731-TA-422 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of new steel rails [1] that are alleged to be sold in the United States at less than fair value.

As provided in §§ 703(a) and 733(a), the Commission must complete preliminary countervailing and preliminary antidumping investigations in 45 days, or in these cases by November 10, 1988.

[1] For the purposes of these investigations, "new steel rails" include rails, whether or not of alloy steel, provided for in items 610.20, 610.21, and 688.42 of the Tariff Schedules of the United States (subheadings 7302.10.10, 7302.10.50, and 8548.00.00 of the Harmonized Tariff Schedule of the United States). Specifically excluded from the scope of these investigations are imports of "light rails," which are 60 pounds or less per yard, such as are used in amusement park rides. "Relay rails," which are used rails that have been taken up from a primary railroad track and are suitable to be reused as rails (such as on a secondary rail line or in a rail yard), are also excluded.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207) (see commission interim rules (53 FR 33034, August 29, 1988)), and Part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202-252-1181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on September 26, 1988, by Bethlehem Steel Corporation, Bethlehem, PA.

Participation in the investigations. Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accorance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be mde not later than seven (7) days after the publication of this notice in the **Federal Regiter.** A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission containing business proprietary information with a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on October 19, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Tedford Briggs (202-252-1181) not later than October 14, 1988, to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in oppposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before October 21, 1988, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary information will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submission must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a))

may comment on such information in their written briefs, and may also file additional written comments on such information no later than October 24, 1988. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12)).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 28, 1988.

[FR Doc. 88-22691 Filed 9-30-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31248]

North Carolina Ports Railway Commission Subtitle IV Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: On its own motion, the Interstate Commerce Commission exempts the North Carolina Ports Railway Commission (NCPRC), under 49 U.S.C. 10505, from the requirements of 49 U.S.C. Subtitle IV, except those matters excluded from its exemption jurisdiction by the provisions of 49 U.S.C. 10505 (e) and (g).

DATES: The exemption will be effective on November 2, 1988. Petitions for stay must be filed by October 18, 1988, and petitions for reconsideration must be filed by October 28, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31248 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Frank J. Pergolizzi, Slover & Loftus, 1224 Seventeenth St. NW., Washington, DC 20036.

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: September 21, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lambolely, and Phillips. Vice Chairman Andre concurred in the result.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-22650 Filed 9-30-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31324]

Exemption Southern Railway Co.; Trackage Rights; Norfolk & Western Railway Co.

Norfolk and Western Railway Company (NW) has agreed to grant approximately 4.9 miles of overhead trackage rights to Southern Railway Company (SR) between milepost N-132.0 at Burkeville and milepost N-127.1 at Crewe, VA. The trackage rights will be effective on or after September 20, 1988.

SR and NW are Class I railroads, which are controlled through stock ownership by Norfolk Southern Corporation (NS), a holding company.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It is a transaction that will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

This notice is filed under 49 CFR 1180.2(d)(3) and (7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay in the transaction.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653(1980).

Dated: September 20, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-22480 Filed 9-30-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-270X)]

CSX Transportation, Inc., Abandonment Exemption; Marion County, FL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 1.12-mile line of railroad between milepost AND-855.0 and milepost AND-856.12 near Dunnellon, in Marion County, FL.

Applicant has certified that (1) no local or overhead traffic has moved over the line for a least 2 years and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective November 2, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues[1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by October 7, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 18, 1988 with: Office of the Secretary, Case Control Branch Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Enviornment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4. I.C.C.2d 400 (1988).

[2] *See Exemption of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading informtion, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by October 3, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 22, 1988

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–22477 Filed 9–30–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 258X)]

CSX Transportation, Inc.; Abandonment at Port Covington, Baltimore, MD

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transporation, Inc., of less than 1 mile of rail line in Baltimore, MD, subject to standard labor protective conditions and a historic preservation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 6, 1988. Petitions for reconsideration must be filed by October 28, 1988. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by October 6, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 258X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Lawrence H. Richmond, 100 North Charles St., Baltimore, MD 21201.

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 (assitance for the hearing impaired is available through TDD service (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: September 23, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Vice Chairman Andre dissented in part with a separate expression.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88–22651 Filed 9–30–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–285 (Sub-1X)]

Los Angeles Department of Water and Power, d/b/a Nevada Northern Railway Co.; Abandonment Exemption, Line in Nevada

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its entire remaining 128-mile line of railroad between milepost 0.0 at Cobre, NV in Elko County to milepost 128.0 near McGill Junction, NV in White Pine County.

Applicant has certified that (1) no local or overhead traffic has moved over the line for at least 2 years and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Usually, as a condition to use of an abandonment exemption, any employee affected by the abandonment would be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). However, as here, when a carrier abandons its entire remaining line of railroad the Commission has consistently declined to impose conditions for the protection of employees unless the evidence shows the existence of: (1) A corporate affiliate that will continue substantially similar rail operations, or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. *See Northampton and Bath R. Co.—Abandonment,* 354 I.C.C. 784 (1978); and *Railway Labor Executives' Ass'n* v. *ICC,* 735 F.2d 691 (2nd Cir. 1984). Here there is no evidence that a corporate parent will realize substantial financial benefit over and above relief from the burden of deficit operation by its subsidiary railroad or that a corporate affiliate will continue substantially similar operations. Accordingly, labor protective conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance has been received this exemption will be effective November 2, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by October 7, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 18, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives:

H.W. Rupp, Jr., 111 North Hope Street, Room 1141E, Los Angeles, CA 90012–2694

and

F. Amanda DeBusk, 555 13th Street NW., Washington, DC 20004.

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[1] *See Exempt. of Rail Abandonment—Offers of Fin. Assist.,* 4 I.C.C. 2d 164, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C. 2d 400 (1988).

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 3, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 22, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–22478 Filed 9–30–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Civil Rights Division; Establishment of the Office of Reparations Administration

The Assistant Attorney General of the Civil Rights Division, pursuant to the Civil Liberties Act of 1988, Pub. L. 100–383, 50 U.S.C. App. 1989b, by designation of the Attorney General, has established the Office of Reparations Administration and appointed a Reparations Administrator to carry out the restitution provisions of this Act.

Pursuant to section 105 of the Civil Liberties Act of 1988, the Reparations Administrator shall identify, locate and make payment to each eligible individual of Japanese ancestry who were interned during World War II, in accordance with the statutory provision of this Act. Any potentially eligible individual may volunteer to the Reparations Administrator information that will facilitate the eligibility determination process, including current address. Those individuals who wish to do so may complete a voluntary information form that will be provided to assist the office in locating additional candidates.

The Office of Reparations Administration also has available for public distribution a booklet that provides basic information regarding the Civil Liberties Act of 1988. To obtain a free copy, call the Office's toll-free telephone number or write to the Reparations Administrator listed below.

To volunteer or request information regarding the Civil Liberties Act of 1988 write to: Office of Reparations Administration, Civil Rights Division, United States Department of Justice, P.O. Box 66260, Washington, DC 20035–6260; or call (voice or TDD): (202) 835–2094 (local), 1–800–228–8375 (outside of Washington, DC).

William Bradford Reynolds,

Assistant Attorney General, Civil Rights Division.

Date: September 27, 1988.

[FR Doc. 88–22635 Filed 9–30–88; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Proposed Termination of Final Judgments; General Electric Co. et al.

Notice is hereby given that General Electric Company ("GE"), N.V. Philips Gloeilampenfabrieken, Corning Glass Works and North American Philips Corporation ("NAPC") have filed with the United States District Court for the District of New Jersey motions to terminate the final judgments and consent decrees in *United States v. General Electric Co., et. al.*, Civil Action No. 1364 and *United States v. General Electric Co., et al.*, Civil Action No. 2590; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgments, but has reserved the right to withdraw its consent pending receipt of public comments. The compliants in these cases (filed on January 27, 1941 and December 9, 1942) alleged that GE, and others had combined and conspired to and had monopolized the incandescent and fluorescent lamp industries. The judgments and consent decrees (entered on April 10, 1942, March 7, 1946, October 8, 1953, March 26, 1954, and June 30, 1954), among other things, enjoin the defendants from combining or conspiring with any other manufacturer of lamps, lamp parts, or lamp machinery to (1) allocate fields, markets, customers, or territories for the manufacture, sales or distribution of lamps, lamp parts, or lamp machinery; (2) fix prices, differentials, discounts, or other terms or conditions for the sale of lamps, lamp parts, or lamp machinery; (3) sell or distribute lamps or lamp parts pursuant to any sale or distribution plan; (4) limit the kind, quantity, or quality of lamps, lamp parts, or lamp machinery which may be manufactured by any person; and (5) exchange price lists or any other information not generally available to the trade relating to prices, costs, discounts, differentials, or other terms or conditions of sale of lamps, lamp parts, or lamp machinery, except in connection with an actual or proposed purchase or sale of the product.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgments would serve the public interest. Copies of the complaints and final judgments, defendants' and NAPC's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with these motions will be available for inspection at Room 3233, Antitrust Division, Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202–633–2481), and at the Office of the Clerk of the United States District Court for the District of New Jersey, Court House and Post Office Building, Newark, New Jersey 07101. Copies of any of these materials may be obtained upon request and payment of the copying fee set by the Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within the 60-day period established by court order, and will be filed with the court. Comments should be addressed to Anthony V. Nanni, Chief, Litigation I Section, 555 4th Street, NW., Room 10–102, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: 202–724–6694).

Dated: September 26, 1988.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 88–22695 Filed 9–30–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 88–92; Exemption Application No. D–3629]

Employees Benefit Plans, Equitable Life Assurance Society of the United States (Equitable); Located in New York City, NY

Exemption

Section I—Exemption for Certain Transactions Involving the Management

of Investments Shared by Two or More Accounts Maintained by Equitable

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) *Transfers Between Accounts*—The restrictions of section 406(b)(2) of the Act shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(b) *Joint Sales of Property*—The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared joint venture interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions*—The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply either to the making of a pro rata equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate (as defined in section V(d)) equity capital contribution by one or more of such Accounts which results in an adjustment in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a pro rata contribution.

(d) *Lending of Funds*—The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts, (1) the restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower or any decision regarding the action to be taken, if any, on behalf of the Accounts in the event of a loan default by the borrower, and (2) the restrictions of section 406(b)(2) of the Act shall not apply to any decision by Equitable thereof on behalf of two or more ERISA-Covered Accounts: (A) Not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreemnt in the event of a loan default by the borrower, even though the independent fiduciary for one (but not all) of such Accounts has approved such modification or has not approved the exercise of such rights.

Secton II—Exemption for Certain Transactions Involving the Management of Joint Venture Interests Shared by Two or More Accounts Maintained by Equitable

It the exemption is granted, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate joint venture between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Cotributions*—(1) The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply either to the making of additional pro rata equity capital contributions by one or more Accounts participating in the joint venture; or to the making of Disproportionate (as defined in Section V(d)) equity capital contributions by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared joint venture investment on the basis of the fair market value of such interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to make a pro rate contribution.

(2) The restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata capital contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to the participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

(3) The restrictions of section 406(b)(2) of the Act shall not apply to the making of Disproportionate additional equity capital contributions (or the failure to make such additional contributions) in the joint venture by ERISA-Covered Accounts which result in an adjustment in the equity ownership interests of the ERISA-Covered Accounts in the joint venture on the basis of the fair market value of such joint venture interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportuntiy to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-venturer fails to provide all or any part of its pro rata share of an additional equity capital contribution, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the making of Disproportionate additional equity capital contributions to the joint venture by the General Account and an ERISA-Covered Account up to the amount of such contribution not provided by the co-venturer which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis provided in the joint venture

agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the joint venture, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by Equitable on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the joint venture even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved the acceptance of the offer, provided that such declining ERISA-Covered Account[s] are first afforded the opportunity to buy out both the co-venturer and "selling" Account's interests in the joint venture.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a joint venture agreement to purchase a co-venturer's interest in the joint venture at the price offered for such interest by a third party, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by such Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproprotionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Equitable on behalf of the Accounts not to exercise such a right of first refusal even though the independent fiduciary for one (but not all) of such ERISA-Covered Accounts has approved the exercise of the right of first refusal, provided that none of the ERISA-Covered Accounts that approved the exercise of the right of first refusal decides to buy-out the co-venturer on its own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the joint venture agreement, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Equitable on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the joint venture to a co-venturer even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved such sale, provided that such disapproving ERISA-Covered Account is first afforded the opportunity to purchase the entire interest of the co-venturer.

Section III—Exemption for Transactions Involving a Joint Venture or Persons Related to a Joint Venture

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of secion 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account that is participating in an interest in the joint venture, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally unrelated to Equitable and its affiliates. This condition shall not apply to plans covering employees of Equitable.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the exemption as granted.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either

(1) A business organization which has at least five years of experience with respect to commercial real estate investments,

(2) A committee comprised of three to five individuals who each have at least five years of experience with respect to commercial real estate investments, or

(3) The plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of Equitable or any of its affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Equitable, its affiliates, and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the Department. Notwithstanding the foregoing, such income limitation shall not include any income for services rendered to a single customer ERISA-Covered Account by an independent fiduciary selected by the plan sponsor to the extent determined by the Department in any subsequent

prohibited transaction exemption proceeding.

In addition, effective for transactions occurring after August 18, 1987, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, Equitable, its affiliates, or any Account maintained by Equitable or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by Equitable or its affiliates for each of the transactions in this exemption. Equitable and its affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) Equitable maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (h) of this section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Equitable or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided in paragraph (2) of this subsection (h) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (g) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (h) shall be authorized to examine trade secrets of Equitable, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this exemption:

(a) An "affiliate" of Equitable includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Equitable,

(2) Any officer, director or employee or Equitable or person described in section V(a)(1), and

(3) Any partnership in which Equitable is a partner.

(b) An "Account" means the General Account (including the general accounts of Equitable affiliates which are managed by Equitable), any separate account managed by Equitable, or any investment advisory account, trust, limited partnership or other investment account or fund managed by Equitable.

(c) An "ERISA-Covered Account" means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(d) "Disproportionate" means not in proportion to an Account's existing equity ownership interest in an investment, joint venture or joint venture interest.

The exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 18, 1987 at 52 FR 30965.

Effective Date: This exemption is effective for transactions occurring on or after July 27, 1982, except as otherwise stated herein with reference to section IV(e).

Written Comments: The Department received three comments with regard to the proposed exemption and no requests for a hearing. These comments are discussed below.

The applicant has commented on certain aspects of the proposed exemption. In this regard, the applicant requested clarification concerning paragraph 35 of the preamble to the proposed exemption, which states that certain joint venture agreements entered into by Equitable provide for the exercise of "buy-sell" provisions "at a price as determined by the terms of the joint venture agreement." The applicant notes that certain joint venture agreements provide for an appraisal process to be used in the event of a co-venturer's default. The process establishes the price at which the non-defaulting co-venturer can buy out the co-venturer in default. After considering the comment, the Department believes that the relief provided in section II(d) of the exemption encompasses an appraisal procedure set forth in the joint venture agreement.

Paragraphs 17 and 19 of the preamble to the proposed exemption state that the independent fiduciary must be approved initially and annually thereafter by a majority of the contractholders in a pooled ERISA-Covered Account. Equitable noted that it intends to provide plan contractholders in ERISA-Covered Accounts with forms by registered mail indicating that the contractholder may vote to disapprove or terminate the independent fiduciary. Because of the large number of plans participating in ERISA-Covered Accounts, the applicant stated that it would be administratively difficult to secure written approval from the appropriate plan fiduciary for each plan participating in an ERISA-Covered Account. For this reason, the forms provided by Equitable will state that failure to return the form will be treated as approval of the independent fiduciary. The applicant requested that the exemption permit the use of such "negative consent" forms. The Department believes that supplying each plan contractholder with a form expressly providing an opportunity to vote to disapprove the independent fiduciary by a method which reasonably insures actual receipt by such

contractholder, and clearly stating that failure to return the form will be deemed to be a vote approving the independent fiduciary, will satisfy the approval process described in paragraphs 17 and 19 of the proposed exemption.

The applicant has also requested certain modifications to the exemption as proposed. In its original application, the applicant requested exemptive relief for the making of disproportionate equity capital contributions only for shared (non-joint venture) investments. (See section I(c) of the proposed exemption.) The applicant has requested additional exemptive relief for the making of disproportionate equity capital contributions in connection with shared joint venture interests. The applicant represented that this modification is in the interest of plans participating in ERISA-Covered Accounts which share investments since it would increase their options in meeting their obligations to contribute additional capital, and would, thereby, avoid a "squeeze down" of the ERISA-Covered Account's interest in the joint venture. On the basis of this comment, the Department has determined to modify section II(a)(1) to provide exemptive relief for the making of disproportionate equity capital contributions in shared joint venture interests, under the same terms and conditions applicable to disproportionate equity captial contributions for shared (non-joint venture) investments.

Equitable also requested that the Department modify section IV(a) of the exemption to make clear that independent fiduciary approval was not required with respect to the decision to participate in an ERISA-Covered Account by plans covering employees of Equitable and its affiliates. The applicant noted that this exception would not in any way effect the requirement that an independent fiduciary act on behalf of the ERISA-Covered Account when that account shares an investment. Equitable further represented that Equitable plans would only participate in pooled ERISA-Covered Accounts which have one or more participants unaffiliated with Equitable. Based upon this comment, the Department has decided to modify the exemption in the manner requested so as to allow Equitable plans to participate in an ERISA-Covered Account that shares investments.

The applicant further requested that the five percent gross income limitation applicable to any individual or business organization which acts as independent fiduciary on behalf of an ERISA-Covered Account (see section IV(e)) exclude retirement benefits obtained from plans maintained by Equitable or its affiliates. The applicant has indicated that retirement benefits are paid automatically each month to an independent fiduciary. The applicant further advised the Department that only fixed, nondiscretionary retirement benefits would be excluded from the gross income limitation. In light of the above, the Department believes that it is appropriate to exclude fixed, nondiscretionary retirment benefits from the five percent gross income limitation.

To further clarify this income limitation, the final exemption incorporates language from the proposed exemption which requires the independent fiduciary to include income for any services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the Department in computing the five percent gross income limitation.[1]

The applicant also urged the Department to permit a business organization or committee member to serve as independent fiduciary for more than one ERISA-Covered Account. The applicant represented that an alternative condition which would prohibit ERISA-Covered Accounts which have a common independent fiduciary from participating in the same shared investments would remove any potential conflict of interest. It appears to the Department that this alternative condition could result in the denial of attractive shared investment opportunities to ERISA-Covered Accounts which share a common independent fiduciary. Accordingly, the Department has determined not to revise this condition.

In response to a comment, the Department notes that references in the propsoed exemption to "ERISA-Covered Accounts" and "General Account" merely reflect adoption of the applicant's terminology.

Finally, one commentator noted that the particular structure and relief contained in the proposed exemption may not be appropriate for all shared investment transactions. The Department wishes to note that it considers each exemption application on its own merits.

After consideration of the entire record, the Department has determined to grant the exemption, as modified herein.

FOR FURTHER INFORMATION CONTACT: Linda Shore of the Department, telephone (202) 523-7901. (This is not a toll-free number.)

Signed at Washington, DC, this 28th day of September, 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-22716 Filed 9-30-88; 8:45 am]

BILLING CODE 4510-29-M

[1] In this regard, the Department notes that it is currently developing a final regulation relating to the definition of "adequate consideration" for purposes of section 3(18)(B) of ERISA, which may result in the establishment of specific standards for determining the "independent" status of certain parties described in the Notice of Proposed Rulemaking (*See:* § 2510.3-18(b)(3) (ii) and (iii), 53 FR at 17637, May 17, 1988). The Department believes that the considerations relevant to determining "independence" for purposes of section 3(18) are the same as those applicable to determinations relating to the "independence" of a fiduciary for purposes of exemptions under ERISA section 408(a). Therefore, the Department anticipates that, subsequent to the adoption of a final regulation under section 3(18), the independence standards established for purposes of section 3(18) may also be applied to determinations concerning the independence of a fiduciary for purposes of exemptive relief under ERISA section 408(a).

[Prohibited Transaction Exemption 88-94; Exemption Application No. D-6922 et al.]

Grant of Individual Exemptions; M&W Pump Corporation Employees Profit Sharing Plan (the Plan) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representatives contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied

with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

M&W Pump Corporation Employees, Profit Sharing Plan (the Plan), Located in Deerfield Beach, Florida

[Prohibited Transaction Exemption 88– ; Exemption Application No. D–6922]

Exemption

The restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of certain improved property located in Deerfield Beach, Florida by the Plan to the Plan sponsor at the greater of $283,000 or the appraised fair market value as of the date of the Sale; provided the terms and conditions of the transaction are similar to those obtainable in an arm's-length transaction between unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption (the Notice) published on July 29, 1988 at 53 FR 28722.

The Department received no comments or requests for a hearing. However, the footnote to paragraph 6 of the Notice has been modified by the Department to read that all applicable excise taxes will be paid in connection with the continuation of the lease beyond June 20, 1980. The Applicant has agreed to this modification.

FOR FURTHER INFORMATION CONTACT: Mrs. Betsy Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

The Boston Company Real Estate, Counsel, Inc. (TBCREC), Located in Boston, Massachusetts

[Prohibited Transaction Exemption 88–Exemption Application No. D–75111]

Exemption

This document provides a final exemption whereby TBCREC shall not be precluded from functioning as a "qualifed professional asset manager" pursunt to Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984) solely bacause of TBCREC's failure to satisfy section I(g) of PTE 84–14 as a result of its affiliation with E. F. Hutton & Company (Hutton).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 29, 1988 at 53 FR 28723.

Effective Date: This exemption is effective as of the date on which TBCREC became an affiliate Hutton.

Correction: In the notice of proposed exemption, on page 28724 in the Summary of Facts and Representations, on the second line of paragraphs 8(c) in the center column, the word "prior" should be inserted after the word "occurred".

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202 523–8881. (This is not a tool-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of that Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory of administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material fact and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption

Signed at Washington, DC, this 28th day of September 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–22718 Filed 9–30–88; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 88–93; Exemption Application No. D–4950A]

Employees Benefit Plans; Metropolitan Life Insurance Co. (Metropolitan); Located in New York City, NY

Exemption

Section I—Exemption for Certain Transactions Involving the Allocation of Shared Joint Venture Partnership Investments to the General Account of Metropolitan and Account RE by Metropolitan

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Internal Revenue Code (the Code) shall not apply to the following transactions if the conditions set forth in Section II are met:

(a) The initial allocation by Metropolitan of equity and debt interests in a joint venture partnership investment that is shared between the general account of Metropolitan and the commingled separate account (Account RE, or the Account) of Metropolitan in which employee benefit plans invest;

(b) The making of an "equity" loan to a developer-partner in a joint venture partnership by Metropolitan on behalf of the general account of Metropolitan and Account RE; and

(c) The making of the initial equity and debt contributions to a joint venture partnership by Metropolitan on behalf of the general account of Metropolitan and

Account RE, where the joint venture partnership is a party in interest solely by reason of the ownership on behalf of the general account of a 50 percent or more interest in such joint venture partnership.

Section II—General Conditions

(a) The decision to participate in Account RE is made by plan fiduciaries independent of Metropolitan and its affiliates following full disclosure to such fiduciaries of all relevant information regarding Account RE. Such information includes, but is not limited to, a detailed description of the structure and investment policy of Account RE, a description of the fees and expenses typically charged Account RE, a statement of the financial condition of the Account, a description of the particular investments held by the Account, and a description of the economic effects of the combined debt and equity interests which ordinarily comprise Account RE investments. In addition, a quarterly written report is provided to plan fiduciaries which reflects the transactions in, and the current status of, the Account. This condition shall not apply to plans covering employees of Metropolitan.

(b) On the basis of written Investment Guidelines that are available upon request to all plan investors, the Board of Directors of Metropolitan adopts, and then applies consistently, a policy which, until formally superseded, determines the maximum share of the debt and equity interests in a real estate joint venture investment that is allocated and shared between the general account and Account RE.

(c) As a result of any initial allocation, the equity interest of Account RE in the joint venture partnership is equivalent to Account RE's debt interest in such partnership.

(d) The rights and obligations of Metropolitan's general account and Account RE in their respective debt and equity holdings in a joint venture partnership, as well as in their respective interests in any "equity" loan to a developer-partner, are identical.

(e) Metropolitan does not rely upon the participation of the assets of Account RE in order to undertake, support or complete investments in real estate joint ventures on behalf of the Metropolitan general account.

(f) Account RE's interest in any "equity" loan to a developer-partner is equivalent to Account RE's debt interest in the joint venture partnership.

(g) After September 16, 1987, any material modification of the Investment Guidelies is subject to the review and approval of an Independent Fiduciary.

(h) Sections II (b), (c), (f) and (g) do not apply to transactions described in Section I(c) of this exemption, if the debt and equity interests of the joint venture partnership which are allocated by Metropolitan to Account RE are in the same relative proportions as the debt and equity interests held by Metropolitan on behalf of its general account.

Section III—Definitions

For purposes of this exemption:

(a) An "affiliate" of Metropolitan includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Metropolitan; (2) any officer, director or employee of Metropolitan or person described in this subparagraph II(a)(1); and (3) any partnership in which Metropolitan is a partner.

(b) The term "debt" means any debt of a joint venture partnership described herein, including construction or long term mortgage loans.

(c) The term "equity" loan means any loan to a developer-partner in a joint venture partnership described herein which is secured by the developer-partner's equity interest in the joint venture partnership.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 18, 1987 at 52 FR 30977.

Effective Date: This exemption is effective January 1, 1975.

FOR FURTHER INFORMATION CONTACT: Linda Shore of the Department, telephone (202) 523-7901. (This is not a toll-free number).

Signed at Washington, DC, this 28th day of September 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-22717 Filed 9-30-88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-86]

NASA Advisory Council (NAC), Commercial Programs Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Commercial Programs Advisory Committee.

DATE AND TIME: October 25, 1988, 8:30 a.m. to 3:30 p.m.

ADDRESS: Howard Johnson Plaza Hotel, Discovery Room, 2080 North Atlantic Avenue, Cocoa Beach, FL 32931.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Praktish, Office of Commercial Programs, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8309.

SUPPLEMENTARY INFORMATION: The Commercial Programs Advisory Committee is concerned with the overall NASA program supporting the commercial development of space, both relevant policies and program scope and content. The Committee is chaired by Mr. Edward Donley and is currently composed of 17 members.

The meeting will be closed to the public from 1:30 p.m. to 3:30 p.m. for a discussion of the qualifications of candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. Prior to the closed session the meeting will be open to the public up to the seating capacity of the room, which is approximately 40 persons including the Committee members and other participants.

Type of Meeting: Open—except for a closed session as noted in the agenda below.

Agenda:

October 25, 1988

8:30 a.m.—Review of Candidate Strategic Plans for the Office of Commercial Programs.

1:30 p.m.—Closed Session.

3:30 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 26, 1988.

[FR Doc. 88-22463 Filed 9-30-88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-322-OL-3]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for the captioned phase of this operating license proceeding except insofar as it concerns the issue of reception centers. As reconstituted, this Appeal Board will consist of the following members: Christine N. Kohl, Chairman; Alan S. Rosenthal, Howard A. Wilber.

C. Jean Shoemaker,

Secretary to the Appeal Board.

Dated: September 26, 1988.

[FR Doc. 88-22689 Filed 9-30-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-604]

[Docket No. 50-604]

Issuance of Environmental Assessment Related to the Construction of the AlChemIE Facility—2 Oliver Springs and Finding of No Significant Impact; All Chemical Isotope Enrichment, Inc.

The U.S. Nuclear Regulatory Commission (the Commission) has issued an Environmental Assessment and a Finding of No Significant Impact related to the application, dated November 17, 1987, for a permit to construct the AlChemIE Facility 2 Oliver Springs. All Chemical Isotope Enrichment, Inc. [AlChemIE or applicant) intends to use the facility to enrich stable isotopes.

Environmental Assessment

Identification of Proposed Action

The proposed action would authorize the applicant to construct the AlChemIE Facility 2 in the Andy Justice Industrial Park in Oliver Springs, Tennessee. In order to enrich stable isotopes, AlChemIE is purchasing centrifuge machines from the Department of Energy (DOE). The centrifuge machines were originally designed and manufactured to enrich uranium, but AlChemIE will not use them for that purpose.

Although the enriching of stable isotopes is not ordinarily within the regulatory authority of the Commission, any equipment or device capable of enriching uranium, if intended for commercial use, must be licensed by the Commission. Since the centrifuge machines AlChemIE will obtain from DOE are capable of enriching uranium, their possession and use must be licensed. The Commission rule which governs the licensing of production facilities is 10 CFR Part 50.

The Need for the Proposed Action

The proposed construction permit will allow the applicant to construct the AlChemIE Facility 2 Oliver Springs, and to install centrifuge machines previously used by DOE. AlChemIE plans to use the centrifuge machines to enrich stable isotopes. AlChemIE will not use the centrifuge machines obtained from DOE to enrich uranium; however, any equipment or device capable of enriching uranium, if intended for commercial use, must be licensed by the Commission.

Environmental Impacts of the Proposed Action

The NRC staff assessed the potential consequences of using the contaminated equipment and concluded that even under the unexpected conditions where the uranium would be released to the environment, the consequences would be minimal with a 50-year whole body equivalent dose commitment of less than 1.2E-5 mrem.

The local environment at Oliver Springs is moderately well characterized as a result of the environmental studies of the Oak Ridge Reservation. The area is being developed as an industrialized park with utilities and waste managment services to support the major facility needs.

The facility will be housed in a steel-framed building with aluminum siding. The centrifuge equipment will be obtained from DOE's Portsmouth Facility. Some of these machines are contaminated with uranium. The centrifuges will be used to process various chemical compounds, some of which are considered toxic or hazardous.

AlChemIE will file for an air emissions permit with the Tennessee Department of Health and Environment (TDHE). While the feed material and processing rate information is not completely defined, the NRC staff used available information to perform a conservative analysis which indicated that material releases due to normal operations are expected to be environmentally acceptable.

AlChemIE waste water (primarily sanitary water) will be discharged through the existing Oliver Springs waste water treatment plant. The discharge limits will not have to be modified to accommodate the AlChemIE waste water. AlChemIE's non-hazardous and hazardous/toxic solid and liquid wastes will be transferred to appropriate existing DOE, municipal, and commercial waste management operations which already have the necessary permits.

The NRC staff's analysis of potential accidental releases of material from the process indicated that the off-site concentrations of toxic materials will be less than the time-weighted average threshold limit values (TWA-TLV) which have been established by the American Conference of Governmental Industrial Hygienists (ACGIE). Exposure of the population of toxic material emission in concentrations below these limits will not result in any effects.

Conclusion

On the basis of the NRC staff's evaluation of the environmental report submitted by AlChemIE and upon further independent analysis of the environmental impacts of the proposed action, as set forth in the staff's Environmental Assessment, the staff has concluded that the proposed action will not result in any significant environmental impacts.

Alternative to the Proposed Action

The principal alternative to the proposed action is that of no action. In view of the NRC staff's conclusion that the proposed action will not result in any significant impact, the preference of this action over the proposed action cannot be justified.

Alternative Use of Resources

Since the facility proposed by AlChemIE is being built in an area that is being developed as an industrialized park with utilities and waste management services to support the major facility needs, its construction should not result in any significant environmental impact. In addition, the quantity of feed materials which AlChemIE will process are in the kilogram per year range and yield no waste streams, since both separated streams are useful products. Because of the expected efficiency of the centrifuge machines, the use of energy resources should be effective compared with other separation methods.

Agencies and Persons Contacted

The Commission's staff contacted the following Roane County Executive; Oak Ridge City Manager; Oak Ridge Mayor;

Anderson County Executive; Oliver Springs Town Administrator; Tennessee Department of Health and Environment, Division of Air Pollution Control; and Tennessee Department of Health and Environment, Division of Solid Waste Management.

Finding of No Significant Impact

The Commission's staff has prepared an Environmental Assessment related to the proposed licensing action. On the basis that the environmental impacts created by the proposed licensing action would not be significant, the proposed action does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the November 17, 1987, application related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492–3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 8th day of September 1988.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88–22684 Filed 9–30–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–603]

Issuance of Environmental Assessment Related to the Construction and Operation of the Alchemie Facility—1 CPDF, and Finding of No Significant Impact, All Chemical Isotope Enrichment, Inc.

The U.S. Nuclear Regulatory Commission (the Commission) has issued an Environmental Assessment and a Finding of No Significant Impact related to the application, dated November 17, 1987, for a license to construct and operate the AlChemIE Facility–1 CPDF. All Chemical Isotope Enrichment, Inc. (AlChemIE or applicant) intends to use the facility to enrich stable isotopes.

Environmental Assessment

Identification of Proposed Action

The proposed action would authorize the applicant to utilize the Centrifuge Plant Demonstration Facility (CPDF), which is owned by the U.S. Department of Energy and is located on the Federally owned Oak Ridge Gaseous Diffusion Plant (ORGDP) site. In order to enrich stable isotopes, AlChemIE is purchasing centrifuge machines and will lease the CPDF from the Department of Energy (DOE). The centrifuge machines were originally designed and manufactured to enrich uranium, but AlChemIE will not use them for that purpose.

Although the enriching of stable isotopes is not ordinarily within the regulatory authority of the Commission, any equipment or device capable of enriching uranium, if intended for commercial use, must be licensed by the Commission. Since the centrifuge machines AlChemIE will obtain from DOE are capable of enriching uranium, their possession and use must be licensed. The Commission's rule which governs the licensing of production facilities is 10 CFR Part 50.

AlChemIE Facility–1 CPDF was previously used by the Department of Energy as a Centrifuge Plant Demonstration Facility (hence, CPDF) located at the site of the Oak Ridge Gaseous Diffusion Plant. Therefore, the facility has been completely constructed and operated. In fact, in addition to tests conducted with uranium (as the hexafluoride), the machines have been used to enrich some stable isotopes. As a result of the tests conducted by the Department of Energy, the centrifuge machines and associated piping have been slightly contaminated with uranium. Because the purpose of the tests, in part, was to demonstrate enrichment, some of the uranium contamination is enriched in the uranium-235 isotope. Although some building modifications are necessary, the construction period is expected to be very short.

The Need for the Proposed Action

The proposed construction permit and license will allow the applicant to utilize the CPDF previously used by DOE to enrich stable isotopes. AlChemIE will not use the centrifuge machines obtained from DOE to enrich uranium; however, any equipment or device capable of enriching uranium, if intended for commercial use, must be licensed by the Commission.

Environmental Impacts of the Proposed Action

The NRC staff's Environmental Assessment has concluded that the local environment is a well characterized, industrialized area with an established buffer zone. The industrialized area has utilities and waste management services to support the major facility needs for steam, sanitary water, and electric power.

The exterior of the CPDF facility will be modified only slightly to meet AlChemIE's requirements. Existing centrifuge equipment will be used to process various chemical compounds, some of which are considered toxic or hazardous.

AlChemIE has filed for an air emissions permit with the Tennessee Department of Health and Environment (TDHE). While the feed material and processing rate information is not completely defined, the NRC used available information to perform a conservative analysis which indicates that material releases due to normal operations are expected to be environmentally acceptable.

AlChemIE waste water (primarily sanitary water) will be discharged through the existing Oak Ridge Gaseous Diffusion Plant waste water treatment plant which is currently covered by an NFDES permit. The NPDES limits will not have to be modified to accommodate the AlChemIE waste water. AlChemIE's non-hazardous and hazardous/toxic solid and liquid wastes will be transferred to appropriate existing DOE, municipal, and commercial waste management operations which already have the necessary permits.

The NRC staff's analysis of potential accidental releases of material from the process indicates that the off-site concentrations of toxic materials will be less than the time-weighted average threshold limit values (TWA–TLV) which have been established by the American Conference of Governmental Industrial Hygienists (ACGIH). Exposure of the population to toxic material emissions in concentrations below these limits will not result in any adverse health and safety effects.

The NRC staff assessed the potential consequences of using the contaminated equipment and concluded that even under the unexpected conditions where the uranium would be released to the environment, the consequences would be minimal with a 50-year body equivalent dose commitment of lest than 1.4E–5 mrem.

Conclusion

On the basis of the NRC staff's evaluation of the environmental report submitted by AlChemIE and upon further independent analysis of the environmental impacts of the proposed action, as set forth in the staff's Environmental Assessment, the staff has concluded that the actions proposed will

not result in any significant environmental impacts.

Alternative to the Proposed Action

The principal alternative to the proposed action is that of no action. In view of the NRC staff's conclusion that the proposed action will not result in any significant impact, the preference of this action over the proposed action cannot be justified.

Alternative Use of Resources

Since the facility proposed by AlChemIE has been constructed and operated by the Department of Energy, most of the resources which would be deviated to its construction have already been expended. In addition, the quantity of feed materials which AlchemIE will process are in the kilogram per year range and yield no waste streams, since both separated streams are useful products. Because of the expected efficiency of the centrifuge machines, the use of energy resources should be effective compared with other separation methods.

Agencies and Persons Contacted

The Commission's staff contacted the following: Roane County Executive; Oak Ridge City Manager; Oak Ridge Mayor; Anderson County Executive; Oliver Springs Town Administrator; Tennessee Department of Health and Environment, Division of Air Pollution Control; and Tennessee Department of Health and Environment, Division of Solid Waste Management.

Finding of No Significant Impact

The Commission's staff has prepared an Environmental Assessment related to the proposed licensing action. On the basis that the environmental impacts created by the proposed licensing action would not be significant, the proposed action does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the November 17, 1987 application related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492–3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 8th day of September 1988.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88–22685 Filed 9–30–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Co., Calvert Cliffs Nuclear Power Plant, Units Nos. 1 and 2; Environmental Assessment and Finding of No significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Baltimore Gas and Electric Company (the licensee) for the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, located at the licensee's site in Calvert County, Maryland.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with the requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited–II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Local Public Document Room, Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 26 day of September 1988.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects, I/II.

[FR Doc. 88-22670 Filed 9-30-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co., Haddam Neck Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Connecticut Yankee Atomic Power Company (the licensee) for the Haddam Neck Plant, located at the licensee's site in Middlesex County, Connecticut.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the Federal Register a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Russell Library, 123 Broad Street, Middletown, Connecticut.

Dated at Rockville, Maryland, this 27th day of September 1988.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Acting Director, Project Directorate I–4, Division of Reactor Projects I/II.

[FR Doc. 88–22666 Filed 9–30–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–247]

Consolidated Edison Co. of New York, Inc., Indian Point Nuclear Generating Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Consolidated Edison Company of New York (the licensee) for the Indian Point Nuclear Generating Unit No. 2, located at the licensee's site in Westchester County, New York.

Identification of Proposed Action

Environmental Assessment

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for The Proposed Action

The exemption is needed because insurance complying with the requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the propsoed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect proptection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of no Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Local Public Document Room, White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 26 day of September 1988.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects, I/II.

[FR Doc. 88–22671 Filed 9–30–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–334 and 50–412]

Duquesne Light Co., Beaver Valley Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Duquesne Light Company (the licensee) for the Beaver Valley Power Station, Units 1 and 2 located at the licensee's site in Shippingport, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an

independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited–II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania.

Dated at Rockville, Mayland, this 27th day of September 1988.

For the Nuclear Regulatory Commission.

Ronald W. Herman,

Acting Director, Project Directorate I–4, Division of Reactor Projects I/II.

[FR Doc. 88–22667 Filed 9–30–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–219]

GPU Nuclear Corp., Oyster Creek Nuclear Generating Station; Environmental Assessment Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to GPU Nuclear Corporation (the licensee) for the Oyster Creek Nuclear Generating Station, located at the licensee's site in Ocean County, New Jersey.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of son-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance, that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for The Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the

exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Base upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey.

Dated at Rockville, Maryland, this 27th day of September 1988.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Acting Director Project Directorate I–4, Division of Reactor Projects I/II.

[FR Doc. 88–22668 Filed 9–30–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–289]

GPU Nuclear Corp., Three Mile Island Nuclear Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to GPU Nuclear Corporation (the licensee) for the Three Mile Island Nuclear Station, Unit 1, located at the licensee's site in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination prioroty and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for The Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stablization and decontamination priority and trusteeship provisions of § 50.74(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even withut the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited–II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving

rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania.

Dated at Rockville, Maryland, this 25th day of September 1988.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Acting Director, Project Directorate I-4, Division of Reactor Projects I/II.

[FR Doc. 88-22669 Filed 9-30-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

Long Island Lighting Co., Shoreham Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Long Island Lighting Company (the licensee) for the Shoreham Nuclear Power Station, located at the licensee's site in Suffolk County, New York.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will have not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington DC, and at the Shorham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9697.

Dated at Rockville, Maryland, this 27th day of September, ,1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II.

[FR Doc. 88-22672 Filed 9-30-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-410]

Niagara Mohawk Power Corp., Nine Mile Point Nuclear Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Niagara Mohawk Power Corporation (the licensee) for the Nine Mile Point Nuclear Station, Unit No. 2, located at the licensee's site in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revison of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for The Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurnace language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room, Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 26 day of September 1988.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects, I/II.

[FR Doc. 88-22674 Filed 9-30-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp., Nine Mile Point Nuclear Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Niagara Mohawk Power Corporation (the licensee) for the Nine Mile Point Nuclear Station, Unit No. 1, located at the licensee's site in Scriba, New York.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impact of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternative to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room, Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 26 day of September 1988.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects, I/II.

[FR Doc. 88–22673 Filed 9–30–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–245, 50–336, 50–423]

Northeast Nuclear Energy Co., Millstone Nuclear Power Station, Units 1, 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Northeast Nuclear Energy Company (the licensee) for the Millstone Nuclear Power Station, Units 1, 2 and 3, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power rector licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has propsed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i)

until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensese shall comply with the provisions of such rule.

The Need for The Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailble and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(5)(4).

Environmental Impacts of the Proposed Action.

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisons. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For imformation concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 27th day of September 1988.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Acting Director, Project Directorate I–4, Division of Reactor Projects I/II.

[FR Doc. 88–22675 Filed 9–30–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–387/388]

Pennsylvania Power & Light Co., Susquehanna Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Pennsylvania Power and Light Company (the licensee) for the Susquehanna Steam Electric Station, Units 1 and 2, located at the licensee's site in Luzerne County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance

This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Reference Department, Osterhout Free Library, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland this 27th day of September 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2 Division of Reactor Projects I/II.

[FR Doc. 88–22676 Filed 9–30–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–352]

Philadelphia Electric Co., Limerick Generating Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Philadelphia Electric Company (the licensee) for the Limerick Generating Station, Unit 1 located at the licensee's site in Montgomery County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priorty and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of lincensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited–II policies. Finally, there is only an extremely small probability of a serious accident occuring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 27th day of September 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II.

[FR Doc. 88–22677 Filed 9–30–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277/278]

Philadelphia Electric Co., Peach Bottom Atomic Power Station, Units 2 and 3; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Philadelphia Electric Company (the licensee) for the Peach Bottom Atomic Power Station, Units 2 and 3 located at the licensee's site in York County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impact of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action doe not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed examption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW; Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 27th day of September, 1988.

For The Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II.

[FR Doc. 88–22678 Filed 9–30–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-286]

Power Authority of The State of New York, Indian Point Nuclear Generating Unit No. 3; Environmental Assessment And Finding of No significant impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to the Power Authority of the State of New York (the licensee) for the Indian Point Nuclear Generating Unit No. 3, located at the licensee's site in Westchester County, New York.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritzed insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of dealy, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Local Public Document Room, White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 26 day of September, 1988.

For The Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1 Division of Reactor Projects, I/II.

[FR Doc. 88-22679 Filed 9-30-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of The State of New York, James A. FitzPatrick Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirement of 10 CFR 50.54(w)(5)(i) to Power Authority of the State of New York (the licensee) for the James A. FitzPatrick Nuclear Power Plant, located at the licensee's site in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has

been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for The Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are sereval reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

1It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Local Public Document Room, Penfield Library, State University College of Oswego, Oswego, New York.

Dated at Rockville, Maryland, this 26 day of September, 1988.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1 Division of Reactor Projects, I/II.

[FR Doc. 88–22680 Filed 9–30–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–354]

Public Service Electric and Gas, Hope Creek Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Public Service Electric and Gas Company (the licensee) for the Hope Creek Generating Station, located at the licensee's site in Salem County, New Jersey.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is likely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the

exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Dated at Rockville, Maryland, this 27th day of September, 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II.

[FR Doc. 88–22681 Filed 9–30–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–272/311]

Public Service Electric and Gas, Salem Generating Station Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w) (5) (i) to P Public Service Electric and Gas Company (the licensee) for the Salem Generating Station, Units 1 and 2 located at the licensee's site in Salem County, New Jersey.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increaed the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) unitl completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implemetation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54 (w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally there is only an extremely small probability of a serious accident occurring during the exemption period.

Even if a serious accident giving raise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption doe not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; and alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agenices or persons in connection with the proposed exemption.

Finding of No Significant Imapct

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statment for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 27th day of September , 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II.

[FR Doc. 88–22682 Filed 9–30–88; 8:45am]

BILLING CODE 7590–01–M

[Docket No. 50–244]

Rochester Gas and Electric Corp.; R. E. Ginna Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–18 issued to Rochester Gas and Electric Corporation (the licensee), for operation of the R. E. Ginna Nuclear Power Plant located in Wayne County, New York.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would modify the Technical Specifications (TS) to reflect replacement of steam generator snubbers with rigid structural supports (bumpers).

The proposed action is in accordance with the licensee's application for amendment dated May 5, 1988.

The Need for the Proposed Action

The proposed change to the TS was submitted by the licensee to reflect the replacement of six of the eight Steam Generator Hydraulic Snubbers with Mechanical Constraints (bumpers).

Environmental Impacts for the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The proposed revision would allow the replacement of six of the eight hydraulic snubbers for each steam generator with rigid structural members (bumpers). These new supports in conjunction with the remaining hydraulic snubbers continue to provide adequate restraint of each steam generator under design basis loads and events. The staff has reviewed the proposed revision and has concluded that the change does not adversely affect safety of operation, the proposed change does not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite and there may be a decrease in the allowable individual or cumulative occupational radiation exposure due to a reduction in the number of hydraulic snubbers that required periodic maintenance. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted areas as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve conflicts regarding resources and in any event does not concern resources not considered in previous reviews for the R.E. Ginna Nuclear Power Plant. The plant was licensed prior to the requirement for issuance of a Final Environmental Statement.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commssion has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action see the application for amendment dated May 5, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, Lower-Level, 2120 L St. NW., Washington, DC and at the local Public Document Room located in the Rochester Public Library, 115 South Avenue, Rochester, New York, 14610.

Dated at Rockville, Maryland, this 6th day of September, 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I–3, Division of Reactor Projects I/II.

[FR Doc. 88–22683 Filed 9–30–88; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Privacy Act of 1974; Computer Matching Programs—Postal Service/ Federal Creditor Agencies

AGENCY: Postal Service.

ACTION: Notice of Matching Program—U.S. Postal Service with the Public Health Service, U.S. Department of Health and Human Services; and the Bureau of the Public Debt, U.S. Department of the Treasury.

SUMMARY: On December 31, 1987, at 52 FR 49556, the United States Postal Service provided notice of its plans to conduct continuing matching programs to identify any postal employeees who are delinquently indebted to the Federal Government under programs administerd by the U.S. Department of Agriculture, U.S. Department of Education, U.S. Department of Housing and Urban Development, U.S. Small Business Administration, and the Veterans Administration. The Postal Service is now adding to the above list of Federal agencies the Public Health Service (PHS) of the U.S. Department of Health and Human Services (HHS) and the Bureau of the Public Debt (BPD) of the U.S. Department of the Treasury (Treasury). The Postal Service will act as the matching agency and compare its payroll records against delinquent debtor records provided by these creditor agencies. Debts not voluntarily repaid will be subject to collection pursuant to the Debt Collection Act of 1982.

DATE: It is anticipated that the match with PHS-HHS will begin about October 1988, and the match with BPD-Treasury about November 1988.

ADDRESS: Send any comments to USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 8121, Washington, DC 20260–5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday at this address.

FOR FURTHER INFORMATION CONTACT: Barbara Fuller, Records Office (202) 268–5161.

SUPPLEMENTARY INFORMATION: Section 5 of the Debt Collection Act of 1982 permits a Federal agency to offset the salaries of its employees who owe delinquent debts to the Federal Government when payment of those debts has not been made voluntarily. A Government-wide effort is currently underway to identify employees who are delinquent debtors and to recoup those debts. The Postal Service plans to participate in this effort by acting as the matching agency for all computer matches of its employee data that may be conducted against the delinquent debtor records of requesting creditor agencies. Initial and follow-up matches with PHS-HHS and BPD-Treasury will be conducted as further described in the "Report" below.

Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computer Matching Programs issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). A copy of this notice has been provided to both Houses of Congress and to the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service (USPS) With Public Health Service (PHS), U.S. Department of Health and Human Services (HHS); and Bureau of the Public Debt (BPD), U.S. Department of the Treasury (Treasury)

a. *Authority:* 39 U.S.C. 404; 5 U.S.C. 5514(a).

b. *Program Description:* The above-named creditor agencies will submit their files of delinquent debtors identified by name and social security account number (SSAN) to the USPS. Using SSAN, the USPS will match the creditor files against its payroll system file (USPS 050.020, Finance Records—Payroll System), identifying employees who are alleged delinquent debtors under a Federal program administered by the creditor agencies. For those individuals common to both tapes ("hits"), the USPS will provide to the creditor agencies the following data elements: name, SSAN, date of birth, home address, and work address.

The validity of "matched" employee/debtor information will be verified by the creditor agencies. Those inviduals who do not have a current repayment plan in effect may be subject to salary offset pursuant tothe Debt Collection Act of 1982 (DCA) if the claim of indebtedness is not resolved through the due process procedures afforded by the DCA. Those procedures require the creditor agencies to give the alleged debtor thirty days written notice of their determination of the debt and an explanation of the individual's rights under the Act, which include an opportunity to inspect and copy Government records relating to the debt, an opportunity to enter into a repayment agreement, and a hearing on the validity of the debt and terms of its repayment.

The USPS Inspection Service may participate in the investigation of hits and establish investigative case files within the parameters of Privacy Act system USPS 080.010, "Inspection Requirements Investigative File System" (last published in 48 FR 10975 of March 15, 1983).

c. *Records to be Matched:* Each match under this program will compare records within the USPS' payroll system file (USPS 050.020, Finance Records—Payroll System (most recently published in 53 FR 25025 of July 1, 1988). Disclosure of information for purposes of this program is authorized by that system's routine use No. 34.

d. *Period of the Match:* The initial match with PHS-HHS is expected to occur about October 1988 and the initial match with BPD-Treasury is expected to occur about November 1988. Subsequent matches will be conducted as described above, but not more often than semiannually.

e. *Security:* Each match will be conducted in accordance with a written agreement between the USPS and the creditor agency. The agreement will call for maintenance of exchanged data in such a manner as to restrict access to only those individuals who have a legitimate need to see or review it in order to accomplish the official purpose of the matching program, and storage of hard copy records in locked desks or file cabinets and of automated records in limited access computer facilities.

f. *Disposition of Records:* Data exchanged will be used only for the purpose of this matching program and will not be derivatively disclosed. Tapes will be returned immediately upon completion of the matching operation, and information about individuals not found to be "hits" will be destroyed immediately.

g. *Other Comments:* No changes will be made to an individual's payments or benefits without first providing due process to the individual concerned.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88–22591 Filed 9–30–88; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 27, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and

Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Allstate Municipal Income Opportunities Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7-3918)
Baker Fentress & Co.
Common Stock, $1.00 Par Value (File No. 7-3919)
Cyprus Minerals Co.
Common Stock, Without Par Value (File No. 7-3920)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 18, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commissoin will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-22636 Filed 9-30-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16573; 811-3637]

Capital T Money Fund; Application

September 27, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Capital T Money Fund ("Applicant").

Relevant 1940 Act Sections: Order requested under section 8(f) of the 1940 Act.

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 29, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 24, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 99 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney (202) 272-2847, or Houghton R. Hallock, Jr., Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is an open-end diversified management company which is a Massachusetts business trust in good standing. Applicant registered as an investment company under the 1940 Act and filed a registration statement under the Securities Act of 1933 on December 30, 1982. Applicant's registration statement became effective on May 27, 1983, and Applicant commenced offering its shares in June of 1983.

2. Applicant originally consisted of a single portfolio investing in short-term securities (money market portfolio). On September 30, 1983, Applicant filed Post-Effective Amendment No. 1, to its registration statement, which became effective November 30, 1983, whereby Applicant added a second portfolio investing in short-term securities (insured money market portfolio).

3. Applicant was one component of a cash management account, known as the Capital T Accounts Program, offered by Travelers Equities Sales, Inc., a subsidiary of The Travelers Corporation. At the election of account holders, cash balances in their accounts were invested in shares of Applicant. In January of 1988, Travelers elected to terminate the Capital T Accounts Program, and account holders were notified that their accounts would be liquidated.

4. At a meeting of the Board of Trustees of Applicant held on March 17, 1988, the Trustees authorized the dissolution of Applicant and the deregistration and winding up of Applicant's affairs, on which date Applicant had 21,536,404 shares of beneficial interest outstanding with an aggregate net asset value of $21,536,404 ($1.00 per share). Between March 18 and March 24, 1988, all of Applicant's shares were redeemed, thereby reducing Applicant's net assets to zero.

5. The only expense incurred in connection with the liquidation was $14,191 payable to Keystone Investor Resource Center, Inc., Applicant's servicing and transfer agent.

6. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

7. Applicant has no assets, debts of liabilities which remain outstanding, is not a party to any litigation or administrative proceeding, has no remaining securityholders and is not engaged in or proposing to engage in any business activities other than those necessary for the winding up of its affairs.

8. Applicant has filed a Form N-SAR for each semi-annual period for which such form was required, including the Form N-SAR for the period ending March 31, 1988. If a Form N-SAR is required for any period from March 31, 1988 through the date Applicant is deregistered, such form will be filed promptly after the earlier of the due date of the form or the issuance of the requested order.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-22728 Filed 9-30-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16571; 811-3633]

Capital T Tax Free Fund; Application

September 27, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Capital T Tax Free Fund ("Applicant").

Relevant 1940 Act Sections: Order requested under Section 8(f) of the 1940 Act.

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 29, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 24, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 99 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney (202) 272–2847, or Houghton R. Hallock, Jr., Special Counsel (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is an open-end diversified management company which invests in short-term (money market) securities. Applicant is a Massachusetts business trust in good standing which registered as an investment company under the 1940 Act and filed a registration statement under the Securities Act of 1933 on December 30, 1982. Applicant's registration statement became effective on May 19, 1983, and Applicant commenced offering its shares in June of 1983.

2. Applicant was one component of a cash management account, known as the Capital T Accounts Program, offered by Travelers Equities Sales, Inc., a subsidiary of The Travelers Corporation. At the election of account holders, cash balances in their accounts were invested in shares of Applicant. In January of 1988, Travelers elected to terminate the Capital T Accounts Program, and account holders were notified that their accounts would be liquidated.

3. At a meeting of the Board of Trustees of Applicant held on March 17, 1988, the Trustees authorized the dissolution of Applicant and the deregistration and winding up of Applicant's affairs, on which date Applicant had 3,032,863 shares of beneficial interest outstanding with an aggregate net asset value of $3,032,863 ($1.00 per share). Between March 18 and March 24, 1988, all of Applicant's shares were redeemed, thereby reducing Applicant's net assets to zero.

4. The only expense incurred in connection with the liquidation was $809 payable to Keystone Investor Resource Center, Inc., Applicant's servicing and transfer agent.

5. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

6. Applicant has no assets, debts or liabilities which remain outstanding, is not a party to any litigation or administrative proceeding, has no remaining securityholders and is not engaged in or proposing to engage in any business activities other than those necessary for the winding up of its affairs.

7. Applicant has filed a Form N–SAR for each semi-annual period for which such form was required, including the Form N–SAR for the period ending March 31, 1988. If a Form N-SAR is required for any period from March 31, 1988 through the date Applicant is deregistered, such form will be filed promptly after the earlier of the due date of the form or the issuance of the requested order.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–22729 Filed 9–30–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16574; 812–7056]

Thomson McKinnon Investment Trust and Thomson McKinnon Securities Inc.; Application

September 27, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order to amend a previous order under the Investment Company Act of 1940 ("1940 Act").

Applicants: Thomson McKinnon Investment Trust ("TMIT") and Thomson McKinnon Securities Inc. (TMSI") on behalf of themselves and other registered investment companies to be organized with TMSI or a corporate affiliate of TMSI as principal underwriter and/or investment adviser ("Subsequent Companies").

Relevant 1940 Act Sections: Order requested under section 6(c) to amend a previous order exempting Applicants from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rules 22c-1 and 22d-1 thereunder.

Summary of Applications: Applicants seek an order amending an existing order of the Commission (the "Existing Order") granted under section 6(c) of the 1940 Act which authorized TMIT and the Subsequent Companies to impose a contignent deferred sales charge on certain redemptions of their shares, to the extent necessary to permit TMIT and the Subsequent Companies to waive the assessment of a contingent deferred sales charge on redemptions of shares of income-oriented series of TMIT or of the Subsequent Companies (including series which invest primarily in tax-exempt securities), when such shares have been purchased in connection with the investment of distributions of certain unit investment trusts sponsored by TMSI.

Filing Date: The application was filed on June 27, 1988 and amended on September 26, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 24, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, Financial Square, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney (202) 272–2847, or Houghton R. Hallock, Jr., Special Counsel (202) 272–3030 (Office of Investment Company

Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300.

Applicant's Representations

1. TMIT is an open-end, diversified, series invesment company organized as a Massachusetts business trust pursuant to an Agreement and Declaration of Trust dated October 14, 1983, as amended. TMIT is registered under the 1940 Act and its shares of beneficial interest are registered under the Securities Act of 1933. TMIT at present consists of nine series (each such series and any series to be created in the future hereinafter referred to individually as a "TMIT Fund" and collectively as the "TMIT Funds"), including the Thomson McKinnon Tax Exempt Fund (the "Tax Exempt Fund"), which seeks a high level of current income exempt from federal income taxes by investing in tax exempt bonds, and the Thomson McKinnon Income Fund (the "Income Fund"), which seeks high current income by investing in a diversified portfolio of income-producing securities.

2. TMSI is the distributor and principal underwriter of TMIT. TMSI is a broker-dealer registered under the Securities Exchange Act of 1934 and is a wholly-owned subsidiary of Thomson McKinnon Inc., a holding company which, through its subsidiaries, is engaged primarily in providing customers with a wide variety of financial services in connection with securities, commodities, options, corporate and public finance and related fields.

3. In the future, TMSI or its corporate affiliates may act as distributor and principal underwriter of Subsequent Companies. It is contemplated that these Subsequent Companies would be open-end investment companies organized as Massachusetts business trusts capable of becoming "series" companies as described in Rule 18f-2 under the 1940 Act (each portfolio represented by any such series, a "Subsequent Fund"). Each TMIT Fund and Subsequent Fund is sometimes hereinafter referred to as a "Fund."

4. TMIT currently pays (and any Subsequent Company would pay) TMSI a distribution fee with respect to each Fund equal to a maximum of 1.0% per annum of the lesser of (i) aggregate investments made in the Fund or (ii) the Fund's average daily net assets. The fee is paid to TMSI as compensation for services provided and expenses borne by TMSI in connection with the distribution of shares, such expenses including, without limitation, commissions paid by TMSI to its salesmen or introducing brokers.

5. Pursuant to the Existing Order, a deferred sales charge is imposed by TMIT if an investor redeems from TMIT an amount which causes the current value of the investor's account in a TMIT Fund to fall below the total dollar amount of purchase payments during the past five years, except that no sales charge is imposed if the shares redeemed have been acquired through the reinvestment of dividends or capital gains distributions or if the amount redeemed is derived from increases in the value of the investor's account above the amount of purchase payments during the past five years. The Existing Order also authorizes the Subsequent Companies to impose a deferred sales charge on the same terms as the sales charge currently imposed by TMIT.The imposition of the contingent deferred sales charge is waived by TMIT and is authorized to be waived by the Subsequent Companies on the following redemptions: (i) Redemptions following the death or disability of a shareholder; (ii) any partial or complete redemption in connection with certain distributions from Individual Retirement Accounts or other qualified retirement plans, and; (iii) redemptions by the trustees, officers and any employees of Applicants and by employees of TMSI, Thomson McKinnon Asset Management L.P. or Thomson McKinnon Inc. or its other subsidaries or of the respective subadvisers of TMIT or each Subsequent Company.

6. TMSI plans to institute a program by which distributions from unit investment trusts for which TMSI acts as depositor or principal underwriter (including those which hold tax exempt bonds) (each a "Thomson McKinnon UIT") will be invested, at the option of the Thomson McKinnon UIT unitholder, in shares of the Tax Exempt Fund. The program may be expanded to provide for the investment of such distributions in the Income Fund or in shares of any other series of TMIT or the Subsequent Companies which has an objective of high current income ("Subsequent Income Funds").

7. Under the Existing Order, Applicants are authorized to impose a contingent deferred sales charge on redemptions of shares and to waive the contingent deferred sales charge in certain cases. Applicants are requesting authorization to waive the contingent deferred sales charge in the additional case of redemptions of shares of the Tax Exempt Fund, Income Fund or Subsequent Income Funds purchased with Thomson McKinnon UIT distributions and the redemption of other TMIT Fund or Subsequent Company shares purchased through the exchange of such Tax Exempt Fund, Income Fund or Subsequent Income Fund Shares.

8. Each of TMIT and the Subsequent Companies will comply with all the provisions of Rule 22d–1 under section 22(d) of the 1940 Act with respect to the contingent deferred sales charge to the same extent as would be required if such contingent deferred sales charge were a sales load within the meaning of section 2(a)(35) of the 1940 Act.

9. Applicants assert that the additional category for waiver of the contingent deferred sales charge that they are requesting is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The contingent deferred sales charge is assessed to compensate TMSI for its sales efforts in connection with the initial sale of TMIT shares.TMSI is not expected to incur significant sales costs in connection with the propsoed sale of shares of the Tax-Exempt Fund, Income Fund or Susequent Income Funds purchased with Thomson McKinnon UIT distribution because: (1) TMSI will not undertake any in-person sales solicitation or presentation in connection with such sales; (2) TMSI expects to incur reduced distribution, advertising or other expenses with respect to such sales because the Thomson McKinnon UIT unitholders are expected to be a preselected group which have evidenced an understanding of mutual funds and an interest in income-oriented (including tax exempt) mutal fund products, and; (3) once a Thomson McKinnon UIT unitholder has agreed to invest his or her Thomson McKinnon UIT distributions in shares of the Tax Exempt Fund, Income Fund or Subsequent Income Fund, it is expected that additional shares of the Tax Exempt Fund, Income Fund or Subsequent Income Fund will be purchased periodically as distributions are paid by the Thomson McKinnon UIT without further sales effort by TMSI.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-22730 Filed 9-30-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2319]

Florida; Declaration of Disaster Loan Area

Hillsborough, Manatee, and Pinellas Counties and the adjacent Counties of DeSoto, Pasco, Polk, and Sarasota, in the State of Florida, constitute a disaster area as a result of damages from flooding caused by a stationary frontal weather system over the central part of the State and the effects of Hurricane Florence in the Panhandle, which occurred during the week of September 5, 1988. Applications for loans for physical damage may be filed until the close of business on November 21, 1988, and for economic injury until the close of business on June 22, 1989, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	(In percent)
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.000

The number assigned to this disaster is 231908 for physical damage and for economic injury the number is 666000.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: September 22, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-22704 Filed 9-30-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2318]

Minnesota; Declaration of Disaster Loan Area

Itasca County, Minnesota, constitutes a disaster area as a result of damages caused by hail, flash flooding, and a tornado which occurred August 11-15, 1988. Applications for loans for physical damage may be filed until the close of business on November 21, 1988, and for economic injury until the close of business on June 21, 1989, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, GA 30308.

or other locally annonced locations.

The interest rates are:

	(In percent)
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.000

The number assigned to this disaster is 231811 for physical damage and for economic injury the number is 665900.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: September 21, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-22705 Filed 9-30-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #6662]

New Jersey; Declaration of Disaster Loan Area

The City of Wildwood, New Jersey, constitutes an Economic Injury Disaster Loan Area as a result of damages from a fire which occurred in the 3900 block of the boardwalk on August 28, 1988. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on June 23, 1989 at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fairlawn, NJ 07410.

or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Date: September 23, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-22706 Filed 9-30-88; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting; Public Meeting; Arkansas

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Little Rock, Arkansas, will hold a public meeting at 10:00 a.m. on Tuesday, October 18, 1988, at the Holiday Inn, 6th and Broadway, Little Rock, Arkansas 72201, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Donald L. Libbey, District Director, U.S. Small Business Administration, 320 West Capitol, Suite 601, Little Rock, Arkansas 72201, (501) 378-5871.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 26, 1988.

[FR Doc. 88-22707 Filed 9-30-88; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council Meeting; Public Meeting; Minnesota

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Minneapolis/St. Paul, will hold a public meeting, on November 4, 1988 at 1:30 p.m. at the U.S. Small Business Administration District Office, 610-C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Edward A. Daum, District Director, U.S. Small Business Administration, 610-C Butler Square, 100 North Sixth Street, Minneapolis, MN 55403, 612-370-2306.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 26, 1988.

[FR Doc. 88-22708 Filed 9-30-88; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting; Public Meeting; North Dakota

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Bismarck, North Dakota, will hold a public meeting, at 8:30 a.m., on Wednesday, October 5, 1988, at the Holiday Inn, 1152 Memorial Highway, Bismarck, North Dakota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For futher information, write or call Mr. James Stai, North Dakota, District Director, U.S. Small Business Administration, Federal Office Building, 218, P.O. Box 3086, Fargo, North Dakota, 58108.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 26, 1988.

[FR Doc. 88-22709 Filed 9-30-88; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting; Public Meeting; Utah

The U.S. Small Business Adminsitration, Region VIII Advisory Council, located in the geographical area of Salt Lake City, Utah, will hold a public meeting, from 9:00 a.m. to 11:00 a.m. on Tuesday, October 11, 1988, at the Federal Building, Room 2404, 125 South State Street, Salt Lake City, Utah to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For futher information, write or call Kent Moon, District Director, U.S. Small Business Administration, 125 South State Street, Salt Lake City, Utah 84138, 801-524-5804.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 26, 1988.

[FR Doc. 88-22710 Filed 9-30-88; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Company; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 9.625 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as further amended by Section 1 of Pub. L. 99-226, December 28, 1985 (99 Stat. 744), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: September 28, 1988

[FR Doc. 88-22701 Filed 9-30-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/10-0150]

Capital Marketing Corp.; Application for Conflict of Interest Transaction

Notice is hereby given that Capital Marketing Corporation (CMC), 100 Nat Gibbs Drive, Keller, Texas 76248, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b)(1) of the Regulations governing small business investment companies (13 CFR 107.903(b)(1) (1988)) for an exemption from the provisions of the cited Regulations.

CMC proposes to loan $388,767 to Vernon Evans, 3305 Shady Hollow Lane, Dallas, Texas 75233.

The proposed financing is brought within the purview of § 107.903(b)(1) of the Regulations because Mr. Evans is an Associate of CMC due to his serving on the Board of Directors of Affiliated Food Stores, Inc., the parent of CMC.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L. Street NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Keller, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: September 26, 1988.

[FR Doc. 88-22702 Filed 9-30-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1082]

State Department Performance Review Board Members

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95-454), the Executive Resources Board of the Department of State has appointed the following members to the State Department Performance Review Board register and in so doing amends accordingly Department of State Public Notice No. 178 effective September 15, 1987.

Elizabeth G. Verville, Deputy Legal Adviser, Office of the Legal Adviser
Richard A. Clarke, Deputy Assistant Secretary for Regional Analysis, Bureau of Intelligence and Research
John P. Boright, Director, Office of Nuclear Technology and Safeguards
Joseph H. Linnemann, Associate Comptroller, Office of the Comptroller
Gloria Gaston-Shapiro, Public Member

Dated: August 30, 1988.

George S. Vest,

Director General of the Foreign Service and Director of Personnel.

[FR Doc. 88-22696 Filed 9-30-88; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on September 27, 1988

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on September 27, 1988, to

the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366–4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "**FOR FURTHER INFORMATION CONTACT**" paragraph set forth above. If you anticipate submitting substanive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on September 27, 1988.

DOT No.: 3111.
OMB No.: 2132–0502.
Administration: Urban Mass Transportation Administration.
Title: Sections 3 and 9 Urbanized Area Capital Assistance Program.
Need for Information: The information is needed to determine applicants' eligibility for funding and to monitor their subsequent progress in implementing projects.
Proposed Use of Information: The data is used by UMTA to assure compliance with provisions of the UMTA Act of 1964, as amended and OMB Circular A–102.
Frequency: (Varied) annually, on occasion, quarterly, biennially.
Burden Estimate: 266,760 hours.
Respondents: State and local government.
Form(s): SF–424.
Average Burden Hours Per Respondent: 14.65 hours.

DOT No.: 3112.
OMB No.: 2132–0509.
Administration: Urban Mass Transportation Administration.
Title: Unified Planning Work Program (UPWP), Transportation Plan, and the Transportation Improvement Program (TIP).
Need for Information: To described transportation planning activities to be funded during the next two year period using FHWA and UMTA funds.
Proposed Use of Information: The information is used for the grant review and approval process and by State and Metropolitan Planning Organizations as the basis for making investment decisions and as a management tool regarding the use of Federal and non-Federal capital funds.
Frequency: Annually/biennially.
Burden Estimate: 336,371.
Respondents: State and local governments and Metropolitan Planning Organizations.
Form(s): None.
Average Burden Hours Per Respondent: 515 hours.

DOT No.: 3113.
OMB No.: 2120–0500.
Administration: Federal Aviation Administration.
Title: Aviation Safety Inspector Supplemental Qualifications Statement.
Need for Information: This information is needed to evaluate qualifications of applicants for aviation safety inspector positions.
Proposed Use of Information: The information will be evaluated by subject matter specialists to rate and rank applicants on registers of eligibles maintained by the FAA.
Frequency: On occasion.
Burden Estimate: 1,000 hours.
Respondents: Individuals seeking employment in the Aviation Safety Inspector area.
Form(s): FAA Form 3330–47.
Average Burden Hours Per Respondent: ½ hour.

DOT No.: 3115.
OMB No.: 2127–0510.
Administration: National Highway Traffic Safety Administration.
Title: Consolidated Vehicle Identification Number Requirements and Federal Motor Vehicle Theft Prevention Standard. (49 CFR 571.115 and Parts 564, 541, and 567.
Need for Information: To identify motor vehicles manufactured/not manufactured in the USA that are registered within a state.
Proposed Use of Information: These standards specify physical requirements for a vehicle identification number, its installation, format, and content to simplify information retrieval, and increase the efficiency of defect recall campaigns. Manufacturers must label major components parts of designated high-theft carlines with the VIN and mark certain replacement parts with the letter "R".
Frequency: On occasion.
Burden Estimate: 375,677 hours.
Respondents: Businesses/small businesses.
Form(s):
Average Burden Hours Per Respondent: 1.51 minutes.

DOT No.: 3116.
OMB No.: 2125–0525.
Administration: Federal Highway Administration.
Title: Emergency Relief Funding Applications.
Need for Information: For FHWA to fulfill its statutory obligations rewarding funding determinations on emergency work to repair damaged highway facilities.
Proposed Use of Information: For FHWA to allocate emergency relief (ER) funds based on the application of the State highway agency.
Frequency: On occasion.
Burden Estimate: 7,200.
Respondents: State highway agencies.
Form(s):
Average Burden Hours Per Respondent: 200 hours.

DOT No.: 3117.
OMB No.: 2120–0022.
Administration: Federal Aviation Administration.
Title: Certification; Mechanics, Repairman, Parachute Riggers—FAR 65
Need for Information: The information is needed to determine applicant eligibility.
Proposed Use of Information: The information is used for evaluation by the FAA for issuing certificates and or ratings.
Frequency: On occasion.
Burden Estimate: 29,472.

Respondents: Individuals.
Form(s): FAA Forms 8610–1 and 8610–2.
Average Burden Hours Per Respondent: FAA Form 8610–1, 20 minutes, FAA Form 8610–2, 20 minutes.

DOT No: 3118.
OMB No: 2125–0523.
Administration: Federal Highway Administration.
Title: Annual Program of Projects.
Need for Information: To meet the requirement of section 105 of Title 23 U.S.C. for the submission of annual program of projects by the State Highway agencies.
Proposed Use of Information: For the Federal Highway Administration to study the overall program of proposed highway projects for which Federal-aid highway funds have been requested.
Frequency: Annually.
Burden Estimate: 45,760.
Respondents: State highway agencies.
Form(s):
Average Burden Hours Per Repondent: 880 hours.

DOT No: 3119.
OMB No: 2120–0033.
Administration: Federal Aviation Administration.
Title: Representatives of the Administrator.
Need for Information: To select properly qualified private persons to be representatives of the Administrator for examining, testing and certifying airmen for the purpose of issuing them airmen certificates.
Proposed Use of Information: The information collected is used to determine eligibility of the representatives.
Frequency: On occasion.
Burden Estimate: 4,626 total hours.
Respondents: Individuals.
Form(s): FAA Forms 8110–14, 1520–2, 8710–6.
Average Burden Hours Per Respondent: FAA Form 8110–14: 1 hour average per person per response, FAA Form 8520–2: 15 minutes average per person per response, FAA Form 8710–6: 30 minutes average per person per response.

DOT No: 3120.
OMB No: 2115–0041.
Administration: U.S. Coast Guard.
Title: Outer Continental Shelf Lands Act of 1978 Facility Application for Certificate of Financial Responsibility.
Need for Information: This information collection requirement ensures compliance with 33 U.S.C. 1815 and 1817. It is needed to determine the financial responsibility of the owner or operator of an offshore facility for oil pollution liability purposes.
Proposed Use of Information: The Coast Guard uses the information to evaluate the owner/operator request for a Certificate of Financial Responsibility. The information will also be used to process and settle any claims made against the Fund.
Frequency: On occasion.
Burden Estimate: 2,062.
Respondents: Owners/operators of offshore facilities.
Form(s): CG–5210.
Average Burden Hours Per Respondent: Facilities 1.4 hours, Claimants 2 hours.
DOT No: 3121.
OMB No: 2115–0526.
Administration: U.S. Coast Guard.
Title: International Oil Pollution Prevention Certificate.
Need for Information: This information collection requirement provides a standard format and language for ships of various countries for inspection purposes. It provides the information needed by inspecting officials to determine whether a ship is in compliance with the requirements of the International Convention for the Prevention of Pollution from Ships.
Proposed Use of Information: The Coast Guard uses the information to prepare for the inspection requested by the ship's owner/operator and to issue the International Oil Pollution Prevention (IOPP) Certificate.
Frequency: Every 4 or 5 years.
Burden Estimate: 150.
Respondents: Ship owner/operators engaged in international voyages.
Forms: CG–5352, CG–5352A, and CG–5352B.
Average Burden Hours Per Respondent: 20 minutes.

DOT No.: 3122.
OMB No.: 2115–0548.
Administration: U.S. Coast Guard.
Title: Vital Systems Automation.
Need for Information: This information is needed to ensure safety of life at sea; to ensure that U.S. Flag vessels conform to the automation requirement of the 1981 Amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS '74); and to facilitate delegation of automation evaluation to the American Bureau of Shipping (ABS).
Proposed Use of Information: The Coast Guard uses the information to determine compliance with the proposed safety regulations and to evaluate the necessary minimum manning consistent with the safe operation of the vessel.
Frequency: On occassion.
Burden Estimate: 630.
Respondents: Vessel designers, shipyards, manufacturers, owners and crewmember.
Form(s):
Average Burden Hours Per Respondent: 58 hours.

DOT No.: 3123.
OMB No.: 2106–0023.
Administration: Office of the Secretary/Office of Air Carrier Fitness Division.
Title: Part 201 Applications for Certificates of Public Convenience and Necessity.
Need for Information: Required to issue a certificate of public convenience and necessity for carrier to engage in air transportation operations.
Proposed Use of Information: Required to determine the nature and scope of requested authority.
Frequency: As needed.
Burden Estimate: 1,240.
Respondents: 100.
Form(s): None.
Average Burden Hours Per Respondent: 12.4 hours.

DOT No.: 3124.
OMB No.: 2115–0503.
Administration: U.S. Coast Guard.
Title: Plan Approval and Records for U.S. Vessels Carrying Oil in Bulk.
Need for Information: This information collection requirement is needed to ensure that (a) sufficient information is available to determine that a vessel is complying with the regulations, and (2) information is available for safe operation of the vessel and required equipment.
Proposed Use of Information: These requirements are used to determine whether U.S. tank vessels are complying with design and construction standards. It is also used to ensure that detail methods for safe, proper operation of the vessel and its required equipment are available.
Frequency: On occasion.
Burden Estimate: 213.
Respondents: Vessel Operators/owners.
Form(s): None.
Average Burden Hours Per Respondent: 19½ minutes.

DOT No.: 3125
OMB No.: 2115–0054
Administration: U.S. Coast Guard
Title: Welding and Hot Work Permit.
Need for Information: This information collection requirement is needed to ensure that minimum safety regulations for welding, cutting and other hot work are complied with.
Proposed Use of Information: The Coast Guard uses the information to issue a permit which allows for the use of welding or other "hot work" equipment on a designated waterfront

facility or vessel containing hazardous materials.

Frequency: On occasion.

Burden Estimate: 2,190.

Respondents: Owners/ operators or vessels and waterfront facilities.

Form(s): CG–4201, CG–4260.

Average Burden Hours Per Respondent: 30 minutes.

Issued in Washington, DC, on September 27, 1988.

Robert J. Woods,

Director of Information Resource Management.

[FR Doc. 88–22711 Filed 9–30–88; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Airport Traffic Control Tower at Pacoima, CA

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of opening.

SUMMARY: Notice is hereby given that on October 1, 1988, an Airport Traffic Control Tower at Pacoima, California, will be opened. Hours of operation will be 8:00 a.m. to 8:00 p.m. local time daily, 7 days per week. This information will be reflected in the FAA Organization Statement the next time it is issued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354).

Jerold M. Chavkin,

Regional Administrator, Western-Pacific Region.

Issued in Los Angeles, California, on September 6, 1988.

[FR Doc. 88–22605 Filed 9–30–88; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Del Norte County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice ot advise the public that a supplement to a Final Environmental Impact Statement (FEIS) will be prepared for a proposed highway project in Del Norte County, California.

FOR FURTHER INFORMATION CONTACT: David L. Eyres, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915. Telephone: (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, the U.S. Army Corps of Engineers, and the Department of the Interior, Bureau of Indian Affairs, and the National Park Service, will prepare a supplement to the Final Environmental Impact Statement (FEIS) on a proposal to construct a 12-mile long highway to bypass the Redwood National Park, located in Humboldt and Del Norte Counties, California. The original EIS for the bypass (FEIS–81–41) was approved February 8, 1984. The original EIS proposed using a gravel bar, located on the Klamath River, approximately eight miles upstream of the Route 101 bridge over the Klamath River, as an aggregate source. The use of that material source has since been determined to be infeasible. It is now proposed to extract approximately 600,000 cubic yards of gravel from a river bar located near Klamath Glen in Del Norte County, California. The gravel will be used to complete the final stage of construction (base, paving, and drainage) of the Redwood National Park Bypass which is currently under construction.

Alternatives being considered include (1) taking no action; (2) reducing the amount of gravel to be extracted, and (3) obtaining gravel from other sources. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have expressed interest in this proposal. A scoping meeting will be held in Klamath, Del Norte County, between October and November, 1988. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The draft supplemental EIS will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues related to this proposed action are addressed, and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided in this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on September 27, 1988.

David L. Eyres,

District Engineer, Sacramento, California.

[FR Doc. 88–22611 Filed 9–30–88; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Wexford County, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed improvements of US–131 from south of Cadillac to north of Manton, Wexford County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. James Kirschensteiner, District Engineer, Federal Highway Administration, P.O. Box 10147, Lansing, Michigan 48901, telephone (FTS) 374–1844 or (Commercial) (517) 377–1851; or Mr. Terry Gotts, Manager, Project Services Section, Bureau of Transportation Planning, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, telephone (517) 335–2905.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Michigan Department of Transportation (MDOT), are preparing an Environmental Impact Statement (EIS) for the proposed improvement of US–131 from south of Cadillac to north of Manton in Wexford County, Michigan. The proposed project is needed to relieve congestion in Cadillac, to correct the poor horizontal and vertical alignment of the existing US–131 between Cadillac and Manton and to increase capacity.

Alternatives under consideration include (1) No Action, (2) Low Capitol Improvements, and (3) Constructing a 4-lane limited access freeway on new location. Three alternate alignments for a proposed freeway location identified as Alternate A, B, C, and Sub-Alternative D are being considered.

The proposed project is divided into 3 segments for comparison of the various alternates. Segment 1 begins at the junction of the existing US–131 freeway, south of the city of Cadillac and ends at Boon Road. Segment 2 begins at Boon Road and ends at M–42 near the village of Manton. Segment 3 begins at M–42 and ends at existing US-131 south of the Manistee River.

The low capitol alternate proposes the construction of a 5-lane roadway along the existing US–131 alignment from the end of the existing US–131 freeway to the south city limits of Cadillac where it would connect to the existing 4-lane roadway. The existing roadway through Cadillac would remain as it is. A 5-lane improvement is proposed for construction in 1989 from 13th Street

north to Boon Road. From Boon Road north to the Manistee River, the existing US–131 would be constructed as a 2-lane facility with improved vertical alignment and possible truck climbing or passing lanes with the exception of the village of Manton where a proposed 4-lane facility would be constructed on the existing US–131 alignment. Some right-of-way would be required.

The proposed freeway alignments would all be on new location primarily to the east side of the city of Cadillac in Segment 1.

In Segment 2, the Alternate A alignment would begin east of existing US–131, cross to the west and return to the east of existing US–131 near Manton. Alternate B would be located primarily to the west of existing US–131 in this segment, incorporating that portion of the proposed Alternate A alignment to the west and return to the east of existing US–131 near Manton. Alternate C would be located primarily to east of existing US–131 incorporting that portion of the Alternate A alignment to the east of existing US–131. A short Sub-Alternate D alignment is proposed as a variation to the proposed Alternate C alignment between Boon Road and north of Long Lake Road to address local issues.

In Segment 3, Alternates A and B would be located east of the village of Manton. North of Manton, Alternate A would diverge to the northwest crossing existing US–131 and generally follow to the west of existing US–131 where it would merge with existing US–131 south of the Manistee River. Alternate B would generally follow to the east of existing US–131 and merge at approximately the same location.

Several other alternatives have already been eliminated from further study through public and agency comments. These include an alternate which impacted the Cadillac Pathway (cross-country ski trails), the relocation of M–55 to 13th Street, an alignment near the east Wexford County Line, and dual-lane or freeway facilities on existing US–131.

Early coordination with a number of Federal, State, and local agencies has identified the more significant issues to addressed in the EIS. Accordingly, no agency scoping meeting is planned at this time. The U.S. Fish and Wildlife Services, U.S. Environmental Protection Agency, and the Michigan Department of Natural Resources are requested to be cooperating agencies in the development of the proposed action. A scoping document has been prepared identifying the alternatives being considered and the social, economic, and environmental issues involved. The scoping document is available to all interested agencies, organizations, and individuals on request. A pre-study meeting was held in June 1986, to provide the public an opportunity to discuss the proposed action. Comments on the scoping document and issues identified are invited from all interested parties. Requests for a copy of the scoping Document or any comments submitted should be addressed to the above contact persons. The closing date for comments is October 21, 1988.

The Draft EIS is scheduled for completion in Spring, 1989, and will be available for public and agency review.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 14, 1988.

David A. Merchant,

Division Administrator, Federal Highway Administration.

[FR Doc. 88–22601 Filed 9–30–88; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Noncompliance Petition; Margolis

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

The National Highway Traffic Safety Administration received a petition dated January 11, 1988, from Mr. Solomon L. Margolis requesting that the agency open a defect investigation of rear safety belts in 1984 through 1988 Ford Escort and Mercury Lynx vehicles.

The petitioner alleged that the rear lap belt system in the subject vehicles is defective within the meaning of the National Traffic and Motor Vehicle Safety Act and fails to comply with Federal Motor Vehicle Safety Standard (FMVSS) 209, "Seat Belt Assemblies." Mr. Margolis specifically alleged that the strap retainer, which is only used in the subject vehicles, pulls the rear lap belt buckle and belt off the pelvic girdle and up into the soft abdominal tissue above it; allegedly resulting in more severe injuries than would otherwise occur.

Analysis of the agency's records for the subject vehicles revealed no other reports concerning defective strap retainers in the rear safety belt system, and no previous violation of FMVSS 209 S4.1(b) on the subject vehicles or any other Ford vehicles. Ford Motor Company provided the agency copies of test reports indicating that 1984 to 1988 Escort and Lynx vehicles' rear safety belt systems comply with the requirements of FMVSS 209 S4.1 (b) and (g), FMVSS 210 S4.3.1, and FMVSS 208. Analysis of the agency's test results indicates that when test volunteers were buckled up in the 1985 Ford Escort, the rear safety belts were positioned on the pelvis of each volunteer. There is no significant difference in the position of the rear safety belts in the test Escort equipped with or without the strap retainer.

The agency has concluded that there is not a reasonable possibility that an order concerning the notification and remedy of noncompliance with FMVSS 209 S4.1(b) in relation to the rear safety belt system on the 1984 through 1988 Escort and Lynx vehicles would be issued at the conclusion of an investigation. Therefore, the petition, as it relates to an alleged failure to comply with FMVSS 209, is denied.

The agency's technical review indicates that the strap retainer does not appear to have an adverse effect on the performance of the belt system. However, testing has indicated that, with or without the strap retainer, the vehicles' rear saftey belts fit differently from other vehicles' belt systems in some circumstances. Therefore, the agency has initiated an Engineering Analysis in response to the portion of the petition alleging that the rear safety belt system may contain a defect in performance, in order to examine the safety effects of the belt system's fit.

Issued on September 27, 1988.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 88–22712 Filed 9–30–88; 8:45 am]

BILLING CODE 4910–50–M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the

agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the form(s) must be filled out, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to fill out the form; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 2, 1988.

Dated: September 26, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

New Collection

1. Department of Veterans Benefits.
2. Status of Dependents Questionnaire.
3. VA Form 21–0538.
4. This form is used to request triennial verification of the status of dependents of veterans for whom additional compensation is being paid. This information is necessary to determine their continued eligibility for such benefits.
5. Triennially.
6. Individuals or households.
7. 225,000 responses.
8. 37,500 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. VA Request for Determination of Reasonable Value/HUD Application for Property Appraisal and Commitment.
3. VA Form 26–1805.
4. This form provides information to permit the assignment of appraisals and inspections of properties in order to determine the reasonable value of properties proposed as security for guaranteed or direct home loans and to require minimum property standards.
5. On occasion.
6. Individuals or households.
7. 450,000 responses.
8. 90,000 hours.
9. Not applicable.

[FR Doc. 88–22692 Filed 9–30–88; 8:45 am]

BILLING CODE 8320-01-M

Scientific Review and Evaluation Board For Research and Development; Reestablishment

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Scientific Review and Evaluation Board for Rehabilitation Research and Development Advisory Committee has been reestablished for a two year period beginning September 21, 1988 through September 21, 1990.

Dated: September 22, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–22693 Filed 9–30–88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 191
Monday, October 3, 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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for October 4, 1988.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on Octoer 4, 1988, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Summary Prior Approvals;
2. Management and Staff Retention Program for the Central Bank for Cooperatives;
3. Changes to the St. Paul District's Retirement Plan
4. Final Regulations Governing Regulatory Accounting Practices;
5. Final Regulations Relating to the Issuance and Retirement of Equities under New Capitalization Bylaws;

Closed Session [1]

6. Examination and Enforcement Matters; and
7. Jackson FLB/FLBA, in Receiversip.

Dated: September 29, 1988

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–22783 Filed 9–29–88; 3:46 pm]

BILLING CODE 6705–01–M

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(2), (4), (8) and (9).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:36 a.m. on Tuesday, September 27, 1988, the Board of Directors of the Federal Insurance Corporation met in closed session, by telephone conference call, to consider (1) matters relating to the possible closing of certain insured banks; and (2) a recommendation concerning an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Director C. C. Hope, Jr. (Appointive), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 27, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88–22742 Filed 9–29–88; 8:45 am]

BILLING CODE 6714–01–M

NATIONAL SCIENCE BOARD

DATE AND TIME: October 14, 1988—8:30 a.m. Closed Session; 8:45 a.m. Open Session.

PLACE: National Science Foundation 1800 G. Street, NW, Room 540, Washington, DC 20550.

STATUS: Most of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED AUGUST 19:

Closed Session (8:30 a.m. to 8:45 a.m.)

1. Minutes—August 1988 Meeting
2. NSB and NSF Staff Nominees
3. Grants, Contracts, and Programs

Open Session (8:45 a.m.—12:00 noon)

Swearing-in Ceremony of New NSB Members

4. Grants, Contracts and Programs
5. Chairman's Report
6. Minutes—June 1988 Meeting
7. Director's Report
8. Draft Report of the NSB Committee on Economic Competitiveness
9. NSB Committee Status Reports
10. Environmental Impact of Polar Activites
11. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 88–22793 Filed 9–29–88; 3:46 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 3, 10, 17, and 24, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 3

Wednesday, October 5

10:00 a.m.
Briefing on Status of Peach Bottom (Public Meeting)

Friday, October 7

10:00 a.m.
Briefing on Status of Reactor Operator Requalification Program (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. ALAB–883—Order on Seabrook (Requirement of Siren Issue Resolution Before Low Power)
2:00 a.m.
Briefing on Status of Policy Statement on Training and Qualification (Public Meeting)

Week of October 10—Tentative

Friday, October 14

10:00 a.m.
Briefing on Proposed Rule for Maintenance of Nuclear Power Plants (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Discuss/Possible Vote on Pilgrim Restart (Public Meeting)

Week of October 17—Tentative

Wednesday, October 19

2:00 p.m.
Briefing on Different Cask Designs for Shipping and Storing Nuclear Materials (Public Meeting)

Thursday, October 20

2:00 p.m.

Briefing on Safety Goal Implementation Plan (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 24—Tentative

Monday, October 24

2:00 p.m.

Briefing on NRC Policy on Cooperation with States at Commercial Nuclear Power Plants (Public Meeting)

Tuesday, October 25

11:00 a.m.

Periodic Briefing by TMI–2 Advisory Panel (Public Meeting)

Wednesday, October 26

10:00 a.m.

Briefing on Interrelationship of Standardization, Severe Accidents, Safety Goals, and Advanced Reactors (Public Meeting)

Thursday, October 27

11:00 a.m.

Periodic Briefing by the Advisory Committee on Nuclear Waste (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

September 29, 1988.

[FR Doc. 88–22797 Filed 9–29–88; 3:46 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission held a closed meeting on Tuesday, September 27, 1988, at 10:00 a.m. to consider the following item:

Report of investigation.

Commissioner Fleischman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272–3195.

Jonathan Katz,

Secretary.

September 27, 1988.

[FR Doc. 88–22727 Filed 9–29–88; 9:25 am]

BILLING CODE 8010–01–M

STATE JUSTICE INSTITUTE

TIME AND DATE: 9:00 a.m. to 5:00 p.m., October 10, 1988, 9:00 a.m. to 3:00 p.m., October 11, 1988.

PLACE: State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: Discussion of FY 1989 Proposed Guideline and consideration of revised applications submitted for Institute funding.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22312, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 88–22726 Filed 9–29–88; 9:25 am]

BILLING CODE 6820–SC–M

Corrections

Federal Register
Vol. 53, No. 191
Monday, October 3, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 379 and 399

[Docket No. 80592-8092]

Revisions to the Export Administration Regulations Based on COCOM Review

Correction

In rule document 88-20802 beginning on page 35459 in the issue of Wednesday, September 14, 1988, make the following corrections:

1. On page 35460, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the seventh and eighth lines, the telephone number should read "(202) 377-1641".

2. On page 35463, in the first column, in the last **Technical Note**, the first paragraph should read:

Technical Note: ASTM grade 5 residual fuel-oil has a maximum kinematic viscosity of 81 centistrokes at 50°C (122°F), and ASTM grade 6 residual fuel-oil has a kinematic viscosity range of 92 to 638 centistrokes at 50°C. Kinematic viscosity is measured by the Saybolt-furol viscosimeter (the test measures the time in seconds for 60 cc of the oil to pass through the furol orifice).

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 71028-7228]

Revisions to General License GLV Dollar Value Limits

Correction

In rule document 88-21532 beginning on page 36560 in the issue of Wednesday, September 21, 1988, make the following corrections:

PART 399—[Corrected]

Supplement No. 1 to § 399.1 [Corrected]

1. On page 36561, in the second column, under paragraph A., in Group 1, in the third line, "110A" should read "1110A".

2. On the same page, in the same column, in Group 5, in the third line, "505A" should read "1505A".

3. On the same page, in the third column, under paragraph B., in Group 1, in the second line, "Equipment" was misspelled.

4. On the same page, in the third column, under the same paragraph in Group 3, in the second line, "1317A" should read "2317A" and "1319A" should read "2319A".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974; Notice of Systems of Records

Correction

In notice document 88-19976 beginning on page 34149 in the issue of Friday, September 2, 1988, make the following corrections:

1. On page 34150, in the third column, under *New Systems of Records:*, in the first paragraph, in the seventh line, "proposes" should read "purposes".

2. On page 34158, in the third column, under **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**, in the first line "310" should read "301".

3. On page 34159, in the third column, under **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**, in the first line, "filed" should read "field".

4. On page 34160, in the second column, the heading, **SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:** should be removed.

5. On page 34161, in the first column, under **RECORD SOURCE CATEGORIES:**, in the first line, "pledgings" should read "pleadings".

6. On page 34164, in the first column, under **RETENTION AND DISPOSAL:**, in paragraph d., after the last line, add a new paragraph as follows:

"Disposal is by shredding or burning."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 412, 413, and 489

[BERC-485-FC]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1989 Rates

In rule document 88-22472, beginning on page 38476 in the issue of Friday, September 30, 1988, make the following correction:

Between FR pages 38616 and 38617, insert page 9 of Table 7A, which was inadvertently omitted in the initial printing:

BILLING CODE 1505-01-M

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 06/88 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
418	11479	8.9684	3	4	7	11	17
419	14208	7.8528	2	4	6	9	15
420	4971	5.8970	2	3	5	7	11
421	11821	5.7451	2	3	4	7	11
422	97	5.3402	1	2	3	7	10
423	6524	11.9093	3	5	8	14	24
424	3384	22.2624	3	7	15	26	44
425	15259	5.3229	2	3	4	8	12
426	11183	8.1590	2	3	6	10	16
427	2059	7.8120	2	3	5	9	16
428	1285	10.4856	1	3	6	13	22
429	31527	11.7737	3	4	7	13	21
430	62101	12.8448	3	5	9	16	27
431	427	9.2108	2	3	6	11	19
432	651	7.1321	1	2	4	8	15
433	5063	5.0660	1	1	3	6	12
434	16057	8.7405	2	3	6	10	20
435	14937	7.7344	2	3	5	8	21
436	4875	15.4888	2	6	15	24	29
437	7934	18.0983	4	9	20	27	30
439	1150	13.0365	1	3	8	17	30
440	7136	17.4113	2	5	12	22	39
441	1134	4.3201	1	1	2	4	9
442	40023	10.2172	1	3	6	13	23
443	17523	5.7158	1	2	4	9	15
444	3527	7.1942	2	3	5	9	14
445	3113	5.1632	1	2	4	5	10
446	1	2.0000	2	2	2	2	2
447	2890	3.7339	1	1	3	5	7
448	1	4.0000	4	4	4	4	4
449	30826	6.3831	2	3	5	8	12
450	13196	4.1022	1	2	3	5	8
451	14	4.8571	1	2	3	4	9
452	25623	7.1609	1	3	5	9	15
453	12296	4.5614	1	2	3	6	9
454	4036	7.2312	1	2	4	8	14
455	1780	4.0365	1	2	3	5	8
456	239	10.0711	1	2	5	10	21
457	140	8.6143	1	1	3	12	23
458	1743	24.7177	5	10	19	32	51
459	947	15.5956	3	6	11	19	33
460	2453	9.5944	2	4	7	12	19
461	9522	4.8649	1	1	2	5	11
462	5360	18.4851	4	8	15	25	36
463	9758	7.2406	2	3	5	9	14
464	4205	4.6942	1	2	3	6	9
465	1082	2.8373	1	1	2	3	5
466	4529	5.3939	1	1	2	6	11
467	7299	8.6845	1	1	3	6	14
468	124202	16.5109	2	6	12	20	33
471	3710	19.6081	10	12	16	23	31

BILLING CODE 1505-01-C

federal register

Monday
October 3, 1988

Part II

Environmental Protection Agency

40 CFR Part 763

Asbestos-Containing Materials in Schools; State Requests for Waivers From Requirements; Notice of Proposed Waiver

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62067, FR-3456-8]

40 CFR Part 763

Asbestos-Containing Materials in Schools; State Requests for Waivers From Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed waiver.

SUMMARY: EPA has received from New Jersey, Connecticut, Illinois, and Rhode Island, requests for waivers from the requirements of 40 CFR Part 763, Subpart E, Asbestos-Containing Materials in Schools. This notice announces an opportunity for public review and comment on the State waiver requests.

DATE: Comments on the waiver requests must be received by December 2, 1988. Each comment must include the name and address of the person submitting the comment.

ADDRESS: Written comments must be sent in triplicate, identified by the docket control number (OPTS–62067) to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street SW., Washington, DC 20460.

Copies of the complete waiver requests submitted by the States are available from the TSCA Public Docket Office. Additionally, copies are on file and may be reviewed at the EPA Regional Office appropriate to the State submitting the request.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M Street SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This notice is issued under the authority of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2641, *et seq.* TSCA Title II was enacted as part of the Asbestos Hazard Emergency Response Act 1986 (AHERA), Public Law 99–519. AHERA is the name commonly used to refer to the statutory authority for EPA's rules affecting asbestos in schools. For purposes of this notice, EPA will use the AHERA designation. In the **Federal Register** of October 30, 1987 (52 FR 41846), EPA issued a final rule as required in AHERA, The Asbestos-Containing Materials in Schools Rule (40 CFR Part 763, Subpart E), which requires all Local Education Agencies (LEAs) to identify asbestos-containing building materials (ACBM) in their school buildings and to take appropriate actions to control the release of asbestos fibers. The LEAs are required to describe their asbestos control activities in management plans, which must be made available to all concerned persons and submitted to the State Governor's Designee. The rule requires LEAs to use specially trained persons to conduct inspections for asbestos, develop the management plans, and design or conduct actions to control asbestos.

The recordkeeping and reporting burden associated with waiver requests was cleared under OMB control number 2070–0091. This notice merely announces the Agency's receipt of waiver requests and therefore imposes no additional burden beyond that which was covered in the existing OMB control number 2070–0091. Send comments regarding the burden estimate or any other aspect of this collecion 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.

Under section 203 of TSCA Title II, EPA may, upon request by a State Governor and after notice and comment and opportunity for a public hearing in the State, waive in whole or in part the requirements of the rule promulgated under section 203, if the State has established and is implementing or intends to implement a program of asbestos inspection and management which is at least as stringent as the requirements of the rule. Section 763.98 of the rule sets forth the procedures to implement this statutory provision. The rule requests specific information be included in the waiver request submitted to EPA, establishes a process for reviewing waiver requests, and sets forth procedures for oversight and rescission of waivers granted to States.

The rule requires States seeking waivers to submit requests to the Regional Administrator for the EPA region in which the State is located. Within 30 days of receiving a waiver request, EPA must determine whether the request is complete. Within 30 days after determining that a request is complete, EPA will issue in the **Federal Register** a notice that announces receipt of the request and solicits written comments from the public. Comments must be submitted within 60 days. If during the comment period EPA receives a written objection to the State's request and a request for a public hearing detailing specific objections to the granting of a waiver, EPA will schedule a hearing to be held in the affected State after the close of the comment period. EPA will issue a notice in the **Federal Register** announcing its decision to grant or deny, in whole or in part, a request for a waiver within 30 days after the close of the comment period or within 30 days following a public hearing.

EPA has conducted a preliminary review to identify areas where the New Jersey, Connecticut, Illinois, and Rhode Island State programs appear to differ from the AHERA requirements. The purpose of the public comment period is to gather more information about each State's program. This information will help EPA determine whether these apparent differences identified in EPA's preliminary review are indeed deficiencies that require action by the State.

This notice is divided into five units. The first four units discuss individually each State's program. Each of these units is divided into three sections. Section A discusses key program elements; section B lists what appears to be differences between the State's program and the AHERA requirements; and section C provides EPA's initial response to the State on the apparent differences. Subsequent information received during the public comment period or in a public hearing may resolve some of the differences listed here or effect some of the EPA responses. The fifth unit discusses other statutory requirements, i.e. the Paperwork Reduction Act.

The New Jersery, Connecticut, Illinois, and Rhode Island waiver requests include the following information:

1. A copy of the provisions of the State program for which the request is made.

2. The name of the State agency that will be responsible for administering and enforcing the program as well as information regarding responsible State officials.

3. Reasons and supporting documentation for concluding that the State program provisions are at least as stringent as the Federal provision.

4. A discussion of any special situations, problems, and needs pertaining to the waiver request accompanied by an explanation of how the State plant to handle them.

5. A statement of the resources devoted to the provisions in the program.

6. Copies of any enabling State laws and regulations relating to the request, including provisions for assessing criminal and/or civil penalties.

7. An assurance from the Governor or appropriate legal counsel that the lead agency or other cooperating agencies have the legal authority to carry out the requirements relating to the request.

I. The New Jersey Program

A. Program Elements

Under the statutory authority of the Asbestos Hazard Management Act, Pub. L. 1984, C. 173 (C. 34:5A–32 *et seq.*), the State of New Jersey has proposed a regulation, Standards of Asbestos Hazard Management, N.J.A.C. 8:58. This proposed regulation would implement a program of asbestos inspection and management for all public and private schools in the State. The Department of Health is the lead agency in this effort with support from a variety of other State agencies. The regulations require:

1. Inspection of all public and private primary and secondary school facilities for the presence of friable and nonfriable ACBM.

2. Asbestos management plan to be submitted to the Department of Health by October 12, 1988.

3. Persons involved in inspections and management plan preparation as well as the design and implementation of abatement activities to be properly accredited.

4. Triannual reinspection and regularly scheduled periodic surveillance.

5. Each LEA to have an Asbestos Program Manager.

6. LEAs to notify building occupants and/or parents annually regarding asbestos activities and the availability of the management plan.

7. Custodial and maintenance workers to be trained.

8. Warning labels to be posted.

9. Compliance and enforcement provisions.

B. Differences between the New Jersey and AHERA Requirements

After a preliminary review of the State's application, no provisions have been identified at this time which appear to be less stringent than the EPA requirements.

C. EPA's Preliminary Response to the New Jersey Plan

Based on EPA's initial review of the New Jersey application, no corrective action is necessary. The proposed State regulation, however, must be made final before EPA will grant the State's waiver request.

II. The Connecticut Program

A. Program Elements

In June 1985, section 10–292a and 10–292b of the Connecticut General Statutes, as amended by Public Act 86–65, became effective. The statute mandated that each public LEA in Connecticut inspect its school facilities for asbestos-containing materials (ACM) and develop asbestos management plans for each facility. LEAs responsible for Connecticut public schools constructed prior to January 1, 1979, submitted Asbestos Management Plans to the State Department of Education (DOE) prior to January 1, 1987. The State Department of Health Services (DHS) reviewed the plans and made recommendations regarding approval to DOE. Forms provided by DOE were used for inspection reports. DHS developed a detailed asbestos decision protocol for the identification and assessment of ACM, including recommended response actions, and an asbestos management program and remediation options guidelines to be used by public LEAs. Regulations promulgated pursuant to this statute require:

1. Inspection of all public schools constructed prior to January 1, 1979, for the identification of friable and nonfriable ACM.

2. Inspections to be conducted by a qualified inspector, defined as an individual who has attended an EPA sponsored program or its equivalent and has demonstrated to the DHS an ability to sample and identify ACM.

3. When asbestos is identified, an asbestos management plan to be developed and prepared by a qualified individual. This individual must have attended an EPA sponsored course in asbestos management or it equivalent as determined by DHS.

4. The asbestos management plan addresses monitoring of ACM, education of building staff, procedures to minimize asbestos fiber release, annual reviews, and a time schedule for implementing actions specified in the plan.

5. Annual updates of the management plan.

6. Periodic visual inspections every 2 months.

7. Each LEA to have a designated person to oversee the LEA's asbestos program.

8. Each school to keep a copy of the asbestos manangement plan in its administrative office.

B. Differences Between the Connecticut and AHERA Requirements

After a preliminary review of the State's application for a waiver of the Federal regulations for public schools only, the following list outlines the major points where the Connecticut regulations appear to differ from AHERA requirements:

1. The number of samples required to be taken to identify ACMs varies from the EPA requirements.

2. Schools constructed after January 1, 1979, are not subject to the State regulations. Additionally, there are no provisions to include buildings brought into the system after the initial inspection.

3. Required training for LEA custodial and maintenance employees does not conform to AHERA's requirements.

4. No provisions are included in the State program for LEAs to notify parent, teacher, and employee organizations about the availability of the management plans.

5. The State regulations do not require posting warning labels in routine maintenance areas where asbestos has been identified.

6. Management plans are not required to be available for inspection.

7. There are differences in accreditation requirements between the State and Federal regulations.

8. Transmission Electron Microscopy (TEM) is not required for abatement clearance.

9. Schools which have no asbestos are not required to submit management plans.

10. Recordkeeping requirements for LEAs and schools differ from AHERA.

11. Methods used for asbestos abatement clearance air monitoring vary from EPA requirements.

12. No triannual reinspections are required.

13. The State enforcement program does not contain the necessary program elements.

C. EPA's Preliminary Response to the Differences Identified

Based on EPA's initial review of the Connecticut application, the following items need to be addressed before May 9, 1989:

1. As a result of different asbestos sampling schemes which were employed during previous inspections, the State, if granted a waiver, must make a determination regarding whether or not the past inspections were done in "substantial compliance" with the current EPA regulations.

2. All public school buildings which are covered under the EPA rules (i.e., schools constructed after January 1, 1979), but not under the State regulations must be inspected and have plans developed. Additionally, provisions must be included to deal with buildings brought into the system after the initial inspections.

3. The State must provide satisfactory assurances that all custodial and maintenance employees will be trained as required by EPA's rules.

4. The State must provide satisfactory assurances that LEAs will provide yearly notification regarding asbestos activities to workers and building occupants, or their legal guardians.

5. The State must provide satisfactory assurances that LEAs will post warning labels in routine maintenance areas where ACBM is located.

6. The State must provide satisfactory assurances that LEAs will make management plans available for public inspection.

7. The State must provide satisfactory assurances that, until the Connecticut accreditation programs are approved by EPA, only properly accredited asbestos professionals who have received accreditation from an EPA-approved program may be used by LEAs for inspections, management plan development, abatement project design, and implementation.

8. The State must provide satisfactory assurances that provisions for phasing in TEM requirements for abatement clearance sampling will be adopted.

9. Schools which have been found not to contain ACBM must still file a management plan with the State and follow the notification requirements.

10. The State must provide satisfactory assurances that the recordkeeping requirements of the EPA rules will be implemented by the LEAs.

11. Asbestos abatement clearance air sampling must be done in accordance with EPA requirements.

Based on EPA's initial review of the Connecticut application, the following items must be resolved prior to the date required by law. As noted below, each item has a specific timeframe for when actions are required. The State would be required to have these specific program elements in place on or before the time the provisions are effective.

1. The State must implement a plan which provides for schools to be reinspected every 3 years. This reinspection must conform with the requirements of the EPA rules. Additionally, this requirement must be effective based on the date which the LEA began implementation of its management plan.

2. Sampling schemes must be upgraded to AHERA standards for all future inspections.

3. If the State identifies any deficiencies in the types of materials inspected during previous inspections, these deficiencies must be resolved during the next scheduled reinspection.

4. Although the State has enforcement authority, the program must be upgraded. In particular, the areas of routine compliance inspections and assessing penalties must be improved. The State must have an enforcement mechanism in place to address the immediately enforceable requirements of the EPA rules. However, the State may revise the balance of its enforcement program according to a schedule which ensures that program elements are enforceable as they become effective.

III. The Illinois Program

A. Program Elements

In September 1986, the Illinois Asbestos Abatement Act was amended by Public Act 84–1346. Under this statute, the State of Illinois arranged for the inspections of schools for friable asbestos materials. The inspections were conducted between April 1, 1986, and September 11, 1987. The program of inspections affected 1,337 of the State's more than 7,000 school facilities. The program has since stopped conducting inspections of schools. The State's current program activities involve quality assurance investigations of previous inspections. The State acknowledges that an inspection for nonfriable forms of asbestos will have to be completed by each of the 1,337 previously inspected schools and that those schools which were not inspected under this program will have to be inspected for all ACBM.

A portion of the State's schools were inspected for the presence of friable asbestos materials. All categories of buildings covered under AHERA were included in the inspection. The State is only seeking a partial waiver applicable to inspection requirements of the rule.

B. Differences Between The Illinois and AHERA Requirements

After a preliminary review of the State's application, the following list outlines the major points where the Illinois regulations differ from AHERA requirements.

1. The program run by the State is not an ongoing effort as required under 40 CFR 763.98.

2. The State program includes only inspection requirements and no asbestos management activities as required under section 203(m) of TSCA Title II.

C. EPA's Preliminary Response to the Difference Identified

Based on EPA's initial review of the Illinois application, the State must, before May 9, 1989, reinstitute its inspection program, and include regulations which are at least as stringent as the EPA rules for the management of friable ACBM.

IV. The Rhode Island Program

A. Program Elements

In July 1985, Chapter 23–24.5 of the General Laws of Rhode Island became effective. The statute required that the Rhode Island Department of Health (DOH) undertake inspections of high priority group buildings, which included public and private school buildings. All Rhode Island public and private schools were inspected by DOH personnel by September 1987. DOH used a numerical algorithm to rate the hazard posed by a particular type of ACM in a given area. The ratings assigned to each area were intended to be used as a basis for allocating State abatement funds. DOH did not establish recommended or required abatement actions based on the numerical ratings. Pursuant to the Statutory authority, DOH promulgated regulations (January 1986 and August 1986) which require:

1. The submission of an asbestos abatement plan by the building owner if the DOH inspection identifies material containing equal to or greater than 1 percent asbestos. Upon DOH notice, the building owner has 120 days to submit the asbestos abatement plan.

2. The asbestos abatement plan includes: bulk and air sampling information; blueprints or floor plans; an operations and maintenance program which addresses the monitoring of ACM; the education of maintenance staff; actions to minimize fiber release and the potential of human exposure to asbestos; and a description of abatement actions.

B. Differences Between the Rhode Island and AHERA Requirements

After a preliminary review of the State's application, the following list outlines the major points where the Rhode Island regulations differ from AHERA requirements.

1. The number of samples required to be taken to identify ACM is less than the EPA requirements.

2. No provisions are included to deal with buildings brought into the system after the initial inspections.

3. Some schools are not required to submit management plans.

4. Required training for LEA custodial and maintenance employees does not conform to AHERA requirements.

5. There are no provisions for LEAs to provide yearly notification regarding asbestos activities to workers and building occupants, or their legal guardians.

6. Warning labels are not required.

7. Management plans are not required to be available for inspection.

8. There are differences in accreditation requirements between the State and EPA regulations.

9. There are no provisions for phasing in TEM requirements for abatement clearance sampling.

10. Recordkeeping requirements for LEAs and schools differ from AHERA.

11. Methods of laboratory identification of asbestos vary from EPA requirements.

12. Asbestos abatement clearance air sampling is not required to be done in accordance with EPA requirements.

13. No triannual reinspections are required.

14. Friable asbestos was not assessed according to EPA requirements.

15. Periodic surveillance every 6 months is not required.

16. No provisions are included to notify short-term workers about the location of asbestos.

C. EPA's Preliminary Response to the Differences Identified

Based on EPA's initial review of the Rhode Island application, the following items need to be addressed before May 9, 1989:

1. As a result of different asbestos sampling schemes and inspector training requirements which were employed during the initial inspections, the State, if granted a waiver, must make a determination regarding whether or not the past inspections were done in "substantial compliance" with the current EPA regulations.

2. All buildings which are covered under EPA rules (i.e., administrative and maintenance buildings), but not under the State regulations must be inspected and have plans developed. Additionally, provisions must be included to deal with buildings brought into the system after the initial inspections.

3. Management plans must be submitted to the State by all schools. Schools which have no ACBM must still submit plans and follow the notification requirements.

4. The State must provide satisfactory assurances that all LEA custodial and maintenance employees will be trained as required by EPA's rules.

5. The State must provide satisfactory assurances that LEAs will provide yearly notification regarding asbestos activities to workers and building occupants, or their legal guardians.

6. The State must provide satisfactory assurances that LEAs will post warning labels in routine maintenance areas where ACBM is located.

7. The State must provide satisfactory assurances that LEAs will make management plans available for public inspection.

8. The State must provide satisfactory assurances that, until Rhode Island accreditation programs are approved by EPA, only properly accredited asbestos professionals who have received accreditation from an EPA-approved program may be used by LEAs for inspections, management plan development, abatement project design, and implementation.

9. The State must provide satisfactory assurances that provisions for phasing in TEM requirements for abatement clearance sampling will be adopted.

10. The State must provide satisfactory assurances that the recordkeeping requirements of the EPA rules will be implemented by the LEAs.

11. Identification of asbestos materials must be done by a laboratory which has interim accreditation in EPA's bulk sample analysis program.

12. Asbestos abatement clearance air sampling must be done in accordance with EPA requirements.

13. Past management plans must be updated to conform with the assessment provisions of the EPA rules.

Based on EPA's initial review of the Rhode Island application, the following items must be resolved prior to the date required by law. As noted below, each item has a specific timeframe for when actions are required. The State would be required to have these specific program elements in place on or before the time the provisions are effective.

1. The State must implement a plan which provides for schools to be reinspected every 3 years. This reinspection must conform with the requirements of the EPA rules. Additionally, this requirement must be effective based on the date which an LEA began implementation of its management plan.

2. Sampling schemes must be upgraded to EPA standards for all future inspections.

3. All future inspections must include assessment of ACBM as required by the EPA rules.

4. All LEAs which have buildings with ACBM must be required to implement a program of periodic surveillance every 6 months.

5. If the State identifies deficiencies in the types of materials inspected during the past inspections, these deficiencies must be resolved during the next scheduled reinspection.

6. The State must provide assurances that LEAs will be required to notify short-term workers about the location of asbestos.

V. Other Statutory Requirements

Paperwork Reduction Act

The reporting and recordkeeping provisions relating to States waivers, from the requirements of the Asbestos-Containing Materials in Schools Rule (40 CFR Part 763), have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, and have been assigned OMB control number 2070–0091.

Dated: September 22, 1988.

Susan F. Vogt,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88–22488 Filed 9–30–88; 8:45 am]

BILLING CODE 6560–50–M

federal register

Monday
October 3, 1988

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203 etc.

Single Family Mortgage Insurance Programs Occupant and Investor Mortgagors; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 213, 220, 221, 222, 226, 233, 234, and 235

[Docket No. R-88-1381; FR-2456]

Single Family Mortgage Insurance Programs Occupant and Investor Mortgagors

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

ACTION: Proposed rule.

SUMMARY: This rule would implement section 406 of the Housing and Community Development Act of 1987. Section 406(a) establishes a new section 203(g) of the National Housing Act. Section 203(g)(1) authorizes HUD (1) to insure single family mortgages under title II of the National Housing Act, or (2) to approve substitute mortgagors for single family mortgages insured under title II, only if the mortgagor is to occupy the dwelling as a principal residence or a secondary residence, as determined by HUD

Section 203(g)(2) provides that this occupancy requirement only applies if the mortgage involves a principal obligation that exceeds 75 percent of the loan-to-value ratio or equivalent calculation under the insuring authority involved. Section 203(g)(3) exempts from the occupancy requirement certain special mortgagors, including mortgagors under the Rehabilitation Loan Insurance program under section 203(k) of the National Housing Act, and certain public entity, nonprofit, serviceperson, and other mortgagors under various National Housing Act authorities.

Section 406(b) contains a number of "conforming amendments" that are designed to give effect to section 203(g) throughout title II of the National Housing Act. Sections 406 (d) and (e) provide that section 203(g) and the "conforming" changes made by section 406(b) will have prospective application only.

DATES: Comment due date: December 2, 1988.

ADDRESS: HUD invites interested persons to submit comments to the Office of General Counsel; Rules Docket Clerk; Room 10276; Department of Housing and Urban Development; 451 Seventh Street SW.; Washington, DC 20410-0500. Comments should refer to the docket number and title. A copy of each comment received will be available for public inspection and copying during regular business hours at this address.

FOR FURTHER INFORMATION CONTACT: Steven J. Martin; Director, Office of Insured Single Family Housing; Room 9226; Department of Housing and Urban Development; 451 Seventh Street SW.; Washington, DC 20410-8000; telephone (202) 755-3046. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0059. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Findings and Certifications.* Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Statutory Basis

This rule would implement section 406 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988.) (the 1987 Act). Section 406(a) establishes a new section 203(g) of the National Housing Act (NHA). Section 203(g)(1) authorizes HUD (1) to insure single family mortgages under title II of the NHA, or (2) to approve substitute mortgagors for single family mortgages insured under title II, only if the mortgagor is to occupy the dwelling as a principal residence or a secondary residence, as determined by HUD. (Section 203(g)(4) defines "substitute mortgagor" to mean a person who, upon the release by a mortgagee of a previous mortgagor from personal liability on the mortgage note, assumes this liability and agrees to pay the mortgage debt.)

Sections 203(g)(2) and (3) contain modifications to section 203(g)(1)'s occupancy limitation. Subsection (g)(2) provides that the occupancy requirement applies, only if the mortgage involves a principal obligation that exceeds 75 percent of the loan-to-value ratio or comparable limitation under the insuring authority involved. Subsection (g)(3) exempts from the occupancy requirement the following mortgagors (or co-mortgagors, as appropriate):

a. The Alaska Housing Authority, and the Governments of Guam and Hawaii, or any agency or instrumentality thereof, under section 214 of the NHA (Insurance of Mortgages on Property in Alaska, Guam, and Hawaii);

b. The Department of Hawaiian Home Lands under section 247 of the NHA (Mortgage Insurance on Hawaiian Home Lands);

c. A private nonprofit or public entity, as provided by section 221(h) or 235(j) of the NHA (insurance of mortgages executed by nonprofit organizations (and public entities, in the case of section 235(j)) to finance the purchase or rehabilitation of deteriorating or substandard housing for subsequent resale to low-income home purchasers);

d. A serviceperson whose inability to meet the occupancy requirement stems from his or her duty assignment, as provided by sections 216 (Waiver of Occupancy Requirements for Servicemen) and 222 (Mortgage Insurance for Servicemen) of the NHA;

e. An Indian tribe, as provided in section 248 of the NHA (Mortgage Insurance on Indian Reservations); or

f. A participant in the Rehabilitation Loan Insurance program under section 203(k) of the NHA.

Section 406(b) of the 1987 Act contains a number of "conforming" amendments that are designed to give effect to the new section 203(g) throughout the various single family insuring authorities in title II of the NHA. Sections 406(d) and (e) of the 1987 Act give the provisions of section 203(g) and section 406(b)'s "conforming" changes prospective effect only.

Section 406(c) of the 1987 Act repealed HUD's mortgage insurance authority for seasonal homes. This provision has been implemented by separate rule making. (See 52 FR 8874, published March 18, 1988.)

Definitions: Principal Residence and Secondary Residence

The rule would define "principal residence" and "secondary residence" as follows. "Principal residence" would mean the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode and typically spends (or will spend) the majority of the calendar year. "Secondary

residence" would mean the dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A mortgagor may not have more than one principal and one secondary residence at any one time.

These definitions are designed to provide general, non-technical guidance for the Department's program users. Where the insured loan is intended to finance the only residence to be owned by the mortgagor, the definitions are relatively uncomplicated: the issue is whether the dwelling should be classified as a principal or secondary residence. Where, however, the insured loan is to finance the mortgagor's second residence, the Department must assure itself that the prospective mortgagor does not already own the type of residence for which he or she seeks HUD mortgage insurance.

It should be noted that in determining how a residence should be classified, the Department would not apply the "calendar year" test in literal fashion, by simply adding up the number of days that a prospective mortgagor may have lived at a residence over the past year. The Department recognizes that use of a residence may vary over time, depending on factors such as illness or temporary assignments away from home. Thus, the Department would consider the "typical" usage over time (or where this is not practicable, other evidence of the nature of the abode) to determine whether the other property qualifies as a secondary or principal residence.

Overall Interpretation of Section 406 of the 1987 Act

The Department believes that sections 203(g)(1) and (2) of the NHA establish the following requirement: HUD may insure a single family mortgage under title II of the NHA with a loan-to-value (LTV) or comparable limitation above 75 percent, *only if* the mortgagor is to occupy the dwelling as a principal or secondary residence. Stated differently, these provisions divide title II single family mortgagors into two general classes—investor mortgagors and those who will occupy the property as a principal or secondary residence—with investor mortgages having a maximum LTV ratio of 75 percent.

Thus, in the Department's view, section 203(g) imposes a limit *only* on the maximum mortgage amount for investor mortgagors. The provision does *not* require HUD to make mortgage insurance available for any class of mortgages, such as mortgages covering properties in older, declining urban areas or for disaster victims. It does *not* require HUD to make mortgage insurance available for any class of mortgagors—principal or secondary residence mortgagors, or investor mortgagors. Further, it does *not* prescribe maximum LTV or comparable ratios for mortgages for principal or secondary residences.

In the Department's view, all of these determinations are left to the statutory provisions governing the specific single family insuring authorities of title II—provisions that generally confer considerable amounts of discretion on the Department and frame their requirements in terms of outer parameters, rather than prescriptive dictates.

As noted above, section 406(b) of the 1987 Act contained a number of "conforming" amendments to the NHA. These amendments had two primary purposes: (1) To remove owner-occupant requirements for mortgage insurance throughout the NHA; and (2) to impose section 203(g)'s LTV and comparable limitations for investor mortgagors on other title II insuring authorities that provided for insurance without regard to the NHA's "eligibility" requirements.

Removal of owner-occupant requirements throughout the NHA generally had the effect of leaving to HUD's discretion the classes of mortgagors (investor, or principal or secondary residence) eligible for insurance under the program involved. Similarly, subjecting other single family authorities to section 203(g)'s "eligibility" requirement had the effect of imposing a LTV limit on investor mortgagors, but left to HUD discretion the determination of the classes of mortgages and mortgagors that would be eligible for mortgage insurance under the provisions involved.

Classes of Mortgagors for Single Family Insuring Authorities

The following chart indicates the mortgagors who would be eligible to participate in each of the Department's single family mortgage insuring authorities.

Program	Principal resident mortgagor	Secondary resident mortgagor	Investor mortgagor	Substitute mortgagor
Part 203:				
Basic home mortgage. (§§ 203.18(a) and (c)).	Yes	Yes	Yes	Principal, secondary, investor.
Special LTV for modestly priced homes. (§ 203.18(a)(3)(i)).	Yes	No	No	Principal, secondary, investor.
Outlying area properties. (§ 203.18(d)).	Yes	Yes	Yes	Principal, secondary, investor.
Disaster victims. (§ 203.18(e)).	Yes	No	No	Principal, secondary, investor.
Alaska, Hawaii, Guam. (§ 203.39).	Yes (public entity mortgagors can obtain insurance without regard to any principal/secondary residence occupancy requirement/without regard to any LTV limitation because of failure to meet this occupancy requirement).	Yes (public entity mortgagors can obtain insurance without regard to any principal/secondary residence occupancy requirement/without regard to any LTV limitation because of failure to meet this occupancy requirement).	Yes	Principal, secondary, investor.

Program	Principal resident mortgagor	Secondary resident mortgagor	Investor mortgagor	Substitute mortgagor
Military service mortgagors. (§ 203.31).	Yes (serviceperson mortgagors can obtain insurance without regard to any principal/secondary residence occupancy requirement and without regard to any LTV limitation because of failure to meet this occupancy requirement).	No	No	Principal, secondary, investor.
Refinancing mortgages. (§ 203.43a(c)).	Yes	Yes	Yes	Principal, secondary, investor.
Property disposition sales mortgages. (§ 203.43(k)).	Yes	Yes	Yes	Principal, secondary, investor.
Cooperative units. (§ 203.43c).	Yes	Yes	Yes	Principal, secondary, investor.
Indian land claims. (§§ 203.43d, 203.43g, and 203.43j).	Yes	No	No	Principal, secondary, investor.
Older decling areas. (§ 203.43a).	Yes	Yes	Yes	Principal, secondary, investor.
Federally impacted areas. (§ 203.43e).	Yes	Yes	Yes	Principal, secondary, investor.
Manufactured homes. (§ 203.43f).	Yes	Yes	Yes	Principal, secondary, investor.
Indian land. (§ 203.43h).	Yes	No	No	Principal only.
Hawaiian homelands. (§ 203.43i).	Yes	No	No	Principal only.
Graduated payment mortgages. (§ 203.45 and for substitute mortgagors, § 203.46).	Yes	No	No	Principal, secondary, investor.
Adjustable rate mortgages. (§ 203.49).	Yes	No	No	Principal, secondary, investor.
Growing equity mortgages. (§ 203.47).	Yes	Yes	Yes	Principal, secondary, investor.
Rehabilitation loans. (§ 203.50).	Yes	Yes	Yes	Principal, secondary, investor.
Part 213, Subpart C:				
Basic cooperative housing mortgage insurance. (Subpart C).	Yes	Yes	Yes	Principal, secondary, investor.
Older, declining areas. (§ 213.550).	Yes	Yes	Yes	Principal, secondary, investor.
Part 220:				
Basic home mortgage. (§ 220.30).	Yes	Yes	Yes [1]	Principal, secondary, investor.
Part 221:				
Basic authority. (§ 221.20).	Yes	Yes	Yes	Principal, secondary, investor.
Low-income homeowners. (§ 221.60).	Yes	No	No	Principal, secondary, investor.
Low- and moderate-income purchasers of condominium units. (§ 221.65).	Yes	No	No	Principal, secondary, investor.
Part 222:				
Servicemen's mortgage insurance..	Yes	No	No	Principal, secondary, investor.
Part 226:				
Armed services housing for civilian employees.	Yes	No	No	Principal, secondary, investor.
Part 233:				
Experimental housing.	Yes	Yes	Yes	Principal, secondary, investor.
Part 234:				
Basic authority. (§ 234.27).	Yes	Yes	Yes	Principal, secondary, investor.

Program	Principal resident mortgagor	Secondary resident mortgagor	Investor mortgagor	Substitute mortgagor
Alaska, Guam, and Hawaii. (§ 234.49).	Yes (public entity mortgagors can obtain insurance without regard to any principal/secondary residence occupancy requirement/without regard to any LTV limitation because of failure to meet this occupancy requirement).	Yes (public entity mortgagors can obtain insurance without regard to any principal/secondary residence occupancy requirement and without regard to any LTV limitation because of failure to meet this occupancy requirement).	Yes	Principal, secondary, investor.
Military service mortgagors. (§ 234.51).	Yes (serviceperson mortgagors can obtain insurance without regard to any principal/secondary residence occupancy requirement and without regard to any LTV limitation because of failure to meet this occupance requirement).	No	No	Principal, secondary, investor.
Refinancing mortgagors. (§ 234.52).	Yes	Yes	Yes	Principal, secondary, investor.
Older, declining areas. (§ 234.68).	Yes	Yes	Yes	Principal, secondary, investor.
Federally impacted areas. (§ 234.69).	Yes	Yes	Yes	Principal, secondary, investor.
Graduated payment mortgages. (§ 234.75 and for substitute mortgagors, § 234.76).	Yes	No	No	Principal, secondary, investor.
Adjustable rate mortgage. (§ 234.79).	Yes	No	No	Principal, secondary, investor.
Growing equity mortgages. (§ 234.77).	Yes	Yes	Yes	Principal, secondary, investor.
Part 235: Homeownership assistance.	Yes	No	No	Principal, secondary, investor.

[1] Investor mortgagors may participate only if the insured financing covers property that is to be built or acquired and rehabilitated for resale to a qualified principal or secondary resident mortgagor.

a. Principal Residents, Secondary Residents, and Investors.

All three classes of mortgagors—investor mortgagors and those who would occupy the dwelling as principal or secondary residences—would be eligible to participate in the following programs:

1. Basic home mortgage insurance (Parts 203, 220, and 221);

2. Basic condominium unit mortgage insurance (Part 234);

3. Mortgage insurance for outlying properties (§ 203.18(d));

4. Mortgage insurance in federally impacted areas (§§ 203.43e and 234.69);

5. Manufactured home mortgage insurance (§ 203.43f);

6. Insured refinancing (§§ 203.43a(c) and 234.52);

7. Property disposition sales mortgage insurance (§ 203.43(k));

8. Rehabilitation loan insurance (§ 203.50);

9. Growing equity mortgage (GEM) insurance (§§ 203.77 and 234.77);

10. Cooperative unit insurance (Part 213, Subpart C, and § 203.43c);

11. Experimental housing insurance (Part 233), and

12. Mortgage insurance in older, declining urban areas (§§ 203.43a, 213.550, and 234.68).

The rule would not change the availability of mortgage insurance under these authorities: They would remain available to investor mortgagors, as well as those who would occupy the property as a principal or secondary residence. The rule would, however, make the eligibility of secondary residence mortgagors explicit for each of these authorities, consistent with section 203(g)(1) of the NHA.

b. Principal residence only.

Only mortgagors who would occupy the property as a principal residence would be eligible to participate in the following authorities:

1. The special LTV ratios for homes with appraised values of $50,000 or less (§ 203.18(a)(2)(i));

2. Disaster victim mortgage insurance (§ 203.18(e));

3. Indian land claims mortgage insurance (§§ 203.43d, 203.43g, and 203.43j);

4. Graduated payment mortgage (GPM) and adjustable rate mortgage (ARM) insurance (§§ 203.45 and 234.75, and §§ 203.49 and 234.79, respectively);

5. Income-tested homeownership programs under §§ 221.60 and 221.65, and Part 235;

6. Indian land and Hawaiian Home Lands insurance (§§ 203.43h and 203.43i);

7. Serviceperson's mortgage insurance (§§ 203.31 and 234.51 and Part 222); and

8. Insurance for armed forces housing for civilian employees (Part 226).

Items 1., 2., 3., and 8. provide more favorable treatment for participating mortgagors. Item 1. provides a higher LTV ratio for modestly priced homes: 97 percent up to $50,000 appraised value, as opposed to the normal 97 percent of the first $25,000 and 95 percent of the second $25,000. Item 2. provides up to a 100 percent LTV ratio for disaster victims. Item 3. makes mortgage insurance available in areas where Indian land claims make FHA insurance otherwise unavailable. Item 8. provides special treatment for armed forces-related housing.

The Department believes that the special benefits of each of these authorities should be limited to mortgagors who will occupy the property as a principal residence. The special features of each of these

programs involve increased risk of mortgage default, and therefore, increased financial exposure to the Department. The Department believes that principal residence mortgagors have the greatest and most immediate interest in ensuring that the property is maintained and that mortgage payments are kept current, and that they would, therefore, be in the best position to mitigate the Department's exposure. Thus, the rule would reserve the benefits of these special provisions for those who will occupy the property as a principal residence.

The rule would also limit two of the Department's alternative mortgage instruments—GPMs and ARMs—to principal residence mortgagors. As with the special provisions discussed above, GPMs have the capacity to increase the Department's financial risk. Limiting them to principal residence mortgagors would help reduce this risk. The Department believes that ARMs should be reserved for owner-occupants because of the statutory limit on the number of ARMs that may be insured each year.

To the extent the Department has the authority, we believe that it would be inappropriate to make available homeownership assistance to investors and secondary residence mortgagors. Housing assistance, limited as it is, should be reserved for principal residence mortgagors.

Finally, insurance under items 6. and 7. (Part 222) is limited to principal residents by statute. Although section 203(g)(3) exempts mortgage insurance for servicepersons from section 203(g)(1)'s occupancy requirement, the Department proposes to limit this authority to principal resident mortgagors, in order to maintain consistency with the mortgage insurance offered under Part 222.

c. Special mortgagors.

As noted above, section 203(g)(3) exempts a number of mortgagors from the investor loan limitation of sections 203(g) (1) and (2). This special provision includes the Alaska Housing Authority, and the governments of Guam and Hawaii, and any of their agencies or instrumentalities (§§ 203.29 and 234.49); nonprofit or public entity mortgagors under sections 221(h) and 235(j) of the NHA; and rehabilitation loan mortgagors under § 203.50.

Regulatory changes are needed to implement section 203(g)(3) for the Alaska, Hawaii, and Guam authority. As noted below, the Department would specify a LTV ratio for all rehabilitation mortgagors.

For the Alaska, Guam, Hawaii authority, the Department has determined that section 203(g)(3)'s reference to the inapplicability of section 203(g)(1)'s occupancy requirement has two effects. First, it would permit these mortgagors to occupy a dwelling without regard to any principal or secondary residence occupancy requirement. This would be in keeping with the literal meaning of section 203(g)(3)'s reference to section 203(g)(1).

The Department also believes that the reference should be interpreted as permitting occupancy in covered housing without the lower LTV ratio associated with investor mortgagors. The Department believes that this conclusion flows naturally from the overall effect of section 203(g), which (as noted above) is basically a LTV limitation on "non-occupant" mortgagors. This interpretation would, in the Department's view, give full effect to section 203(g)(3)'s exemption from the otherwise applicable requirements of section 203(g).

d. Substitute Mortgagors.

Substitute mortgagors (as defined above) could generally be investors, or principal or secondary residents, for each of the authorities described in paragraphs a. and b. of this Section. This would be so, even where only principal resident mortgagors would qualify for the initial insured loan.

In most cases, the special purpose of the insuring authority that limited it originally to principal residents would not continue to future assumptors. For example, the disaster victim insurance authority (§ 203.18(e)) serves its purpose when its more favorable LTV provisions assist the victim to regain his or her residence: The nature of a subsequent assumptor would be of little interest to HUD (provided, of course, the assumptor meets all other applicable requirements). Similarly, once a serviceperson has achieved homeownership under Part 222, the Department has little interest in the identity of a later assumptor. In addition, limiting the availability of mortgage insurance for assumptors to principal residents could affect the saleability of the property, and thereby jeopardize the Department's financial exposure.

However, the Indian and Hawaiian mortgage insurance authorities under sections 247 and 248 of the NHA, respectively, would be restricted to principal residence mortgagors for purposes of *both* initial mortgage insurance *and* a future substitute mortgagor. These authorities are designed to assist Indian and Hawaiian mortgagors achieve homeownership. To the extent that the Department would have authority to permit secondary residents and investors to participate in these programs, their fundamental purpose of making mortgage insurance available to these special classes of mortgagors would be undermined.

Loan-to-Value Ratios

The Department proposes to institute a 75 percent LTV ratio (or comparable cost or value estimate under the program involved) for investor mortgagors under the programs specified in the above chart as permitting this type of occupancy. This level is the maximum permissible under section 203(g)(2) of the NHA, and should be adequate to limit the incidence of insurance claims against the Department under the authorities involved.

Mortgagors of secondary residences would have a uniform 85 percent provison. This amount reflects current practice with respect to secondary resident mortgagors.

The Department also proposes an 85 percent factor for both secondary and investor mortgagors under the rehabilitation loan insurance program (§ 203.50). As noted above, section 203(g)(3) of the NHA exempts investor mortgagors under this program from the 75 percent limitation. The 85 percent figure is the current LTV for rehabilitation mortgagors, and the Department believes that this level is appropriate in light of the programmatic and actuarial considerations for the program. For principal resident mortgagors, the LTV for the rehabilitation loan insurance program (Section 203(k) of the NHA) would be the same as that for principal mortgagors under the Section 203(b) program.

Section 203(g)(1) authorizes the Department to approve substitute mortgagors who would occupy the property as a principal or secondary residence. The LTV considerations for these occupancies would be determined under the program involved.

The statute limits, however, the principal loan amount for investor substitute mortgagors to 75 percent of the appropriate value or cost amount. For purposes of calculating this LTV limitation, the proposed rule would determine the value or comparable determination as of the date that the mortgage was *originally* accepted for insurance. To the extent that the principal amount of the loan to be assumed exceeds the 75 percent limitation, the investor mortgagor would

be required to "pay down" the mortgage to at least this level. The Department believes that this approach is necessary to ensure that substitute investor mortgagors have an adequate financial investment in the property to safeguard the Department's financial exposure.

Applicability

Consistent with section 406(d) of the 1987 Act, the rule provides that the amendments made by section 203(g) of the NHA and the "conforming amendments effected by section 406(b) of the 1987 Act apply to mortgages insured:

a. Pursuant to a conditional commitment or a master conditional commitment issued by HUD, or a certificate of reasonable value (CRV) or a master CRV issued by the VA, on or after February 5, 1988 (the effective date of the 1987 Act); or

b. In accordance with the direct endorsement program (24 CFR 203.163), if the approved underwriter of the mortgagee signs the appraisal or master appraisal report for the property on or after February 5, 1988.

These amendments would apply to substitute mortgagors, only if the original mortgage was subject to the changes brought about by section 203(g) of the NHA and section 406(b) of the 1987 Act.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would 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 government agencies, or geographic regions; or (3) have 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.

In accordance with the provisions of 5 U.S.C. 605(b), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. This rule implements a congressional mandate that changes the LTV ratios for nonoccupant mortgagors and makes available financing on owner-occupant terms for occupants of secondary residences. Both of these changes are modest, and are not likely to have much economic effect on small entities.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 203.31(a)(2) and 234.51(b) of this proposed rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Tabulation of Annual Reporting Burden Proposed Rule—Single Family Mortgage Insurance Program Occupant and Investor Mortgagors

Description of information collection	Section 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Mortgagor Notice of Intent to satisfy occupancy requirement upon discharge from military. (2501-0059).	24 CFR 203.31(a)(2), 234.51(b).	1,353,334	1	1,353,334	0.005	6,766.67
Total Burden Hours						6,766.67

This rule was listed in the Department's Semiannual Agenda of Regulations published on April, 25, 1988 (53 FR 13854, 13875) under Executive Order 12291 and the Regulatory Flexibility Act at Sequence Number 940.

The Catalog of Federal Domestic Assistance program numbers are sections 14.103, 14.108, 14.110, 14.115, 14.117, 14.119, 14.120, 14.121, 14.123, 14.133, 14.165, 14.166, 14.172, and 14.175.

List of Subjects

24 CFR Part 203

Home improvement, Loan programs: housing and community development; Mortgage insurance, Solar energy.

24 CFR Part 213

Mortgage insurance, Cooperative.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs: housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 222

Condominiums, Military personnel, Mortgage insurance.

24 CFR Part 226

Government employees, Mortgage insurance, Single family housing.

24 CFR Part 233

Loan programs: housing and community development, Mortgage insurance, Experimental housing, Projects.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

Accordingly, 24 CFR Parts 203, 213, 220, 221, 222, 226, 233, 234, and 235 would be amended to read as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for Part 203 would continue to read as follows:

Authority: Sections 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C is also issued under section 230, National Housing Act (12 U.S.C. 1715u).

2. In § 203.18, the introductory language in paragraphs (a), (a)(2), and (a)(3) would be revised; paragraphs (c), (d), (e)(1) and (f) would be revised; and new paragraph (a)(4) would be added, to read as follows:

§ 203.18 Maximum mortgage amounts.

(a) *Mortgagors of principal or secondary residences.* A mortgage executed by a mortgagor who is to occupy the property as a principal residence or a secondary residence (as these terms are defined in paragraph (f) of this section) may not exceed the lesser of the amounts specified in paragraphs (a) (1) and (2), (a) (1) and (3), or (a) (1) and (4) of this section (whichever applies), as follows:

* * * * *

(2) *Loan-to-value limitation—principal residences—no approval before construction.* If the mortgage covers a dwelling that is to be occupied as a principal residence (as defined in paragraph (f)(1) of this section) and that is not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, unless the dwelling:

* * * * *

(3) *Loan-to-value limitation—principal residences—approval before construction.* If the mortgage covers a dwelling that is to be occupied as a principal residence (as defined in paragraph (f)(1) of this section) and that is approved for mortgage insurance before the beginning of construction, or that meets one of the alternative conditions listed in paragraph (a)(2) of this section, the following loan-to-value ratios apply:

* * * * *

(4) *Loan-to-value limitation—secondary residences.* If the mortgage covers a dwelling that is to be occupied as a secondary residence (as defined in paragraph (f)(2) of this section), the loan-to-value ratio may not exceed 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

* * * * *

(c) *Mortgagors of dwellings that are not principal or secondary residences.* A mortgage executed by a mortgagor who is not to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in paragraph (f) of this section) may not exceed the lesser of:

(1) The applicable dollar limitation under paragraph (a)(1) of this section or

(2) 75 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(d) *Outlying area properties.* A mortgage covering a single family residence that is located in an area in which the Commissioner finds that it is not practicable to obtain conformity with many of the requirements essential to the insurance of mortgages in built-up, urban areas; or a mortgage covering a single family dwelling that is to be used as a farm home on a plot of land that is two and one-half or more acres in size and adjacent to an all-weather public road, may not exceed:

(1) In the case of a mortgagor who is to occupy the dwelling as a principal residence (as defined in paragraph (f)(1) of this section):

(i) 75 percent of the dollar limitation on the principal obligation for a one-family residence under paragraph (a)(1)(i) of this section. This limit may be increased by up to 20 percent, if necessary to account for the increased cost of the residence due to the installation of a solar energy system, as defined in § 203.18a(b).

(ii) 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, if:

(A) The Commissioner approved the dwelling for insurance before the beginning of construction; or

(B) Construction was completed more than one year before the date of the application for insurance; or

(C) The Administrator of Veterans Affairs approved the dwelling for guaranty, insurance, or direct loan before the beginning of construction.

(iii) If the property does not meet the requirements of paragraph (d)(1)(iii) of this section, 90 percent of the appraised value of the property as of the date the mortgate is accepted for insurance.

(2) In the case of a mortgagor who is to occupy the dwelling as a secondary residence (as defined in paragraph (f)(2) of this section):

(i) The amount permitted in paragraph (d)(1)(i) of this section, or

(ii) 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(3) In the case of a mortgagor who is not to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in paragraph (f) of this section):

(i) The amount permitted in paragraph (d)(1)(i) of this section, or

(ii) 75 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(e) *Disaster victims.*

* * * * *

(1) The mortgage is executed by a mortgagor who is to occupy the dwelling as a principal residence (as defined in paragraph (f)(1) of this section);

* * * * *

(f) *Definitions.* As used in this section:

(1) "Principal residence" means the dwelling where the mortgagor:

(i) Maintains (or will maintain) his or her permanent place of abode and

(ii) Typically spends (or will spend) the majority of the calendar year.

A person may have only one principal residence at any one time.

(2) "Secondary residence" means the dwelling where the mortgagor:

(i) Maintains (or will maintain) a part-time place of abode and

(ii) Typically spends (or will spend) less than the majority of the calendar year.

A person may have only one secondary residence at any one time.

3. In § 203.29, paragraph (c) would be revised to read as follows:

§ 203.29 Eligible mortgages in Alaska, Guam, or Hawaii.

* * * * *

(c) If the Alaska Housing Authority, or the Government of Guam or Hawaii, or any agency or instrumentality thereof, is the mortgagor or the mortgagee, or if the mortgagor is regulated or restricted as to rents of sales, charges, capital structure, rate of return, and methods of operation to such an extent and in such manner as the Commissioner determines advisable to provide reasonable rental and sales prices and a reasonable return on the investment, any mortgage otherwise eligible for insurance under this subpart may be insured:

(1) In any case where the Alaska Housing Authority, or the government of Guam or Hawaii, or any agency or instumentality thereof, is the mortgagor, without regard to any requirement that the mortgagor occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in § 203.18(f)), or meet loan-to-value or

comparable limitations based on the failure of the mortgagor to meet this occupancy requirement.

(2) Without regard to any requirement that the mortgagor has paid on account of the property a prescribed percentage of the appraised value of the property; or

(3) Without regard to any requirement that the mortgagor certify that the mortgaged property is free and clear of all liens other than the mortgage offered for insurance and that there will not be any unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property.

* * * * *

4. Section 203.31 would be revised to read as follows:

§ 203.31 Mortgagor of a principal residence in military service cases.

(a) A mortgage that is otherwise eligible for insurance under any of the provisions of this part may be insured without regard to any requirement contained in this part that the mortgagor occupy the dwelling as a principal residence (as defined in § 203.18(f)(1)) at the time of insurance, or that the mortgagor meet loan-to-value or comparable limitations based on the failure of the mortgagor to meet this occupancy requirement, if:

(1) The Commissioner is satisfied that the inability of the mortgagor to meet this occupancy requirement is by reason of his or her entry into military service after the filing of an application for insurance; and

(2) The mortgagor expresses an intent (in such form as the Commissioner may prescribe) to meet this occupancy requirement upon his or her discharge from the service.

(b) A serviceperson will also be considered to meet the occupancy requirement referred to in paragraph (a) of this section for mortgage insurance purposes, if the following conditions are satisfied:

(1) The serviceperson and his or her family expect to meet the occupancy requirement referred to in paragraph (a) of this section for two or more years. The Commissioner may shorten this period to one year, if (i) the serviceperson's family will occupy the property for at least one year and (ii) the serviceperson is assigned to a combat zone or other hazardous duty area where the family cannot accompany him or her; and

(2) The property is located in an area in which the prospects of resale are reasonable.

(Approved by the Office of Management and Budget under OMB control number 2502-0059)

5. In § 203.43, the introductory language in paragraph (c), and paragraphs (c)(1)(i) and (ii) and (k) would be revised, to read as follows:

§ 203.43 Eligibility of miscellaneous type mortgages.

* * * * *

(c) The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in the other provisions of this subpart, any mortgage given to refinance an existing mortgage insured under the National Housing Act. The refinancing mortgage must meet the following special requirements:

(1)(i) Except as provided by paragraph (c)(1)(ii) of this section, the refinancing mortgage must be in an amount that does not exceed the least of (A) the original principal amount of the existing mortgage; (B) the sum of the unpaid principal balance of the existing mortgage, plus loan closing charges approved by the Commissioner; or (C) in the case of a mortgagor who is not to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in § 203.18(f)), 75 percent of the appraised value (or other cost or value estimate, as applicable) of the property as of the date the existing mortgage was originally accepted for insurance.

(1)(ii) In the case of graduated payment mortgages insured under section 203 of the Act pursuant to section 245(a) or (b) of the Act (see § 203.45 of this part or § 203.46 in the Code of Federal Regulations revised as of April 1, 1987) [1], the refinancing mortgage must have a principal amount that does not exceed the lesser of:

(A) The outstanding balance of the existing mortgage, or

(B) In the case of a mortgagor who is not to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in § 203.18(f)), 75 percent of the appraised value (or other cost or value estate, as applicable) of the property as of the date the existing mortgage was originally accepted for insurance.

* * * * *

(k) The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage assigned to the Commissioner in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by the Commissioner of any property acquired in the settlement of an insurance claim under any section or title of the National Housing Act.

6. In § 203.43c, paragraph (g) would be revised to read as follows:

§ 203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.

* * * * *

(g) The mortgage may not exceed the balance remaining after subtracting from the amount determined under §§ 203.18(a) or (c), 203.18a, and 203.18b of this part an amount equal to the portion of the unpaid balance of the blanket mortgage covering the cooperative development that is attributable to the dwelling unit that the mortgagor is entitled to occupy as of the date the mortgage is accepted for insurance.

* * * * *

7. In §203.43d, the introductory language and paragraph (a)(3) would be revised to read as follows:

§203.43d Eligibility of mortgages in certain communities.

Notwithstanding any other requirements of this subpart, a mortgage covering a one- to four-family dwelling occupied by the mortgagor as a principal residence (as defined in §203.18(f)(1)) is eligible for insurance if the following requirements are met:

(a) * * *

(3) As a direct result of the community's temporarily impaired economic condition, owners of homes in the community occupied as prinicpal residences (as defined in §203.18(f)(1)) have been involuntarily unemployed or underemployed and have, thus, incurred substantial reductions in income that significantly impair their ability to continue timely payment of their mortgages;

* * * * *

8. In §203.43g, paragraph (a)(1) would be revised to read as follows:

§203.43g Eligibility of mortgages in certain communities.

(a) * * *

(1) The mortgagor is to occupy the dwelling as a prinicipal residence (as defined in §203.18(f)(1)).

* * * * *

9. In §203.43j, paragraph (e) would be revised to read as follows:

203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

* * * * *

[1] **Note:** The section 245(b) Modified Graduated Payment Mortgage Program in § 203.46 was terminated effective October 13, 1987 (52 FR 32754, August 28, 1977).

(e) *Purchase for principal residence.* The mortgagor must be a purchaser who intends to occupy the property as a principal residence (as defined in §203.18(f)(1)). Mortgages may not be used to refinance existing mortgages.

* * * * *

10. In §203.45, paragraph (g) would be revised to read as follows:

§203.45 Eligibility of graduated payment mortgages.

* * * * *

(g) This section applies only to mortgagors who are to occupy the dwelling as a principal residence (as defined in §203.18(f)(1)). It does not apply to a mortgage that meets the requirements of §§203.18(a)(4), 203.18 (c) through (e), 203.43. 203.43a, 203.43j, or 203.49.

* * * * *

11. In §203.49, paragraph (h) would be revised to read as follows:

§203.49 Eligibility of adjustable rate mortgages.

* * * * *

(h) *Cross-reference.* Sections 203.21 (level payment amortization provisions) and 203.44 (open-end advances) do not apply to this section. This section does not apply to a mortgage that meets the requirements of §§203.18(a)(4) (mortgagors of secondary residences), 203.18(c) (mortgagors of dwellings that are not principal or secondary residences), 203.18(d) (outlying area properties), 203.18(e) (disaster victims), 203.43 (miscellaneous type mortgages), 203.43c (mortgages involving a dwelling unit in a cooperative housing development), 203.43d (mortgages in certain communities), 203.43e (mortgages covering houses in federally impacted areas), 203.45 (graduated payment mortgages), and 203.47 (growing equity mortgages).

* * * * *

12. In §203.50, paragraph (f) would be revised to read as follows:

§203.50 Eligibility of rehabilitation loans.

* * * * *

(f) The loan may not exceed an amount which, when added, to any outstanding indebtedness of the borrower that is secured by the property, creates an outstanding indebtedness in excess of the lesser of:

(1) The limits prescribed in

(i) Section 203.18(a) (1) and (3) (in the case of a dwelling to be occupied as a principal residence, as defined in §203.18(f)(1));

(ii) Section 203.18(a) (1) and (4) (in the case of a dwelling to be occupied as a secondary residence, as defined in §203.18(f)(2));

(iii) Section 203.18(c) (in the case of a dwelling to be occupied neither as a principal residence nor a secondary residence, except that the loan-to-value rating will be 85 percent);

(iv) Section 203.18(a); and

(v) Section 203.18(b), based upon the sum of the estimated cost of rehabilitation and the Commissioner's estimate of the value of the property before rehabilitation; or

(2) The limits prescribed in the authorities listed in paragraphs (f)(1) (i) through (v) of this section, based upon 110 percent of the Commissioner's estimate of the value of the property after rehabilitation.

* * * * *

13. Part 203, Subpart A, is amended by adding a new section after §203.50 to read as follows:

§203.51 Applicability.

(a) The provisions of §§203.18 (a), (c), (d), (e)(1), and (f); §203.29(c); §203.31; §203.43(c); §203.43c(g); §203.43d(a), §203.43g(a)(1); §203.43j(e); §203.45(g); §203.49(h); and §203.50(f) of this subpart apply to mortgages insured:

(1) Pursuant to a Conditional Commitment or a Master Conditional Commitment issued by the Commissioner, or a Certificate of Reasonable Value or a Master Certificate of Reasonable Value issued by the Administrator of Veterans Affairs, on or after February 5, 1988; or

(2) In accordance with the Direct Endorsement program (24 CFR 200.163), if the approved underwriter of the mortgagee signs the Appraisal Report or Master Appraisal Report for the property on or after February 5, 1988.

(b) The provisions referred to in paragraph (a) of this section, as they existed immediately before [insert effective date of this rule], govern the insurance of mortgages that do not meet the conditions of that paragraph (a).

14. Section 203.258 would be revised to read as follows:

§ 203.258 Substitute mortgagors.

(a) *Selling mortgagor.* The mortgagee may effect the release of a mortgagor from personal liability on the mortgage note, if it obtains the Commissioner's approval of a substitute mortgagor, as provided by this section.

(b) *Purchasing mortgagor.* (1) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under § 203.43h or § 203.43i, only if the mortgagor is to occupy the dwelling as a principal residence (as defined in § 203.18(f)(1)).

(2) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under this part (except a mortgage referred to in paragraph (b)(1) of this section), if the substitute mortgagor is to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in § 203.18(f)).

(3) The Commissioner may approve a substitute mortgagor who does not meet the occupancy requirement referred to in paragraph (b)(2) of this section with respect to any mortgage insured under or pursuant to this part (except a mortgage referred to in paragraph (b)(1) of this section), only if the outstanding balance of the mortgage does not exceed 75 percent of the appraised value (or cost or value estimate, as applicable) of the property as of the date the mortgage was originally accepted for insurance.

(c) *Applicability.* Paragraph (b) of this section applies to the Commissioner's approval of a substitute mortgagor, only if the mortgage executed by the original mortgagor of the mortgage met the conditions of § 203.51(a).

(d) *Definition.* As used in this section, the term "substitute mortgagor" means a person who, upon the release by a mortgagee of a previous mortgagor from personal liability on the mortgage note, assumes this liability and agrees to pay the mortgage debt.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

15. The authority citation for Part 213 would continue to read as follows:

Authority: Sections 211, 213, National Housing Act (12 U.S.C. 1715b, 1715e); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

16. In § 213.510, paragraph (a) would be revised to read as follows:

§ 213.510 Mortgage maturity.

(a) *Maturity.* The mortgage must have a maturity satisfactory to the Commissioner not to exceed 40 years from the date of the beginning of amortization. However, if the mortgage covers property released from a sales project, the maturity may not exceed 30 years from the beginning of amortization, or 35 years from that date if the mortgagor occupies the dwelling as a principal residence or a secondary residence (as these terms are defined in 24 CFR 203.18(f) of this chapter). This paragraph applies as provided in 24 CFR 203.51 of this chapter.

* * * * *

§ 213.751 [Amended]

17. In § 213.751(b), a new entry in the listing of sections would be added at the appropriate place, to read as follows: "203.258 Substitute mortgagors".

18. Part 213, Subpart D, would be amended by adding a new section, to read as follows:

§ 213.752 Substitute mortgagors.

(a) *Selling mortgagor.* The mortgagee may effect the release of a mortgagor from personal liability on the mortgage note, if it obtains the Commissioner's approval of a substitute mortgagor, as provided by paragraph (b) of this section.

(b) *Purchasing mortgagor.* (1) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under this part, if the substitute mortgagor is to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in 24 CFR 203.18(f) of this chapter).

(2) The Commissioner may approve a substitute mortgagor who does not meet the occupancy requirement referred to in paragraph (b)(1) of this section with respect to any mortgage insured under this part, only if the outstanding balance of the mortgage does not exceed 75 percent of the appraised value of the property as of the date the mortgage was originally accepted for insurance.

(c) *Applicability.* Paragraph (b) of this section applies to the Commissioner's approval of a substitute mortgagor, if the mortgage executed by the original mortgagor met the conditions of 24 CFR 203.51(a) of this chapter.

(d) *Definition.* For purposes of this section, the term "substitute mortgagor" is defined as provided in 24 CFR 203.258(d) of this chapter.

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

19. The authority citation for Part 220 would continue to read as follows:

Authority: Sections 207, 211, 220, National Housing Act (12 U.S.C. 1713, 1715b, 1715k); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

20. In § 220.30, the introductory language in paragraphs (a), (a)(1), (a)(2), and (a)(3) would be revised; paragraphs (a)(4), (a)(5) and (c) would be revised; and new paragraphs (a)(6), (d), and (e) would be added, to read as follows:

§ 220.30 Maximum mortgage amounts—loan-to-value limitation.

(a) *Mortgagors of principal or secondary residences.* A mortgage executed by a mortgagor who is to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in paragraph (d) of this section) may not exceed the following:

(1) *New construction—principal residences—prior approval.* If the mortgage covers a dwelling that is to be occupied as a principal residence and that is approved for mortgage insurance before the beginning of construction, the sum of the following percentages of the Commissioner's estimate of the replacement cost of the property as of the date the mortgage is accepted for insurance:

* * * * *

(2) *New construction—principal residences—no prior approval.* If the mortgage covers a new dwelling under construction that is to be occupied as a principal residence and that is approved for mortgage insurance after the beginning of construction, 90 percent of the Commissioner's estimate of the replacement cost of the property as of the date the mortgage is accepted for insurance:

* * * * *

(3) *Existing construction—principal residences—prior approval.* If the mortgage covers an existing dwelling that is to be occupied as a principal residence and that was approved for mortgage insurance before the beginning of construction, or the construction of which has been completed for more than one year, the sum of the Commissioner's estimate of the cost of repair or rehabilitation, plus the Commissioner's estimate of the value of the property before rehabilitation, in the following percentages:

* * * * *

(4) *Existing construction—principal residences—no prior approval.* If the mortgage covers an existing dwelling that is to be occupied as a principal residence and that was not approved for mortgage insurance before the beginning of construction, and the construction of which has been completed less than one year, 90 percent of the sum of the Commissioner's estimate of the cost of repair or rehabilitation, plus the Commissioner's estimate of the value of the property before rehabilitation.

(5) *Secondary residences.* If the mortgage covers a dwelling that is to be occupied as a secondary residence, 85 percent of:

(i) The Commissioner's estimate of the replacement cost of the property as of the date the mortgage is accepted for insurance, in the case of a mortgage covering a newly constructed dwelling.

(ii) The sum of the Commissioner's estimate of the cost of repair or rehabilitation, plus the Commissioner's estimate of the value of the property before rehabilitation, in the case of a mortgage covering an existing dwelling.

(6) *Refinancing.* In a case under paragraph (a)(3), (a)(4), or (a)(5)(ii) of this section that involves the refinancing of existing indebtedness, the sum of the following:

(i) The estimated cost of repair and rehabilitation.

(ii) The amount (as determined by the Commissioner) required to refinance the existing indebtedness secured by the property.

(iii) Any existing indebtedness (as determined by the Commissioner) incurred in connection with improving, repairing, or rehabilitating the property.

* * * * *

(c) *Mortgagors of dwellings that are not principal or secondary residences.* A mortgage executed by a mortgagor who is not to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in paragraph (d) of this section) may not exceed 75 percent of:

(1) The Commissioner's estimates for the appropriate loan type under paragraphs (a)(1) through (4) of this section or

(2) The amount specified in paragraph (a)(6) of this section.

(d) *Definitions.* As used in this section:

(1) "Principal residence" means the dwelling where the mortgagor:

(i) Maintains (or will maintain) his or her permanent place of abode and

(ii) Typically spends (or will spend) the majority of the calendar year.

A person may have only one principal residence at any one time.

(2) "Secondary residence" means the dwelling where the mortgagor:

(i) Maintains (or will maintain) a part-time place of abode and

(ii) Typically spends (or will spend) less than the majority of the calendar year.

A person may have only one secondary residence at any one time.

(e) *Applicability.* Paragraphs (a), (c), and (d) of this section apply as provided in 24 CFR 203.51 of this chapter.

§ 220.251 [Amended]

21. In § 220.251(a), a new entry in the listing of sections would be added in the appropriate place, to read as follows: "203.258 Substitute mortgagors".

22. Part 220, Subpart B, would be amended by adding a new section, to read as follows:

§ 220.253 Substitute mortgagors.

(a) *Selling mortgagor.* The mortgagee may effect the release of a mortgagor from personal liability on the mortgage

note, if it obtains the Commissioner's approval of a substitute mortgagor, as provided by this section.

(b) *Purchasing mortgagor.* (1) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under this part, if the substitute mortgagor is to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in § 220.30(d)).

(2) The Commissioner may approve a substitute mortgagor who does not meet the occupancy requirement referred to in paragraph (b)(1) of this section with respect to any mortgage insured under this part, only if the outstanding balance of the mortgage does not exceed 75 percent of the Commisssioner's estimate of:

(i) The replacement cost of the property as of the date the mortgage was originally accepted for insurance, in the case of a dwelling described in § 220.30(a) (1) or (2); or

(ii) The cost of repair or rehabilitation, plus the Commissioner's estimate of the replacement cost of the property as of the date the mortgage was originally accepted for insurance, in the case of a dwelling described in § 220.30(a) (3) or (4).

(c) *Applicability.* Paragraph (b) of this section applies to the Commissioner's approval of a substitute mortgagor, if the mortgage executed by the original mortgagor of the mortgage met the conditions of 24 CFR 203.51(a) of this chapter.

(d) *Definition.* As used in this section, the term "substitute mortgagor" means a person who, upon the release by a mortgagee of a previous mortgagor from personal liability on the mortgage note, assumes this liability and agrees to pay the mortgage debt.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

23. The authority citation for Part 221 would continue to read as follows:

Authority: Sections 211, 221, National Housing Act (12 U.S.C. 1715b, 1715*l*; section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

24. In § 221.10, the introductory language would be revised to read as follows:

§ 221.10 Maximum mortgage amount—dollar limitation.

A mortgage executed by a mortgagor who is to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in § 221.20(c)) may not exceed:

* * * * *

§ 221.12 [Removed and Reserved]

25. Section 221.12 would be removed and reserved.

26. In § 221.20, the introductory language in paragraph (a)(1) would be revised; paragraph (b) would be revised; and new paragraphs (a)(4) and (c) would be added, to read as follows:

§ 221.20 Maximum mortgage amount—loan-to-value limitation.

* * * * *

(a) *Mortgagors or principal or secondary residences.* (1) if the mortgagor is to occupy the dwelling as a principal residence (as defined in paragraph (c)(1) of this section), the mortgage may not exceed:

* * * * *

(4) If the mortgagor is to occupy the dwelling as a secondary residence (as defined in paragraph (c)(2) of this section), the mortgage may not exceed 85 percent of the Commissioner's estimates referred to in paragraph (a)(1) (i) or (ii) of this section, as appropriate.

(b) *Mortgagors of dwellings that are not principal or secondary residences.* A mortgage executed by a mortgagor who is not to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in paragraph (c) of this section), but who is to use the insured loan proceeds to facilitate the construction or the repair or rehabilitation of the dwelling and to provide financing pending subsequent resale of the property to a qualifying mortgagor under this subpart, may not exceed the lesser of 75 percent:

(1) Of the Commissioner's estimates referred to in paragraph (a)(1) (i) or (ii) of this section, as appropriate, or

(2) Of the value of the property as of the date the mortgage is accepted for insurance.

(c) *Definitions.* As used in this section:

(1) "Principal residence" means the dwelling where the mortgagor:

(i) Maintains (or will maintain) his or her permanent place of abode and

(ii) Typically spends (or will spend) the majority of the calendar year.

A person may have only one principal residence at any one time.

(2) "Secondary residence" means the dwelling where the mortgagor:

(i) Maintains (or will maintain) a part-time place of abode and

(ii) Typically spends (or will spend) less than the majority of the calendar year.

A person may have only one secondary residence at any one time.

27. In § 221.30, paragraph (b) would be revised to read as follows:

§ 221.30 Maturity of mortgage.

* * * * *

(b) In the case of any other mortgagor, if the Commissioner:

(1) Determines that the mortgagor:

(i) Is to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in § 221.20(c)) and

(ii) Is unable to make the required payments under a mortgage having a shorter amortization period, and

(2) Approved the dwelling for mortgage insurance before the beginning of construction, or the Administrator of Veterans Affairs approved the dwelling for guaranty, insurance, or direct loan before the beginning of construction.

28. In § 221.50, the introductory language of paragraph (b)(1) and paragraph (b)(2) would be revised, and new paragraphs (b) (3) and (4) would be added, to read as follows:

§ 221.50 Mortgagor's minimum investment.

* * * * *

(b) * * *

(1) *Loan-to-value limitation—principal residences—approval before construction.* If the mortgage covers a dwelling that is to be occupied as a principal residence (as defined in § 221.20(c)(1)) and is approved for mortgage insurance before the beginning of construction, or was completed more than one year before the date of the application for mortgage insurance, the sum of the following percentages of the Commissioner's estimate of the appraised value of the property as of the date the mortgage is accepted for insurance constitutes the maximum loan-to-value ratio:

* * * * *

(2) *Loan-to-value limitation—principal residences—no prior approval.* A loan-to-value limitation of 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance is required, if the mortgage covers a dwelling that is to be occupied as a principal residence (as defined in § 221.20(c)(1)) and that was not approved for mortgage insurance before the beginning of construction, or completed more than a year before the date of the application for mortgage insurance.

(3) *Loan-to-value limitation—secondary residences.* A loan-to-value limitation of 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance is required, if the mortgage covers a dwelling that is to be occupied as a secondary residence (as defined in § 221.20(c)(2)).

(4) *Loan-to-value limitation—mortgagors of dwellings that are not principal or secondary residences.* A loan-to-value limitation of 75 percent of the appraised value of the property as of the date the mortgage is accepted for insurance is required, if the mortgage covers a dwelling referred to in § 221.20(b).

* * * * *

29. In § 221.60, paragraphs (b)(1), (c)(1), (c)(2), and (j) would be revised to read as follows:

§ 221.60 Eligibility requirements for low-income homeowners.

* * * * *

(b) *Definitions.* * * *

(1) "Single family dwelling" includes a two-family dwelling in which the owner occupies one of the units as a principal residence (as defined in § 221.20(c)(1)).

* * * * *

(c) *Types of transactions.* (1) The financing of the purchase of a rehabilitated single family dwelling or a rehabilitated one-family unit in a condominium project from a nonprofit mortgage by a low-income purchaser who is to occupy the dwelling as a principal residence (as defined in § 221.20(c)(1)).

(2) The rehabilitation or improvement and refinancing of a single family dwelling owned by a mortgagor who:

(i) Is to occupy the dwelling as a principal residence (as defined in § 221.20(c)(1)) and

(ii) Has purchased the dwelling from a nonprofit organization that is engaged in purchasing and rehabilitating substandard housing, and selling it after rehabilitation.

* * * * *

(j) *Interest rate increase—discontinuance of occupancy.* The mortgage must provide that if the mortgagor does not continue to occupy the dwelling as a princical residence (as defined in § 221.20(c)(1)), the interest rate will increase to the maximum rate in effect under this subpart at the time the commitment for insurance was issued on the project mortgage (where the mortgage finances the purchase of the property from a nonprofit mortgagor) or on the individual mortgage (where the mortgage finances the rehabilitation or improvement and refinancing of property owned by the mortgagor). If the property is sold to one of the following purchasers, the increase in interest rate will not be required:

(1) A nonprofit organization that has been engaged in purchasing and rehabilitating deteriorating and substandard housing with financing provided pursuant to section 221(h) of the National Housing Act, except that the sale must be to the same nonprofit organization from which the unit was purchased if the mortgage finances the purchase.

(2) A public housing agency under the United States Housing Act of 1937 having jurisdiction over the area in which the dwelling is located.

(3) A low-income purchaser meeting the income requirements of section 221(h) of the Act.

* * * * *

30. In § 221.65, paragraphs (b) and (d)(4) would be revised to read as follows:

§ 221.65 Eligibility requirements for a low- and moderate-income purchaser of a family unit in condominium.

* * * * *

(b) *Purchaser qualifications.* To qualify as a mortgagor, the purchaser must:

(1) Occupy the dwelling as a principal residence (as defined in § 220.20(c)(1)), and

(2) Be approved by the Commissioner as having an income within the limits prescribed for occupants in projects financed with a below-market interest rate (BMIR) mortgage pursuant to §§ 221.501 *et seq.*

* * * * *

(d) * * *

(4) It shall provide that if the mortgagor does not continue to occupy the property as a principal residence (as defined in § 221.20(c)(1)), the interest rate shall increase to the maximum rate in effect under this subpart at the time the commitment for insurance was issued on the project mortgage, except that the increase in interest rate shall not be applicable if the property is sold to one of the following purchasers:

(i) A nonprofit organization approved by the Commissioner;

(ii) A low- or moderate-income purchaser meeting the requirements of paragraph (b) of this section.

* * * * *

31. Part 221, Subpart A, would be amended by adding a new center heading and a new § 221.70, to read as follows:

Applicability

§ 221.70 Applicability.

(a) The provisions of §§ 221.10; 221.20 (a) through (c); 221.30(b); 221.50(b); 221.60 (b)(1), (c)(1), (c)(2), and (j); and 221.65 (b) and (d)(4) of this subpart, and the removal of § 221.12 of this subpart, apply to mortgages insured:

(1) Pursuant to a Conditional Commitment or a Master Conditional Commitment issued by the Commissioner, or a Certificate of Reasonable Value or a Master Certificate of Reasonable Value issued by the Administrator of Veterans Affairs, on or after February 5, 1988; or

(2) In accordance with the Direct Endorsement program (24 CFR 200.163 of this chapter), if the approved underwriter of the mortgagee signs the Appraisal Report or the Master Appraisal Report for the property on or after February 5, 1988.

(b) The provisions referred to in paragraph (a) of this section, as they existed immediately before *[insert effective date of this rule]*, govern the insurance of mortgages that do not meet the conditions of that paragraph.

§ 221.251 [Amended]

32. In § 221.251(a), a new entry in the listing of sections would be added at the appropriate place, to read as follows: "203.258 Substitute mortgagors".

33. Part 221, Subpart B, would be amended by adding a new § 221.252, to read as follows:

§ 221.252 Substitute mortgagors

(a) *Selling mortgagor.* The mortgagee may effect the release of a mortgagor from personal liability on the mortgage note, if it obtains the Commissioner's approval of a substitute mortgagor, as provided by this section.

(b) *Purchasing mortgagor.* (1) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under this part, if the substitute mortgagor is to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in § 221.20(c)).

(2) The Commissioner may approve a substitute mortgagor who does not meet the occupancy requirement referred to in paragraph (b)(1) of this section with respect to any mortgage insured under this part, only if the outstanding balance of the mortgage does not exceed 75 percent of the Commissioner's estimate of:

(i) The replacement cost of the property as of the date the mortgage was originally accepted for insurance, in the case of a dwelling described in § 221.20(a) (1) or (2); or

(ii) The cost of repair or rehabilitation, plus the Commissioner's estimate of the replacement cost of the property as of the date the mortgage was originally accepted for insurance, in the case of a dwelling described in § 221.20(a) (3) or (4).

(c) *Applicability.* The provisions of paragraph (b) of this section apply to the Commissioner's approval of a substitute mortgagor, if the mortgage executed by

the original mortgagor met the conditions of § 221.70(a).

(d) *Definition.* As used in this section, the term "substitute mortgagor" means a person who, upon the release by a mortgagee of a previous mortgagor from personal liability on the mortgage note, assumes this liability and agrees to pay the mortgage debt.

PART 222—SERVICEPERSON'S MORTGAGE INSURANCE

34. The authority citation for Part 222 would continue to read as follows:

Authority: Sections 211, 222, National Housing Act (12 U.S.C. 1715b, 1715m); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

35. The Part heading for Part 222 would be revised to read as set forth above.

§ 222.1 [Amended]

36. In § 222.1(a), the last entry in the listing of sections would be revised to read as follows: "203.51 Applicability".

37. In § 222.2, paragraphs (b), (c), and (d) would be revised to read as follows:

§ 222.2 Definition of terms.

* * * * *

(b) "Certificate of eligibility" means the official certificate issued by the Secretary to the Federal Housing Commissioner which establishes that the person designated on the certificate as the serviceperson has met the eligibility requirements set forth in section 222 of the National Housing Act.

(c) "Serviceperson" means a person to whom the Secretary has issued a certificate of eligibility.

(d) "Period of ownership by serviceperson" means that period of time during which a service branch is required to pay mortgage insurance premiums to the Federal Housing Commissioner, commencing with the date the Commissioner endorses a mortgage for insurance and terminating when the Secretary furnishes the Commissioner with a certificate indicating that the service branch will no longer be liable for payment of the insurance premiums to the Commissioner.

§ 222.4 [Amended]

38. In § 222.4, paragraph (c) would be removed.

39. In § 222.6, the introductory language in paragraph (a), and paragraph (b), would be revised, to read as follows:

§ 222.6 Application of payments.

(a) Notwithstanding the provisions of § 203.24 of this chapter and until the Commissioner has notified the mortgagee that the period of ownership by serviceperson has been terminated, the mortgagor's monthly payments must be applied to the following items in the order set forth:

* * * * *

(b) After the mortgagee receives notification from the Commissioner that the period of ownership by serviceperson has been terminated, it must apply all monthly payments received from the mortgagor in the order set forth in § 203.24 of this chapter.

40. Section 222.7 would be revised to read as follows:

§ 222.7 Use of mortgage proceeds.

The proceeds of mortgages must be used for the purpose of financing the construction or purchase of an eligible dwelling by a serviceperson.

41. Section 222.8 would be revised to read as follows:

§ 222.8 Eligible mortgagors.

To be eligible for mortgage insurance under this part, the mortgagor must:

(a) Meet the requirements of 24 CFR 203.32 through 203.36 of this chapter;

(b) Hold a certificate of eligibility issued by the Secretary, indicating that the mortgagor meets the eligibility requirements of section 222 of the National Housing Act; and

(c) Occupy the dwelling as a principal residence (as defined in 24 CFR 203.18(f)(1) of this chapter).

42. Section 222.50 would be revised to read as follows:

§ 222.50 Transfer of insurance.

The insurance of a mortgage pursuant to §§ 203.1 *et seq.* (Part 203, Subpart A); §§ 213.501 *et seq.* (Part 213, Subpart C); §§ 220.1 *et seq.* (Part 220, Subpart A); §§ 221.1 *et seq.* (Part 221, Subpart A); §§ 226.1 *et seq.* (Part 226, Subpart A); §§ 227.1 *et seq.* (Part 227, Subpart A); §§ 234.1 *et seq.* (Part 234, Subpart A); §§ 235.1 *et seq.* (Part 235, Subpart A); §§ 237.1 *et seq.* (Part 237, Subpart A); all of this chapter, covering a single family dwelling or a family unit in a condominium project, may, with the approval of the Commissioner and upon the request of the mortgagee, be transferred for insurance under this subpart, if the mortgage indebtedness has been assumed by a serviceperson who:

(a) Holds a certificate of eligibility issued by the Commissioner,

(b) Becomes the owner of the property, and

(c) Either occupies the property as a principal residence (as defined in 24 CFR 203.18(f)(1) of this Chapter) or certifies that his or her failure to do so is the result of his or her military assignment, or, in the case of the Coast Guard or U.S. National Oceanic and Atmospheric Administration, other assignment.

43. Part 222, Subpart A, would be amended by adding a new section, to read as follows:

§ 222.52 Applicability.

The provisions of §§ 222.2 (b) through (d); 222.6; 222.7; 222.8; and 222.50 apply as provided in 24 CFR 203.51 of this Chapter.

§ 222.251 [Amended]

44. In § 222.251(a), the listing of sections would be amended by adding a new entry at the appropriate place, to read as follows: "203.258 Substitute mortgagors".

45. Part 222, Subpart B, would be amended by adding a new section, to read as follows:

§ 222.254 Substitute mortgagors.

(a) *Selling mortgagor.* The mortgagee may effect the release of a mortgagor from personal liability on the mortgage note, if it obtains the Commissioner's approval of a substitute mortgagor, as provided by paragraph (b) of this section.

(b) *Purchasing mortgagor.* (1) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under this part, if the substitute mortgagor is to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in 24 CFR 203.18(f)(1) of this Chapter).

(2) The Commissioner may approve a substitute mortgagor who does not meet the occupancy requirement referred to in paragraph (b)(1) of this section with respect to any mortgage insured under this part, only if the outstanding balance of the mortgage does not exceed 75 percent of the appraised value of the property as of the date the mortgage was originally accepted for insurance.

(c) *Applicability.* Paragraph (b) of this section applies to the Commissioner's approval of a substitute mortgagor, if the mortgage executed by the original mortgagor of the mortgage met the conditions of 24 CFR 203.51(a) of this Chapter.

(d) *Definition.* For purposes of this section, the term "substitute mortgagor" is defined as provided in 24 CFR 203.258(d) of this Chapter.

PART 226—ARMED SERVICES HOUSING—CIVILIAN EMPLOYEES [SEC. 809]

46. The authority citation for Part 226 would continue to read as follows:

Authority: Sections 211, 807, 809, National Housing Act (12 U.S.C. 1715b, 1748f, 1748h–l);

section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 226.1 [Amended]

47. In § 226.1(a), the last entry in the listing of sections would be removed.

48. Section 226.8 would be revised to read as follows:

§ 226.8 Eligible mortgagors.

(a) *Eligibility requirements.* No mortgage may be insured under this part, unless it is executed by a mortgagor who:

(1) Meets the employment status requirements set forth in § 226.3; and

(2) At the time of insurance:

(i) Is the owner of the property; and

(ii) Occupies the property as a principal residence (as defined by 24 CFR 203.18(f)(1) of this chapter) or certifies that the failure to do so is the result of a change in his or her employment.

(b) *Applicability.* Paragraph (a) of this section applies as provided in 24 CFR 203.51 of this chapter.

§ 226.251 [Amended]

49. In § 226.251(a), a new entry in the listing of sections would be added at the appropriate place, to read as follows: "203.258 Substitute mortgagors".

50. Part 226, Subpart B, would be amended by adding a new § 226.252, to read as follows:

§ 226.252 Substitute mortgagors.

(a) *Selling mortgagor.* The mortgagee may affect the release of a mortgagor from personal liability on the mortgage note, if it obtains the Commissioner's approval of a substitute mortgagor, as provided by paragraph (b) of this section.

(b) *Purchasing mortgagor.* (1) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured pursuant to this part, if the substitute mortgagor is to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in 24 CFR 203.18(f) of this chapter).

(2) The Commissioner may approve a substitute mortgagor who does not meet the occupancy requirement referred to in paragraph (b)(1) of this section with respect to any mortgage insured under this part, only if the outstanding balance of the mortgage does not exceed 75 percent of the appraised value of the property as of the date the mortgage was originally accepted for insurance.

(c) *Applicability.* Paragraph (b) of this section applies to the Commissioner's approval of a substitute mortgagor, if the mortgage executed by the original mortgagor of the mortgage met the conditions of 24 CFR 203.51(a) of this Chapter.

(d) *Definition.* For purposes of this section, the term "substitute mortgagor" is defined as provided in 24 CFR 203.258(d) of this chapter.

PART 233—EXPERIMENTAL HOUSING MORTGAGE INSURANCE

51. The authority citation for Part 233 would be revised to read as follows:

Authority: Sections 211, 233, National Housing Act (12 U.S.C. 1715b, 1715x); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

52. In § 233.5, paragraph (a)(5) would be removed and reserved, and paragraph (a)(3) would be revised to read as follows:

§ 233.5 Cross-references.

(a) * * *

(3) The limitations upon maximum mortgage amounts for a mortgagor who is not to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in 24 CFR 203.18(f) of this chapter) do not apply. The provisions of this paragraph (a)(3) apply as provided by 24 CFR 203.51 of this chapter.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

53. The authority citation for Part 234 would continue to read as follows:

Authority: Sections 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

54. In § 234.25, paragraph (c)(2) would be revised to read as follows:

§ 234.25 Mortgage provisions.

* * * * *

(c) * * *

(2) Have a maturity satisfactory to the Commissioner of not more than 30 years from the date of the beginning of amortization, except that the term may be up to 35 years from that date, if the mortgagor:

(i) Occupies the property as a principal residence or a secondary residence (as these terms are defined in § 234.27(f)); and

(ii) Is not able, as determined by the Commissioner, to make the required payments under a mortgage having a shorter amortization period.

* * * * *

55. In § 234.26, paragraphs (e) (2) and (3) would be revised to read as follows:

§ 234.26 Project requirements.

* * * * *

(e) * * *

(2) An application for mortgage insurance of a unit will not be approved, if approval would result in less than 80 percent of the FHA-insured mortgages covering units in the project being occupied by mortgagors or comortgagors as a principal residence or a secondary residence (as these terms are defined in § 234.27(f)).

(3) In addition to the other requirements of this section, in order for a project to be acceptable to the Secretary, at least 51 percent of all family units (*i.e.*, both FHA-insured and conventionally financed units) must be occupied by the owners as a principal residence or a secondary residence (as these terms are defined in § 234.27(f)), or must have been sold to owners who intend to meet this occupancy requirement.

* * * * *

56. In § 234.27, the introductory language in paragraphs (a), (a)(2), and (a)(3) would be revised; paragraph (d) would be revised; and new paragraphs (a)(4) and (e) would be added, to read as follows:

§ 234.27 Maximum mortgage amounts.

(a) *Mortgagors of principal or secondary residences.* Except for "high-cost" mortgage limits provided for in paragraph (b) of this section, a mortgage executed by a mortgagor who is to occupy the property as a principal residence or a secondary residence (as these terms are defined in paragraph (e) of this section) may not exceed the lesser of the amounts in paragraphs (a)(1) and (a)(2), (a)(1) and (a)(3), or (a)(1) and (a)(4) of this section (whichever applies), as follows:

* * * * *

(2) *Loan-to-value limitation—principal residences—no approval before construction.* If a family unit is to be occupied as a principal residence and is not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the family unit as of the date the mortgage is accepted for insurance, unless the family unit:

* * * * *

(3) *Loan-to-value limitation—principal residences—approval before construction.* If a family unit is to be occupied as a principal residence and is approved for mortgage insurance before the beginning of construction, or it meets one of the alternative conditions listed in paragraph (a)(2) of this section, the following loan-to-value ratios apply:

* * * * *

(4) *Loan-to-value limitations—secondary residences.* If a family unit is to be occupied as a secondary residence, the loan-to-value ratio is 75 percent of the appraised value of the family unit as of the date the mortgage is accepted for insurance.

* * * * *

(d) *Mortgagors of dwellings that are not principal or secondary residences.* A mortgage executed by a mortgagor who is not to occupy the family unit as a principal residence or a secondary residence (as these terms are defined in paragraph (e) of this section) may not exceed the lesser of:

(1) The dollar limitation under paragraph (a)(1) of this section or

(2) 75 percent of the appraised value of the family unit as of the date the mortgage is accepted for insurance.

(e) *Definitions.* As used in this section:

(1) "Principal residence" means the dwelling where the mortgagor:

(i) Maintains (or will maintain) his or her permanent place of abode and

(ii) Typically spends (or will spend) the majority of the calendar year.

A person may have only one principal residence at any one time.

(2) "Secondary residence" means the dwelling where the mortgagor:

(i) Maintains (or will maintain) a part-time place of abode and

(ii) Typically spends (or will spend) less than the majority of the calendar year.

A person may have only one secondary residence at any one time.

57. in § 234.49, paragraph (a) would be revised to read as follows:

§ 234.49 Eligible mortgages in Alaska, Guam, or Hawaii.

(a) If the Alaska Housing Authority, or the Government of Guam or Hawaii, or any agency or instrumentality thereof, is the mortgagor or the mortgagee, or if the mortgagor is regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation to such an extent and in such manner as the Commissioner determines advisable to provide reasonable rental and sales prices and a reasonable return on the investment, any mortgage otherwise eligible for insurance under this subpart may be insured:

(1) In any case where the Alaska Housing Authority, or the government of Guam or Hawaii, or any agency or instrumentality thereof, is the mortgagor, without regard to any requirement that the mortgagor occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in § 234.27(e)), or meet loan-to-value limitations based on the failure of the mortgagor to meet this occupancy requirement;

(2) Without regard to any requirement that the mortgagor has paid on account of the property a prescribed percentage of the appraised value of the property; or

(3) Without regard to any requirement that the mortgagor certify that the mortgaged property is free and clear of all liens other than the mortgage offered for insurance and that there will not be any unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property.

* * * * *

58. Section 234.51 would be revised to read as follows:

§ 234.51 Mortgagor of principal residence in military service cases.

A mortgage otherwise eligible for insurance under any of the provisions of this part may be insured without regard to any requirement contained in this part that the mortgagor occupy the dwelling as a principal residence (as defined in §234.27(e)(1)) at the time of insurance, or that the mortgagor meet loan-to-value limitations based on his or her failure to meet this occupancy requirement, if:

(a) The Commissioner is satisfied that the inability of the mortgagor to meet this occupancy requirement is by reason of his or her entry to military service after the filing of an application for insurance; and

(b) The mortgagor expresses an intent (in such form as may be prescribed by the Commissioner) to meet this occupancy requirement upon his or her discharge from military service.

(Approved by the Office of Management and Budget under OMB control number 2502–0059).

59. In §234.52, the introductory language and paragraph (a) would be revised, to read as follows:

§234.52 Refinancing of existing mortgages.

The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in the other provisions of this subpart, any mortgage covering a family unit given to refinance an existing mortgage insured under the National Housing Act. The refinancing mortgage must meet the following special requirements:

(a)(1) It must be in an amount that does not exceed the least of:

(i) The original principal amount of the existing mortgage;

(ii) The sum of the unpaid principal balance of the existing mortgage, plus loan closing costs approved by the Commissioner; or

(iii) In the case of a mortgagor who is not to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in §234.27(e)), 75 percent of the appraised value of the property as of the date the existing mortgage was originally accepted for insurance.

(2) In the case of graduated payment mortgages insured under section 234(c) of the Act pursuant to section 245 (a) or (b) of the Act (§234.75 or 234.76 [as in effect before its removal at 52 FR 32754, published August 28, 1987), the refinancing mortgage must have a principal amount that does not exceed the lesser of:

(i) The outstanding balance of the existing mortgage, or

(ii) In the case of a mortgagor who is not to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in §234.27(e)), 75 percent of the appraised value of the property as of the date the existing mortgage was originally accepted for insurance.

* * * * *

60. In §234.75, paragraph (g) would be revised to read as follows:

§234.75 Eligibility of graduated payment mortgages.

* * * * *

(g) This section applies only to mortgagors who are to occupy the dwelling as a principal residence (as defined in §234.27(e)(1)). It does not apply to a mortgage that meets the requirements of §234.27 (a)(4) or (d), or §234.79.

* * * * *

61. In §234.79, paragraph (h) would be revised to read as follows:

§234.79 Eligibility of adjustable rate mortgages.

* * * * *

(h) *Cross-reference.* Sections 234.36 (level payment amortization provisions) and 234.70 (open-end advances) do not apply to this section. This section does not apply to a mortgage that meets the requirements of §§234.27(a)(4) (mortgagors of secondary residences), 234.27(d) (mortgagors of dwellings that are not principal or secondary residences), 234.68 (mortgages covering housing in certain neighborhoods), 234.69 (mortgages covering housing in federally impacted areas), 234.69a (mortgages for individually owned condominium units for existing multifamily housing demonstration),

234.75 (graduated payment mortgages), and 234.77 (growing equity mortgages).

* * * * *

62. Part 234, Subpart A, would be amended by adding a new center heading and a new § 234.85, to read as follows:

Applicability

§ 234.85 Applicability.

(a) The provisions of §§ 234.25(c)(2), 234.26(e) (2) and (3); 234.27 (a), (d), and (e); 234.49(a); 234.51; 234.52; 234.75(g); and 234.79(h) of this Subpart apply to mortgages insured:

(1) Pursuant to a Conditional Commitment or a Master Conditional Commitment issued by the Commissioner, or a Certificate of Reasonable Value of a Master Certificate of Reasonable Value issued by the Administrator of Veterans Affairs, on or after February 5, 1988; or

(2) In accordance with the Direct Endorsement program (24 CFR 200.163 of this Chapter), if the approved underwriter of the mortgagee signs the Appraisal Report or the Master Appraisal Report for the property on or after February 5, 1988.

(b) The provisions referred to in paragraph (a) of this section, as they existed immediately before [*insert effective date of this rule*], govern the insurance of mortgages that do not meet the conditions of that paragraph (a).

§ 234.255 [Amended]

63. In § 234.255(a), a new entry to the listing of sections would be added at the appropriate place, to read as follows: "203.258 Substitute mortgagors".

64. Part 234, Subpart B, would be amended by adding a new § 234.256, to read as follows:

§ 234.256 Substitute mortgagors.

(a) *Selling mortgagor.* The mortgagee may effect the release of a mortgagor from personal liability on the mortgage note, if it obtains the Commissioner's approval of a substitute mortgagor, as provided by paragraph (b) of this section

(b) *Purchasing mortgagor.* (1) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under this part, if the mortgagor is to occupy the property as a principal residence or a secondary residence (as these terms are defined in § 234.27(e)).

(2) The Commissioner may approve a substitute mortgagor who does not meet the occupancy requirement referred to in paragraph (b)(2) of this section with respect to any mortgage insured under this part, only if the outstanding balance of the mortgage does not exceed 75 percent of the appraised value of the property as of the date the mortgage was originally accepted for insurance.

(c) *Applicability.* Paragraph (b) of this section applies to the Commissioner's approval of a substitute mortgagor, if the mortgage executed by the original mortgagor of the mortgage met the conditions of § 234.85(a).

(d) *Definition.* As used in this section, the term "substitute mortgagor" means a person who, upon the release by a mortgagee of a previous mortgagor from personal liability on the mortgage note, assumes this liability and agrees to pay the mortgage debt.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

65. The authority citation for Part 235 would continue to read as follows:

Authority: Sections 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 235.1. [Amended]

66. In § 235.1(a), the last section entry would be revised to read as follows: "203.51. Applicability".

67. In § 235.2, paragraph (c) would be revised to read as follows:

§ 235.2 Basic program outline.

* * * * *

(c) Assistance will be limited to mortgagors who purchase for occupancy as a principal residence (as defined in 24 CFR 203.18(f) of this chapter) new or substantially rehabilitated single family or condominium units.

* * * * *

68. Section 235.32 would be revised to read as follows:

§ 235.32 Increased maximum mortgage amount for physically handicapped persons.

If the mortgage relates to a dwelling to be occupied as a principal residence (as defined in 24 CFR 203.18(f) of this chapter) by a handicapped person as defined in § 235.5(c)(2), the dollar amount limitation under § 235.25 or § 235.30 may be increased in such amount as may be necessary to reflect the cost of making the dwelling accessible to and usable by such person, but not exceed 10 percent of such limitation.

69. A new § 235.50 would be added in Subpart A, to read as follows:

§ 235.50 Applicability.

The provisions of §§ 235.2(c) and 235.32 apply as provided in 24 CFR 203.51.

§ 235.201 [Amended]

70. In § 235.201(a), a new entry to the listing of sections would be added at the appropriate place, to read as follows: "203.258 Substitute mortgagors".

71. Part 235, Subpart B, would be amended by adding a new § 235.206, to read as follows:

§ 235.206 Substitute mortgagors.

(a) *Selling mortgagor.* The mortgagee may effect the release of a mortgagor from personal liability on the mortgage note, if it obtains the Commissioner's approval of a substitute mortgagor, as provide by paragraph (b) of this section.

(b) *Purchasing mortgagor.* The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under this part, only if the mortgagor is to occupy the dwelling as a principal residence (as defined in 24 CFR 203.18(f)(1)) and meets all applicable requirements of this part.

(c) *Applicability.* Paragraph (b) of this section applies to the Commissioner's approval of a substitute mortgagor, if the mortgage executed by the original mortgagor of the mortgage met the conditions of 24 CFR 203.51(a) of this chapter.

(d) *Definition.* As used in this section, the term "substitute mortgagor" means a person who, upon the release by a mortgagee of a previous mortgagor from personal liability on the mortgage note, assumes this liability and agrees to pay the mortgage debt.

Dated: July 1, 1988.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-22085 Filed 9-30-88; 8:45 am]

BILLING CODE 4210-27-M

federal register

Monday
October 3, 1988

Part IV

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program; Closing Date for Applications; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Public Telecommunications Facilities Program; Closing Date for Applications

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Public Telecommunications Facilities Program: Notice of closing date for applications.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces that applications are available for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program administered by NTIA.

Applicants for grants under the PTFP must file their applications on or before January 11, 1989. Congress has not completed action on the appropriation for this program, if funds are available for the program for the fiscal year, NTIA anticipates making grant awards in mid-summer 1989.

Final Rules for the Public Telecommunications Facilities Program were published on August 20, 1987 (52 FR 31496–31505, No. 161). Those rules will be the ones in effect for 1989 applications.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Acting Director, PTFP/NTIA/DOC, Room 4625, Washington, DC 20230. Telephone (202) 377–5802.

SUPPLEMENTARY INFORMATION:

I. Eligibility

A. To be eligible to apply for or receive a construction grant under the PTFP, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes;

(5) A State or local government or agency or a political or special purpose subdivision of a State.

B. To be eligible to apply for and receive a PTFP Planning Grant, an applicant must be:

(1) Any of the organizations described in the preceding paragraph; or,

(2) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious.

II. Closing Date

Pursuant to § 2301.5(c) of the PTFP Final Rules (52 FR 31496; 31501, (Aug. 20, 1987)), the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. *The closing date selected for the submission of applications for 1989 is January 11, 1989.*

III. Program Goals and Priorities

The Goals of this program, as stated in section 390 of the Communications Act are:

To assist through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

(1) Extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;

(2) Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and

(3) Strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

The Agency has established the following Priorities for the PTFP:

Priority I—Provisions of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area

There are two subcategories:

A. *Projects which include local origination capacity.* This subcategory includes the planning or construction of new facilities which can provide a full range of radio and/or television programs including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

B. *Projects which do not include local origination capacity.* This subcategory includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks and repeater transmitters which will result in providing public telecommunications services to previously unserved areas.

Priority I and its subcategories only apply to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas which are presently unserved—i.e., areas which do not receive any public telecommunications services whatsoever. An applicant proposing to plan or construct a facility to serve a geographical area which is presently unserved, should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project. (Television and radio are considered separately for the purposes of determining coverage.)

Under Priority 1B, NTIA will consider an area served when it receives a public television signal from a distant source through a cable system which has a penetration rate of 50 percent.

Priority II—Replacement of Basic Equipment of Existing Essential Broadcast Stations

Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment in existing broadcast stations which provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area.

In order to show that the replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (i.e., copies of maintenance logs. Letters documenting non-availability of parts should also be included.) Additionally, applicants must show that the station is the only public telecommunications station providing a signal to a geographical area or the only station with local origination capcity in a geographical area.

The distinction between Priority II and Priority IV is that Priority II is for the replacement of basic equipment for essential stations. Where an applicant seeks to "improve" basic equipment in its station (i.e., where the equipment is not "worn out"), or where the applicant is not an essential station, NTIA would consider the applicant's project under Priority IV.

Priority III—Establishment of First Local Origination Capacity in a Geographical Area

Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from

distant sources through translators, repeaters or cable systems.

Applicants seeking funds to bring the first local origination capacity to an area already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. (A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the originating facility).

Priority IV—Replacement and Improvement of Basic Equipment for Existing Broadcast Stations

Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards (e.g., improvements to signal quality and significant improvements in equipment flexibility or reliability). As under Priority II, applicants seeking to replace or improve basic equipment under Priority IV should show that the replacement of the equipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in maintenance logs).

Priority V—Augmentation of Existing Broadcast Stations

Projects under this priority would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. *Projects to equip auxiliary studios at remote locations, or either to provide mobile origination facilities.* An applicant must demonstrate that significant expansion in public participation in programming will result. This category includes mobile units, neighborhood production studios or facilities in other locations within a station's service area which would make participation in local programming accessible to additional segments of the population.

B. *Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution.* This category would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

Special Applications. NTIA possesses the discretionary authority to award grants to eligible applicants whose proposals are so unique or innovative that they do not clearly fall within any of the listed priorities. Innovative projects submitted under this category must address demonstrated and substantial community needs (e.g., services to identifiable ethnic or linguistic minority audiences, services to the blind or deaf, instructional services or electronic text.)

IV. Application Forms and Regulations

To apply for a PTFP grant, an applicant must file a timely and complete application on a current form approved by the Agency. In 1989, application materials were revised to conform with the August 1987 Final Rules. In addition, new information collection requirements have been imposed by the Office of Management and Budget (OMB). These requirements have been incorporated into the 1989 application materials. *Therefore, no previous versions of the PTFP Application Form may be used.* All persons and organizations on the PTFP's mailing list will be sent a copy of the current application form and the Final Rules. Those not on the mailing list may obtain copies by contacting the PTFP at the address above. Prospective applicants should read the Final Rules carefully before submitting applications. Applicants whose applications were deferred will be mailed pertinent PTFP materials and instructions for requesting reactivation.

Applicants should note that they must comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Ponts of Contact (SPOC) of all states relevant to the project. Applicants are required to serve a copy of their completed application on the appropriate SPOC on or before January 11, 1989. Applicants are encouraged to contact the appropriate SPOC well before the NTIA closing date.

Effective October 1, 1988, OMB Circular A-102 as it applies to grant recipients has been superceded by Department of Commerce regulations, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments, 15 CFR Part 24, *printed in* 53 FR 8034 (March 11, 1988). Applicants should note that all PTFP grant recipients are subject to the provisions of Office of Management and Budget OMB Circular A-87 "Cost Principles for State and Local Governments," A-21 "Cost Principles for Educational Institutions," A-110, A-122, and A-128. In addition, any applicant organizations with outstanding accounts receivable with the Department of Commerce will not receive a new award until the debt is paid or arrangements to repay the debt which are satisfactory to the Department are made.

Potential PTFP grant recipients may also be required to submit a "Name Check" form (Form CD-346), which is used to ascertain background information on key individuals associated with the potential grantee. The "Name Check" requests information to reveal if any key individuals in the organization have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters pertinent to management honesty or financial integrity. Potential grantee organizations may also be subject to reviews of Dun and Bradstreet data or other similar credit checks. Potential PTFP recipients are also subject to the provisions of 15 CFR Part 26, Department of Commerce Nonprocurement Debarment and Suspension.

V. Funding Criteria

The funding criteria for construction applications are as follows:

In determining whether to approve or defer a construction grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the project meets the program purposes set forth in § 2301.2 of the Final Rules as well as the specific program priorities set forth in the Appendix of those Rules;

(b) The adequacy and continuity of financial resources for long-term operational support;

(c) The extent to which non-Federal funds will be used to meet the total cost of the project;

(d) The extent to which the applicant has:

(1) Assessed specific educational, informational, and cultural needs of the community(-ies) to be served, and the extent to which the proposed service will not duplicate service already available;

(2) Evaluated alternative technologies and the bases upon which the technology was selected;

(3) Provided significant documentation of its equipment requirements, and the urgency of acquisition or replacement;

(4) Provided documentation of an increasing pattern of substantial non-Federal financial support;

(5) Provided other evidence of community support, such as letters from elected or appointed policy-making officials, and from agencies for whom the applicant produces or will produce programs or other materials;

(e) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities available to, operated by, and owned or controlled by minorities and women;

(f) The extent to which various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds;

(g) The extent to which the eligible equipment requested meets current broadcast industry performance standards;

(h) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(i) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(j) The extent to which the project implements local, statewide or regional public telecommunications systems plans, if any; and

(k) The readiness of the FCC to grant any necessary authorization.

The funding criteria for planning applications are as follows:

In determining whether to approve or defer a planning grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(b) The qualifications of the proposed project planner;

(c) The extent to which the project's proposed procedural design assures that the applicant would adequately:

(1) Obtain financial, human and support resources necessary to conduct the plan;

(2) Coordinate with other telecommunications entities at the local, state, regional and national levels;

(3) Evaluate alternative technologies and existing services; and

(4) Receive participation by the public to be served (and by minorities and women in particular) in the project planning;

(d) Any pre-planning studies conducted by the applicant showing the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary, for the project); and,

(e) The feasibility of the proposed procedure and timetable for achieving the expected results.

VI. Matching Requirements

(a) *Planning grants.* A Federal grant for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the award document and the attachments thereto. The Agency may provide up to 100 percent of the funds necessary for the planning of a public telecommunications constructions project.

(b) *Construction grants.* (1) A Federal grant award for the construction of a public telecommunications facility shall be an amount determined by the Agency and set forth in the award document, except that such amount shall not exceed 75 percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

Special Note: At the time the Final Rules for PTFP were adopted, NTIA announced a policy which did not require any rule change, but which is intended to encourage stations reporting substantial non-Federal revenues to increase the matching percentage in their proposals for replacement of equipment from 25% to 50%. The Agency emphasized that applicants proposing to provide first service to a geographic area encounter considerable ineligible costs, including construction or renovation of buildings or other similar expenses. NTIA, therefore, expects to continue funding projects to extend service at up to 75% of the total project cost. Applicants from small community-licensed stations, or those who can show that a station licensed to a large institution cannot obtain direct or in-kind support from the larger institution, also will not be subject to this preference. Otherwise, a showing of extraordinary need or emergency situation will be taken into consideration as justification for grants of up to 75% of the project cost, but the presumption of 50% funding will be the general rule for replacement applications.

(2) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by Federal statute.

(3) Funds supplied to an applicant by the Corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear compelling showing of need.

(4) The expenditure of any local matching funds prior to the filing of an application will be disallowed.

(5) *The Applicants should note that expenditure of local matching funds prior to the award of a grant is at the applicant's own risk.* The exact amount of the match will not be known with certainty until the final award agreement is negotiated. Therefore, should the applicant's expenditure of non-Federal funds exceed the non-Federal share which will be established in the final award agreement, the Federal share of the total project cost will be reduced by a corresponding amount and a penalty could be imposed. If the amount already spent at the local level is a substantial portion of the amount negotiated as the total project cost, the action could result in cancellation of the grant offer.

VII. Selection Process and Project Period

PTFP grants are awarded on the basis of a competitive review process. This includes several grant review panels, which apply the Funding Criteria listed in section V above. The Agency determines the selection of grantees according to the Priorities listed in section III above and the evaluation of the application by the various review panels.

The period for which a planning grant may be made is one year, whereas the period for which a construction grant may be made is two years. Although these timeframes are generally applied to the award of all PTFP grants, variances in project periods may be made based on specific circumstances of an individual proposal.

VIII. Filing Applications

Applications delivered by mail must be *received* no later than close of business, January 11, 1989, and must be addressed to: Public Telecommunications Facilities Program, NTIA/DOC, Room 4625, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Applications *delivered by hand* must be delivered to the above address between 8:30 a.m. and 5:00 p.m. on or before close of business January 11, 1989. Applicants whose applications are not received by close of business January 11, 1989, will be notified that

their applications will not be considered in the current grant cycle and will be returned.

NTIA requires that all applicants whose proposed projects need authorization from the Federal Communications Commission (FCC), must tender an application to the FCC for such authority on or before January 20, 1989. (An application is tendered to the FCC when it has been received by the Secretary of the FCC.) However, you are urged to submit it with as much lead time before the PTFP closing date as possible. The greater the lead time, the better the chance your FCC application will be processed to coincide with NTIA's grant cycle. NTIA will return the application of any applicant which fails to tender an application to the FCC for any necessary authority on or before January 11, 1989.

Authority: The Public Telecommunications Financing Act of 1978, 47 U.S.C. 390–394, 397–399b (Act); as amended by the Public Broadcasting Amendments of 1981, Pub. L. No. 97–35, 95 Stat. 725 (1981 Amendments), and the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, sec. 5001, 100 Stat. 82, 117 (1986).

(Catalog of Federal Domestic Assistance No. 11.550)

Dennis R. Connors,

Director, Office of Policy Coordination and Management.

[FR Doc. 88–22494 Filed 9–30–88; 8:45 am]

BILLING CODE 3510–60–M

federal register

Monday
October 3. 1988

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) is amending its regulations dealing with the approval of a permit for surface coal mining operations. This rule adds definitions of the terms "owns or controls" and "owned or controlled" as these concepts are used in section 510(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act, the Surface Mining Act, or SMCRA). It also revises the scope of review of a permit applicant's environmental compliance record prior to the issuance of a new permit. These revisions will greatly reduce the possibility of violators obtaining permits in violation of the permit approval provisions of the Act.

EFFECTIVE DATE: November 2, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–5241 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule and Comments
III. Procedural Matters

I. Background

This rule amends OSMRE's regulations dealing with the permit approval process by adding definitions of the terms "owns or controls" and "owned or controlled" in 30 CFR Part 773 in conformance with the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* The concepts of "ownership" and "control" are used in, but are not defined by, section 510(c) of the Act, 30 U.S.C. 1260(c).

The rule also revises 30 CFR 773.15, which specifies the review by the regulatory authority of the compliance record of the permit applicant and related parties with certain environmental laws which is required prior to the issuance of a permit for surface coal mining operations.

This rule also amends the regulations governing the permitting process by expanding the scope of the review that must be made prior to the issuance of a permit concerning any willful pattern of violations.

This rule is intended to secure greater compliance with the Act by preventing mining permits from being issued to persons who, either by themselves or through related persons, own or control violators of the Act. By defining the terms "owns or controls" and "owned or controlled" and by revising the scope of the compliance review, OSMRE will gain an effective tool to encourage persons who own or control a violator to ensure that all violations are abated or are in the process of being abated. Authority for the rule derives from sections 101, 102, 201(c)(1), 201(c)(2), 412(a), 501, 507(b), 510 and 701 of the Act.

In the past, some operators evaded the requirements of the Act and obtained a new permit while past violations remained unabated or money remained unpaid. In some instances, they formed new corporations, partnerships or other business entities, and through them applied for permits for new operations without correcting the violations or paying the fees and penalties resulting from old operations. If allowed to persist, these practices could seriously weaken enforcement of the Act and impede mine site reclamation. This could result in an unfair competitive advantage to operators who fail to comply with the requirements of the law and thereby lower their coal production costs.

This rule will also assist in implementing a court order in the case of *Save Our Cumberland Mountains, Inc. et al. v. Clark*, No. 81–2134 (D.D.C. January 31, 1985) (Parker J.), relating to enforcement measures that can be taken against operators with unabated cessation orders and unpaid civil penalties. Under the court order, the Secretary of the Interior is required to improve the enforcement and implementation of section 510(c) of the Act, and to establish a computerized Applicant Violator System which will match permit applicants and their owners and controllers with current violators of the Act. This rule establishes standards by which matches will be made by the computer.

This final rule contains revisions to § 773.15(b) which were proposed in two separate rulemaking actions. They are combined to assist readers in better comprehending the regulatory scheme being established.

A proposed rule amending 30 CFR 773.5 and 773.15(b)(1) was published on April 5, 1985 (50 FR 13724). On June 7, 1985 (50 FR 24122), the comment period was extended to June 28, 1985. On April 16, 1986 (51 FR 12879), the comment period was reopened and extended to June 16, 1986. On June 25, 1986 (51 FR 23085), the comment period was reopened and extended until August 11, 1986. On May 4, 1987 (52 FR 16275), the comment period was again reopened and extended until June 3, 1987, and on October 5, 1987 the comment period was again reopened and extended until November 4, 1987. During the comment periods, four public hearings were held, one on June 20, 1985 and another on July 15, 1986 in Big Stone Gap, Virginia; one on June 21, 1985 in Columbus, Ohio; and one on July 29, 1986 in Denver, Colorado.

A proposed rule amending 30 CFR 773.15 (b)(1)(ii), (b)(2) and (b)(3) was published on July 16, 1986 (51 FR 25822). On September 24, 1986 (51 FR 33905), the comment period was extended to October 24, 1986. No request was received for a public hearing and none was held.

II. Discussion of Final Rule and Comments

A. Section 773.5—Definitions

The proposal published on April 5, 1985 contained the following proposed definitions:

Control means ownership or any other relationship which gives one person express or implied authority to determine the manner in which that person or another person mines, handles, sells, or disposes of coal. Being an officer or director of a corporation shall constitute control. Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining shall establish a rebuttable presumption of control of such other person.

Ownership means holding the proprietary interest in a sole proprietorship, being a general partner in a partnership, being a contributor of capital or services in a joint venture, or having record or beneficial ownership of 10 percent or more of any class of voting stock in a corporation. In addition, being a limited partner owning 10 percent or more of the assets in a partnership creates a rebuttable presumption of ownership. 50 FR 13724.

The April 16, 1986, notice described an option for the definitions which would have contained the following features:

(1) The rule would have contained a definition for "ownership" which would track through various levels of a corporate structure. Ownership would have been defined as holding the proprietary interest in a sole proprietorship, being a general partner in a partnership, or having a 10 percent or greater interest in an entity either

directly or indirectly through one or more intermediary companies. Under this definition, a 10 percent or greater interest in an entity would have constituted ownership regardless of the number of levels "up" or "down" through the corporate structure between the parent and the subsidiary.

(2) The rule would have contained a definition for "control" which would have included any relationship which gave one person authority to determine the manner in which an applicant, or an operator if other than an applicant, conducted surface coal mining operations. Being an operator would have constituted control. Being a chief executive officer or chief operating officer of a coperation would have constituted control of that corporation. Being a director or any other officer of a corporation would have created a rebuttable presumption of control of that corporation. Being a director or officer of a corporation would also have created a rebuttable presumption of control over other entities owned by that corporation. The rebuttable presumptions of control could be overcome by clear and convincing evidence that such person had no authority to determine the manner in which the surface coal mining and reclamation operations were conducted.

On May 4, 1987, in response to comments submitted on the April 16, 1986 option, OSMRE published another option for a final rule which addressed the many concerns raised by commenters. The May 4, 1987 option contained the following definition:

Owned or controlled and *owns or controls* mean any relationship which gives one person authority to determine the manner in which an applicant, or an operator if other than an applicant, conducts surface coal mining operations, and includes but is not limited to the following:

(1) Being a chief executive officer, chief operating officer, or chairman of the board of an entity constitutes control of the entity.

(2) Being an officer, director, operator of an entity, or having the ability to commit the financial or real property assets or working resources of an entity creates a presumption of control.

(3) Based on the intruments of ownership or the voting securities of an entity:

(a) Ownership in excess of 50 percent constitutes control;

(b) Ownership of 20 through 50 percent creates a presumption of control; and

(c) Ownership of less than 20 percent creates a presumption of noncontrol.

52 FR 16275.

On October, 1987, OSMRE published another option for the definitions which contained the following language:

Owned or controlled and *owns or controls* means—

(a)(1) Being a permittee of a surface coal mining operation;

(2) Based on instruments of ownership or voting securities, owning of record in excess of 50 percent of an entity; or

(3) Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

(1) Being an officer or director of an entity;

(2) Being the operator of a surface coal mining operation;

(3) Having the ability to commit the financial or real property assets or working resources of an entity;

(4) Being a general partner in a partnership; or

(5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity.

52 FR 37164.

The final definitions of the terms "owned or controlled" and "owns or controls" at 30 CFR 773.5 are based in large part on the October 5, 1987 proposal. The definition is being adopted over other options considered because it focuses on those relationships which allow one person to compel action by another person. It allows persons who would ordinarily exercise control because of their positions to prove they do not or cannot exercise control. Specific rule language has been added to cover certain control relationships discussed in the October 5, 1987 **Federal Register** notice, but for which rule language was not specifically delineated.

1. Introductory Language

Introductory language has been added to the definition. The addition clarifies that the definition applies to both directly or indirectly related entities. Where two entities are indirectly related, control is established using any appropriate combination of the relationships specified in the definition, including the presumptions in paragraph (b). For instance, a director of a parent company is presumed to control wholly owned subsidiaries of the parent company using the combination of the relationships specified in paragraph (b)(1) and (a)(2). This provides explicit regulatory language to implement the policy OSMRE proposed in preceding notices for this rulemaking.

2. Paragraph (a)

Paragraph (a)(1)—Permittees. Paragraph (a)(1) of the final rule expressly includes the permittee as a controller of a surface coal mining operation. This was implicit in the options published on April 5, 1985, April 16, 1986 and May 4, 1987, and was explicitly proposed in the October 5, 1987 option. No objections were received to this aspect of the proposal.

Paragraph (a)(2)—Majority Shareholders. Paragraph (a)(2) of the definition specifies that record ownership in an entity of greater than 50 percent, based upon instruments of ownership or voting securities, always constitutes ownership or control because a majority interest will always be a controlling interest. (As will be subsequently discussed, direct ownership interests of from 10 to 50 percent will only presumptively establish ownership or control.)

Inclusion of ownership only where control also exists has been done for a number of reasons. The definition should reflect the primary purpose for which the Congress enacted section 510(c) of the Act. Under section 510(c), where a permit applicant has a current violation, the regulatory authority cannot approve a permit unless the applicant "submits proof that such violation has been corrected or is in the process of being corrected * * *." Thus, by its own terms, section 510(c) is intended to induce persons to correct, or be in the process of correcting, violations. For the rules to accomplish that purpose, an applicant should be denied a permit when it, its owners or controllers, or the entities they own or control, are or have been in a position to have outstanding violations corrected, and did not do so. No compelling reason exists to block permit issuance, however, where control never existed.

No comments were received objecting to a determination of ownership or control when a majority interest is owned.

The specific references in the April 5, 1985 proposed ownership definition to sole proprietors, joint venturers and limited partners are not included in the final definition. Sole proprietors would be included in paragraph (a)(2). Joint venturers and limited partners will be regulated through whichever paragraphs of the rule are applicable and, if not covered elsewhere, can be included under paragraph (a)(3).

If approached in a literal sense, the term "owned" could have been defined to span a range from a few shares of common stock in a large publicly-held

corporation to a sole proprietorship. An all inclusive definition, however, would unfairly treat widely-held corporate applicants that could be denied permits based upon small holdings by persons with outstanding violations, and would be difficult to administer. Absent some reasonable minimum threshold of ownership, regulatory authorities would face the monumental task of tracing every applicant through every thread of common ownership with every current violator, no matter how small the interest involved. The number of remote ownership interests that could exist between applicants and violators under such a definition would be enormous. And absent some reasonable minimum threshold, mere chance occurrences, such as small investors purchasing stock in two otherwise unrelated coal mining companies, could play an unreasonably significant role in the withholding of permits under section 510(c).

Given the congressional finding that "*effective and reasonable* regulation of surface coal mining operations" is appropriate and necessary (emphasis added), 30 U.S.C. 1201(e), the Congress could not have intended to produce such cumbersome and inequitable results. Thus, OSMRE has concluded that the definition should not cover all degrees of ownership, but only those where control exists.

Paragraph (a)(3)—Any Other Relationships. Paragraph (a)(3) of the definition includes as ownership or control any relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations. This general functional category applies to persons who exercise control over a surface coal mining and reclamation operation without regard to title or official position. This category applies when persons are not otherwise covered by the definition. The primary difference between relationships that would be covered under this category and those relationships enumerated in paragraph (b) is that under paragraph (a)(3) the regulatory authority has to establish that control exists, whereas persons covered under paragraph (b) have to establish that control does not exist.

Some commenters objected to the use of the phrase "mines, handles, sells or disposes of coal" that was proposed in April 1985 (50 FR 13727) as the general functional requirement to determine whether control exists. They suggested that it was vague and could result in situations where coal brokers or others with no control over a surface coal mining operation would be considered to exercise control over the operation. Other commenters stated that the definition of control should be based on total control of a surface coal mining operation, and not on control of one aspect such as handling or selling coal.

OSMRE agrees that paragraph (a)(3) should be written in terms of control over surface coal mining operations rather than control over specific activities, because section 510(c) of the Act addresses ownership or control over surface coal mining operations. Thus, instead of the phrase "mines, handles, sells or disposes of coal," OSMRE employs the phrase "conducts surface coal mining operations," the latter being a term defined at 50 CFR 700.5. In some instances, control over certain aspects of an operation, such as the manner or rate of mining, or the marketing, sale, or disposition of the coal can provide control over the conduct of surface coal mining operations.

Some commenters objected that the proposed phrase "any other relationship" (52 FR 37165) was too broad or inclusive and that its use undermined the credibility of (and the need for) the remainder of the definition.

OSMRE disagrees that the phrase "any other relationship" is too broad. The phrase is needed to cover extremely diverse patterns of ownership and control and consequently must be broadly inclusive. Whether a particular relationship provides authority to determine the manner in which a surface coal mining operation is conducted will be determined on a case-by-case basis after careful examination of the facts.

OSMRE intends that under paragraph (a)(3) the regulatory authority can examine any relationships and the facts surrounding them, such as informal agreements, personal relationships, and the mining history of the parties in question to determine if the relationship results in control over a surface coal mining operation. The regulatory authority may also consider any of the circumstances surrounding a surface coal mining operation to determine control. Such circumstances might include, for example, the fact that a person has financed the operation, or owns the equipment or the rights to the coal, or directs on-site operations.

One commenter requested that the final rule clarify that the examples given in the October 5, 1987 notice were examples of relationships that should be scrutinized for purposes of determining if ownership or control exists and should not be construed as relationships that always would constitute ownership or control.

OSMRE's statement in the October 5, 1987 notice (52 FR 37165) that "any relationship" can include one between family members, a lessor and a lessee, and an owner of coal and a contract miner was intended to be illustrative. The degree to which particular types of relationships will presumptively establish control is set forth in paragraph (b) of the definition. Examples of other relationships includable under paragraph (a)(3) are family relationships, contract mining situations not covered by paragraph (b)(6) and employees of business entities holding positions other than that of officer or director.

One commenter asserted that the rule should contain an irrebuttable presumption of control for mine managers, subcontractors, and mine foremen.

OSMRE agrees that in certain circumstances such persons could control a surface coal mining operation, but has chosen to regulate such persons under paragraph (a)(3) of the rule rather than establish specific presumptions. If OSMRE were to create a specific presumption for every possible relationship which might result in control of a surface coal mining operation, the definition would be longer than is reasonable. If OSMRE incorporated the terms "mine manager" or "foreman", new positions could easily be created to circumvent the rule. Furthermore, it would be incorrect to assume that such persons exercise control in all situations.

Actual Authority. As originally proposed, the rule would have defined "control" as "any relationship which gives one person *express or implied authority* to determine the manner in which that person or another person mines, handles, sells or disposes of coal * * *" (Emphasis added.) Some commenters stated that it was not clear what was meant by "express or implied authority." They suggested that control should turn on "actual" authority, as opposed to "express or implied" authority. OSMRE agrees, and has not included the phrase "expressed or implied" in the final definition. Paragraphs (a)(3) and (b) simply use the term "authority," which is intended to mean actual authority.

One commenter argued that the phrase "authority directly or indirectly to determine" used in paragraph (a)(3) should be changed for clarity to the phrase "control or have the power to control."

OSMRE did not adopt the suggestion. The language contained in the rule is

sufficient and is no less inclusive than the suggested phrase.

3. Paragraph (b)—Relationships Presumptively Establishing Ownership or Control

Paragraph (b) of the definition creates a presumption of control for certain relationships. Under paragraph (b) the following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

(1) Being an officer or director of an entity;

(2) Being the operator of a surface coal mining operation;

(3) Having the ability to commit the financial or real property assets or working resources of an entity;

(4) Being a general partner in a partnership;

(5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or

(6) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

Paragraph (b) of the definition includes those persons who, by virtue of their relationship to an entity, would ordinarily be in a position to exercise control over that entity. Paragraphs (b)(1), (b)(2), (b)(4) and (b)(5) include persons required to be reported on a permit application pursuant to section 507(b)(4) of the Act. A primary purpose of establishing the presumptions is to shift the burden of persuasion from the regulatory authority to the persons more likely to have access to the information necessary to establish whether control exists.

Presumptions. If an applicant and a violator have a relationship specified in paragraph (b), the permit will be blocked unless the applicant can rebut the presumption of control. A person need not hold the same position in each entity to establish the presumptions, so long as he or she controls the applicant and also controls or controlled the violator. A person presumed to be in control of an entity can rebut the presumption by submitting evidence which establishes to the satisfaction of the regulatory authority that he or she has or had no control of the entity. For any entity with unabated violations or unpaid penalties or fees, some person is responsible for the occurrence of the violation or the failure to abate the violation or to pay monies owed. In some cases, more than one person may be in control, such as in a partnership composed of two individuals.

The April 5, 1985 proposal would have established an irrebuttable determination of control for all officers, directors, general partners, and anyone having record or beneficial ownership of ten percent or more of any class of voting stock in a corporation. The April 16, 1986 option would have expanded this group to also include operators.

Many comments were received on these proposals. A few approved, but the majority objected to a conclusive presumption of control for such persons.

OSMRE agrees with commenters who asserted that not all officers, directors, general partners, operators and ten percent owners of record are in a position to exercise control over a surface coal mining operation. Rather than have an irrefutable standard, therefore, OSMRE has included rebuttable presumptions in paragraph (b) of the final rule.

OSMRE has concluded that an irrebuttable presumption of control for all officers, directors, general partners, operators and 10 percent shareholders would raise due process concerns. If the presumption of control is not necessarily or universally true for each member of a class and a reasonable alternative procedure for making the determination exists, an irrebuttable presumption should not be established. See *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974); and *Vlandis v. Kline*, 412 U.S. 441 (1973).

Several commenters objected to the use of presumptions in the proposed definitions, criticized OSMRE's standards for presuming control, and argued that the presumptions were contrary to well-established business law and to the realities of the marketplace with regard to who actually exercises control of a business.

OSMRE does not agree. The presumptions in the definition do not determine who ultimately is responsible for the manner in which a surface coal mining operation is conducted. The presumptions determine who has the burden of proof, and have been established on the basis of those classes of persons who have apparent authority over the conduct of surface coal mining operations. The burden of proof properly should rest with those who have access to the information on which a control determination can be accurately made—the officers, directors, general partners, operators, those with the ability to commit the financial or real property or working resources of an entity, owners of a ten through fifty percent interest, and owners and lessors of coal. Neither OSMRE nor regulatory authorities have easy access to the information which is needed to make an accurate determination of control in such circumstances, whereas persons subject to the presumptions would have better access to the information needed to show control does not exist.

One commenter stated that immediate family members should be the subject of rebuttable presumptions of control with the exception of minor children for which there should be an irrebuttable presumption. The commenter further stated that immediate family members should include members of the same household, husbands, wives, direct descendants and ancestors, siblings, aunts, uncles, nephews, nieces and first cousins, and include relationships by blood and adoption.

OSMRE disagrees. Such relationships can be effectively regulated under paragraph (a)(3), should the need arise. Under paragraph (a)(3), "any other relationship" can include family relationships. The regulatory authority may use paragraph (a)(3) to regulate family relationships if it has reason to believe that such relationships are being used to mask control of surface coal mining operations. Such information may come to the attention of the regulatory authority during the public participation process provided by 30 CFR 773.13.

Concerning minor children, OSMRE is unaware of any situation where a minor child has applied for a permit, and questions whether a minor child would be able to enter into a contract, or obtain the necessary bond, without the assistance and consent of a legal guardian, who would then be regulated under paragraph (a)(3).

Paragraph (b)(1)—Officers and Directors. Commenters asserted that while a corporate board of directors exercises general control over a corporation when acting as a unit, it may have little impact on day-to-day operations. The commenters stated that individual directors may exert little or no control, or may disagree with the board's majority, but under the corporate bylaws or standards may be unable to influence it. A commenter argued to the contrary that "complete" or "absolute" control over a company's activities should not be required before an officer or director is considered in control. By "complete" or "absolute" control the commenter meant control or an ownership interest large enough to

allow a person to compel compliance by his or her actions alone.

A person, such as a director, cannot escape responsibility merely by asserting that he or she is a member of a group, and the group, collectively, can exercise authority, but not any one individual. The information needed to establish whether a particular director can exercise control of a corporation likely relates to the internal workings of the corporation. A director may have access to such information. Access by a regulatory authority is likely to be difficult. OSMRE is establishing the presumption of control for directors to encourage such information to be brought forward to the regulatory authority if the director wishes to establish that control does not exist.

Commenters opposing the presumption of control for officers and directors asserted that it is unlikely as a general matter that a treasurer or junior officer of a corporation could exercise control.

As stated above, OSMRE agrees that every officer of a corporation may not control the relevant surface coal mining operation. An officer in a large corporation may rebut the presumption by demonstrating that his or her responsibilities preclude such control. In small closely held corporations, however, control can be exercised in a number of ways and the mere restatement of official responsibilities may be insufficient to overcome the presumption.

Irrebuttable Presumption Alternative For Officers Rejected. One commenter preferred a conclusive presumption of control for officers, but stated that if OSMRE rejects this approach, an alternative could be structured which establishes an irrebuttable presumption in the following three situations where an irrebuttable presumption for officers would be particularly compelling.

The first situation specified by the commenter would apply to businesses over a certain size, and include an irrebuttable presumption for "line of authority" officers dealing with surface coal mining and reclamation operations, and would always include the chief executive officer and the chief operating officer. Non-"line" officers would not be subject to any presumption, because in large corporations, non-"line" officers may not be involved with the conduct of surface coal mining and reclamation operations. The commenter suggested that "line of authority" officers could be initially identified by requiring companies to specify which of their officers are included, subject to the regulatory authority's discretion to add others.

OSMRE agrees that in most instances officers with "line" authority over a surface coal mining operation are in control of the operation. The problem with establishing an irrebuttable presumption, however, is twofold. First, within a particular entity, actual authority could be exercised by a person without "line" authority, and the person in apparent control should be given opportunity to demonstrate that he or she cannot exercise control. Second, a person with line authority in an entity which controls, but is not conducting, a surface coal mining operation perhaps can demonstrate that he or she does not control the activities of the surface coal mining operation. OSMRE does not expect in either situation that a person in a line position will generally rebut the control presumption.

OSMRE also agrees that non-"line" officers in large corporations often will not control the organization. OSMRE's problem in this regard was establishing the size standard for removing the presumption of control. Rather than selecting an arbitrary cutoff, OSMRE has decided to establish the control presumption for all officers, recognizing that for very large corporations a non-line officer will easily be able to provide adequate rebuttal.

The second situation would include corporations with less than 500 employees. The commenter suggested that all officers in such corporations should be subject to an irrebuttable presumption, because lines of authority are likely to be blurred, with all officers intimately involved in various aspects of business. The commenter selected the 500-employee threshold from the Small Business Administration size standard of five hundred employees for small businesses in coal mining, at 48 CFR 19.102(g).

OSMRE simply does not agree that a size threshold exists for corporations below which every officer will always control the corporation. OSMRE cannot justify an irrebuttable presumption, particularly with regard to officers who are not in the chain of command over the conduct of a surface coal mining operation.

The commenter's suggested size threshold is based on the Federal Acquisition Regulations (FAR) at 48 CFR Part 19. Part 19 implements the acquisition-related sections of the Small Business Act, the purposes of which are different from SMCRA. Although the FAR address whether entities are affiliated or under common control, they do not establish an irrebuttable presumption of control for all officers of small corporations. To the contrary, instead of conclusively providing that an individual who serves as an officer of two corporations controls both corporations, the FAR require interlocking management so that the officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern. (48 CFR 19.101(f)(1)).

Although the commenter focused on particular aspects of the FAR, in many ways OSMRE's regulatory scheme will result in greater scrutiny of an applicant than would the provisions of the FAR. For instance, although the commenter asserted that OSMRE must collect extensive information on all officers, the FAR simply requires that an offeror represent in good faith that it is a small business, without the requirement to submit supporting information. 48 CFR 19.301.

In the third situation suggested by the commenters, the following officers would be subject to an irrebuttable presumption of control: (1) Those who serve as directors ("inside directors"); (2) those who own substantial amounts of a corporation's stock or debt; (3) those who rent facilities or equipment to or from a corporation; (4) those who "share" employees with a corporation; (5) those who organized a corporation; (6) those who commingle their assets with those of a corporation; or (7) those who work for a corporation that is undercapitalized or that disregards corporate formalities. The commenter asserted that the above standards would cover situations where an officer is the driving force behind a "shell" company, or has such a relationship with a company that he or she is in control.

OSMRE rejects these suggestions for several reasons. The complexity of the commenter's suggestions would make implementation extremely difficult. Implementation of any regulatory scheme is dependent upon the quality and availability of the information needed. The two principal sources of information for compliance review are OSMRE's Applicant Violator System and permit applications. With the exception of officers who are also directors or large shareholders, neither source can presently provide information needed to establish the third set of categories suggested by the commenter. Information on items such as the commingling of assets, undercapitalization of corporations, corporate organizers or sharing of employees is not easily collectible. Future modification of permit application requirements is not likely to make such information available,

particularly with regard to the owners or controllers of permit applicants.

The commenter's suggested alternative would unreasonably increase the information collection burden imposed on the public. Under the Federal Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, Federal agencies are required to minimize or, where possible, reduce the information collection burden it imposes on the public. In addition each Federal agency is given an information collection "budget." Although statutory information collection requirements, such as mandated by 507 of SMCRA, must be satisfied, OSMRE must consider the amount of information to be collected from the public when imposing discretionary requirements.

As to the exception where information is likely to be available, the rebuttable presumption established by this final rule satisfactorily deals with officers who are also directors or large shareholders. In such situations, the aggregation of factors that tend to establish control will make rebuttal difficult. Factors, such as an officer being both an officer and director, or financing the operation, will be considered when the officer or director attempts to rebut the presumption. Thus a rebuttable presumption in such cases will likely yield the same result as the proposal suggested by the commenters, but will be more fair and provide individuals a chance to show that control does not exist.

In addition, OSMRE is not sure what the commenter meant by the concept of corporations that disregard corporate formalities or officers who organized the corporation, which could include persons who performed technical tasks. A rebuttable presumption will allow persons to come forward to demonstrate whether he or she is in control in such circumstances.

OSMRE agrees that many of the factors the commenter enumerated are valuable indications of control which will certainly be considered during the permitting process. This rule will prove no less effective than the commenter's suggested alternative, however, without imposing undue complexity.

Finally, many of the commenter's suggestions are significant departures from the options proposed by OSMRE, which would have required an additional opportunity for public comment. This would have further delayed the adoption of a final rule.

Paragraph (b)(2)—Operators. As described earlier, the definition establishes a rebuttable presumption of control for operators. This has been a difficult and controversial issue for OSMRE, and one about which members of Congress inquired as to the basis the agency had for proposing an irrebuttable presumption of control for operators and the basis for changing that position.

Prior to promulgating this rule, OSMRE considered several alternatives. In the April 5, 1985, proposal (50 FR 13724), operators were not specifically mentioned in the definition, but would have been regulated under the phrase "any other relationship." The second alternative was published on April 16, 1986 (51 FR 12879). It did not contain specific rule language but stated that being an operator would constitute control. This option was added in response to comments which argued that the person really controlling the mining operation is the operator (administrative record document no. 6). Under another alternative, published on May 4, 1987 (52 FR 16275); reiterated on October 5, 1987 (52 FR 37164), and included in this final rule, being an operator creates a presumption of control.

Part of OSMRE's difficulty in determining the degree to which an operator controls a surface coal mining operation results from ambiguities in the Act. Even though the terms "permittee" and "operator" are defined in the Act, the Act sometimes uses the terms interchangeably from one section or subsection to another. For example, "permittee" in section 518(a) and "operator" in section 518(c) appear to be used interchangeably.

OSMRE is concerned about the inequities that could result from a conclusive presumption for operators that may not always be true. Although permittees are responsible for everything that happens on the site, non-permittee operators are responsible only for their own conduct. Thus an operator may be able to show that a violation was caused by the permittee or someone else other than itself.

Further, courts have construed operators to include entities which do not physically engage in coal removal. See *United States v. Rapoca Energy Co.*, 613 F. Supp. 1161 (1985) (*Rapoca*). Thus although OSMRE agrees that entities physically engaged in surface coal mining operations will almost universally control such operations, the term operator includes more than such entities.

The proper focus of a compliance review inquiry should be whether a person controls the operation, not whether the person is the "operator." Therefore OSMRE is reluctant to establish an irrebuttable presumption based upon the definition in section 701(13).

One commenter asked whether the rule would apply to the owners and controllers of operators in the same fashion as to the owners and controllers of permittees.

The ownership and control definition provides a means of evaluating the relationship between any two entities, regardless of whether a permittee or operator is involved. When an operator controls a surface coal mining operation, the compliance review must consider the owners and controllers of the operator.

Paragraph (b)(3)—Persons Who Can Commit Assets or Resources. Paragraph (b)(3) creates a presumption for anyone having the ability to commit the financial or real property assets or working resources of an entity. OSMRE considers such an ability sufficient to imply control and therefore has included a rebuttable presumption for such persons.

Paragraph (b)(4)—General Partners. Paragraph (b)(4) establishes a rebuttable presumption of control for each general partner in a partnership.

Several commenters pointed out that while it is true that general partners control a partnership *as a group*, an individual partner may have only a small voice in management. The commenters pointed out that under sections 18 (e) and (h) of the Uniform Partnership Act, unless the partners agree otherwise, all partners have an equal voice in management. Therefore, unless a provision covering voting exists in the partnership agreement, ordinary matters are decided by a majority vote of the partners.

Under the commenters' reasoning, no partner will be a controller. OSMRE rejects this position on the basis that individuals cannot escape responsibility merely because a group collectively has control and the person is but a part of the group. OSMRE has established a presumption to enable a partner to show that he or she cannot exercise control. Mere assertion of group responsibility is insufficient to overcome the presumption.

Paragraph (b)(5)—10 to 50 Percent Owners. Paragraph (b)(5) presumes control in situations where a person owns less than a majority interest in an entity (*i.e.*, ten through fifty percent). This is consistent with rulings in which several courts have found that actual control can exist when the largest shareholder owns less than half of the voting stock in a corporation. See *Securities and Exchange Commission v. R. A. Holman & Co.*, 377 F.2d 665, 667 (2d Cir. 1967); *Gottesman v. General Motors Corp.*, 279 F. Supp. 361, 368 (S.D.N.Y.

1967). If a person with a ten through fifty percent interest in an entity believes that his interest does not constitute control, then he will be given an opportunity to submit evidence rebutting the presumption. For example, the presumption of control can be rebutted by evidence which establishes that the shareholder in question has consistently been denied control of the entity by block voting of other shareholders, or that there is a majority shareholder who controls the entity.

The presumption in paragraph (b)(5) will be used in determining whether control exists between indirectly related corporate entities and will apply at each level of a corporate structure. For example, if Company "A" owns a forty-five percent interest in Company "B," and Company "B" owns a twenty percent interest in Company "C" (the applicant), then Company "A" will be presumed to own or control the applicant, even though Company "A" has an indirect interest in the applicant of only nine percent. The determining factor is not the percentage owned, but whether control exists. In such an example, if company "A" owned or controlled Company "D" which had a violation, the applicant will not be issued a permit unless it submits evidence proving that it is not controlled by Company "B," Company "B" is not controlled by Company "A", Company "A" does not own or control Company "D", or Company "D" is not a violator.

As originally proposed in April 1985, "ownership" would have been defined as, among other things, "ownership of 10 percent or more of any class of voting stock in a corporation." In the corresponding definition of "control," the proposed rule stated that "Control means ownership * * *." Because of this linkage between the definitions, a ten percent interest in a corporation would have resulted in a determination of control under the rule. OSMRE received numerous comments objecting to a definition of "ownership based on an interest that was insufficient to establish any control over a violating entity. Several commenters asked OSMRE to explain how a ten percent interest resulted in control, and requested examples of such situations. They stated that ten percent stock ownership generally does not constitute control of a corporation, and that a higher standard such as fifty percent should be adopted. The commenters asserted that the purpose of the permit blocking provisions of section 510(c) is to compel compliance with the Act and certain other environmental laws by withholding approval of a permit until outstanding violations under an old permit are corrected. They argued that it would serve no useful purpose to block a permit merely because someone listed in the permit application owned, directly or indirectly, a ten percent or greater interest in a violator if that interest gave insufficient control to effect compliance.

Several commenters objecting to the ten percent option stated that under the rules of statutory construction, words should be given their common meaning in the absence of evidence that some other meaning was intended or manifested. Since the Congress did not define the term "owned" in section 510(c) of the Act, they argued, it is appropriate to assume that the Congress intended the term to be used in its usual and ordinary sense. As one commenter pointed out, the term "own" is defined by the American Heritage Dictionary as "to have or possess," while "control" is defined as "to exercise authority or dominating influence over." Therefore, as used together in the Act, the commenter concluded both of these terms should be defined to imply an ability to direct the manner in which a company conducts the surface mining of coal.

For the reasons described earlier, OSMRE agrees with the commenters' conclusion that only controlling ownership interests should block permits. OSMRE also agrees with the comments that ownership of less than fifty percent may not always constitute control. The definition adopted today addresses these concerns by eliminating a mandatory determination of ownership and control for ownership interests of less than fifty percent.

In addition, no presumption is included in paragraph (b)(5) for ownership of less than 10 percent because it is unlikely that an ownership interest of less than ten percent would generally be sufficient to give control of an operation without other factors. A situation involving less than 10 percent ownership can constitute control under paragraph (a)(3), if the regulatory authority can establish the necessary facts.

Several commenters, citing "11 Fletcher, Cyclopedia of the Law of Private Corporations (rev. perm. ed. 1986)" as authority, stated that a ten percent shareholder does not "own" a corporation; he merely owns one-tenth of its shares, and has the rights to vote one-tenth of its shares and to collect one-tenth of its dividends. In the commenter's view, the shareholder does not own any of the corporation's assets or capital directly, and therefore does not "own" the corporation as that term is used in section 510(c).

OSMRE disagrees with the commenters' analysis. The commenter's focus on direct ownership of assets and capital is not determinative as to whether a certain percentage ownership of a corporation's shares can establish control of the corporation. If direct ownership of assets and capital had to exist, a majority shareholder would not necessarily be considered an owner of the corporation. That result is not plausible.

Relation to section 507(b)(4) of the Act. Section 507(b)(4) requires an applicant which is a partnership, corporation, association, or other business entity to include in its application for a surface coal mining and reclamation permit:

> [T]he names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, together with the name and address of any person owning, of record 10 percentum or more of any class of voting stock of the applicant and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation * * * within the five-year period preceding the date of submission of the application.

Some commenters argued that the legislative history of section 507(b)(4) indicates that the Congress did not intend that all persons named by an applicant under section 507(b)(4) should be held ultimately responsible as owners or controllers. They argued that the information submitted pursuant to section 507(b)(4) does not define who owns or controls an applicant for the purposes of section 510(c) permit blocking, but simply requires the submission of data from which OSMRE must determine those ultimately responsible for the mining operation, either because of their official position or because of their controlling ownership interest in a corporation. OSMRE agrees.

One commenter favoring the position that ten percent ownership establishes ownership or control asserted that the information reporting requirements of section 507(b)(4) indicate who the Congress considered "ultimately responsible" for a mining operation, and therefore everyone named by an applicant pursuant to section 507(b)(4) should be considered either an "owner" or a "controller" for permit blocking under section 510(c). OSMRE initially was inclined to adopt this position. However, a careful reading of the legislative history and the inequitable results that would flow from such a

position has led OSMRE to a different conclusion.

The legislative history of section 507(b)(4) includes the statement that "[t]he information required by [section 507(b)(4)] is a key element of the operator's affirmative demonstration that the environmental protection provisions of the Act can be met as stipulated in Section 510 and includes: (1) Identification of all parties, corporations, and officials involved *to allow identification* of parties ultimately responsible * * *." H.R. Rep. No. 94–896, 94th Cong., 2nd Sess. 111 (1976). (Emphasis added.) See also S. Rep. No. 94–28, 94th Cong., 1st Sess. 206 (1975). The report does not state that the information submitted pursuant to section 507(b)(4) identifies all parties ultimately responsible, but only that it is collected "to allow identification" of such parties. Thus, the Congress intended to give the regulatory authority discretion to determine whether any person named under section 507(b)(4) owns or controls the applicant.

In the April 5, 1985 proposed rule, OSMRE requested comments as to how far up and down the vertical chain of corporate ownership the rule should apply. Some commenters stated that it should apply up and down the ownership chain until all ten percent stock owners were identified.

Commenters opposed to a rule including indirect owners pointed out that section 507(b)(4) of the Act required only the applicant's shareholders of record to be listed on a permit application, but not indirect owners. The commenters argued that this indicated that the Congress intended that a permit should be blocked only for direct ownership.

OSMRE disagrees with the latter commenters' conclusion. Their focus on the scope of section 507(b)(4) of the Act does not answer the question of the proper reach of OSMRE's rule. Section 507(b)(4) is an information collection provision that does not govern the scope of the compliance review under section 510(c) of the Act. This rule, moreover, is an exercise of authority under more than just section 510(c). For instance, sections 201(c)(1), 201(c)(2), 412(a) and 501, provide ample authority for the Secretary to include as many corporate levels as necessary within the concepts of ownership or control. Thus, the proper reach of OSMRE's rule is a matter for the exercise of its discretion in a reasonable manner.

OSMRE views the primary purpose of the withholding of permits based upon ownership or control to be the correction of violations and the payment of monies owed. Accordingly, OSMRE has adopted a rule which focuses on the ability to achieve these goals, rather than on a specific number of indirect ownership levels and will track ownership up and down a corporate chain so long as control is present.

As required by section 507(b)(4), OSMRE and state regulatory authorities will collect information on persons holding at least a ten percent interest in the applicant, and will use the information to determine who in fact is ultimately responsible for the operation. OSMRE also will include such information in the Applicant Violator System. Under the rule, a person holding an ownership interest of between ten and fifty percent will be presumed to qualify as an owner or controller unless it can be demonstrated that the person's relationship to the entity does not provide control over the conduct of the relevant surface coal mining operation. Based upon such a demonstration, the regulatory authority lawfully may conclude that a person named under section 507(b)(4) does not own or control the applicant.

One commenter objected to the rule and stated that it incorrectly interpreted the informational requirements of section 507 as establishing a new class of persons subject to penalties, both in the form of civil or criminal penalties and of permit blocking under the Act. The commenter argued that section 507 should not be read as defining "ownership or control" for penal purposes under section 510(c). The commenter argued that section 507 sets forth only a comprehensive informational requirement that is broad enough to cover all of the Act's informational needs, such as the conflict of interest provisions, the inspection and enforcement provisions, and the provisions setting forth certain exemptions from the Act's requirements such as the small operator exemption. The commenter further argued that the rule subjected a new class of persons to liability for civil penalties and reclamation work incurred by another separate, and possibly unrelated, corporate permittee.

OSMRE agrees in part and disagrees in part. Certainly OSMRE may use the information furnished pursuant to section 507(b)(4) of the Act to perform the compliance review required by section 510(c) of the Act. The House Report quoted earlier links the reporting requirements of section 507 with the compliance review required by section 510. Similarly, the information reported pursuant to section 507(b)(4) of the Act may be used for more than the compliance review required by section 510(c) of the Act. For example, section 518(f) of the Act authorizes the assessment of individual civil penalties against officers, directors and agents of a corporate permittee who knowingly and willfully authorize violations of the Act. The information supplied pursuant to section 507(b)(4) may be used to identify the officers, directors and agents of the corporate permittee against whom an individual civil penalty may be assessed.

OSMRE disagrees with the commenter's assertion that the rule will subject a new class of persons to liability for civil penalties and reclamation work incurred by another separate, and possibly unrelated, corporate permittee. The rule does not transfer liability for civil penalties and reclamation work to the permit applicant. Those responsibilties remain with the persons who originally incurred the obligation. If the commenter intended the term "liability" to mean that an applicant would be unable to receive a permit until reclamation is performed and penalties and fees paid, the commenter is correct. The rule is justified because it is a powerful means of inducing remedial action in situations where such action is possible.

Relation to section 518 of the Act. A commenter asserted that section 518 of the Act establishes the class of persons and entities subject to penalties and responsible for violations of the Act's provisions. The commenter argued that section 510(c) must be read as requiring the regulatory authority to withhold the privilege of obtaining a surface mining permit only from individuals or entities determined to be in violation of the Act's requirements pursuant to the penalty provisions of section 518 or under similar provisions of other environmental laws. As an example, the commenter argued that section 518(f) establishes clear standards for when a corporate officer, director or agent is in violation of the Act's requirements. The commenter argued that the officer, director or agent must have willfully and knowingly authorized, ordered or carried out the violation before he or she can be held personally liable and a permit be denied because of a common link between a permit applicant and a violator.

OSMRE disagrees. Section 518 establishes the civil and criminal penalty provisions of the Act; it does not establish the criteria for permit blocking under section 510(c). For example, section 518(f) specifies the type of conduct, knowing and willful, for which a corporate official will be assessed an individual civil penalty. No such

requirement is set forth in the relevant portion of section 510(c).

Moreover, OSMRE has discretion to use a range of enforcement options to achieve compliance and may find it more effective to take action against a corporate entity rather than to assess an individual civil penalty under section 518(f). Therefore, a determination that an individual is in violation of section 518 is not a prerequisite to blocking a permit under section 510(c) or under this rule. The determining factors under final § 773.15(b)(1) are: (1) Whether the common officer was in control of the violator at the time the violation occurred and is therefore responsible for the violation; or (2) whether the common officer presently controls the violator and, therefore, can order abatement.

Successor Responsibility. In the notice of proposed rulemaking, OSMRE requested comments as to whether parent corporations which acquire subsidiaries should be responsible for violations committed by the subsidiaries prior to their acquisition. Some commenters opposed making parent corporations responsible for the violations. Other commenters favored responsibility. Commenters opposing responsibility argued that it might have a negative effect on an acquisition even though the acquisition could result in any acquiring company abating a violation or reclaiming an abandoned mine site. Commenters favoring responsibility stated that it was reasonable for the acquiring parent to assume the liabilities of a subsidiary as well as its assets. One commenter favored responsibility after a grace period in which the parent could bring the subsidiary into compliance.

OSMRE concludes that it is reasonable and proper to hold an acquiring company liable for the violations for which a subsidiary was responsible prior to its acquisition in a number of circumstances. When the acquiring company acquires a share in excess of 10 percent of an entity, under the rule it will presumptively own or control the entity and therefore can compel the correction of a violation in the same manner as its predecessors in interest.

When a company acquires only assets of an entity, its responsibilities will depend upon a number of factors. For instance, if the assets purchased include the mine site and equipment where outstanding violations exist, the acquiring company would be responsible for the violations under the theory that the acquiring company has purchased the liabilities in connection with the transferred assets of the other entity and that the purchase price for the entity would reflect any liabilities transferred. In other instances, assets may be transferred without transferring responsibility for violations. However in these instances the contract of sale or other legal instrument must clearly establish that responsibility remains with the selling entity.

The law of successor liability is complex. Although the general rule is that where a corporation sells all its assets to another company, the buyer is not liable for the obligations of the seller, significant exceptions exist. As one Federal Court stated:

> Four exceptions to the general rule of nonliability are widely recognized * * *. Thus, where (1) the purchaser of assets expressly or impliedly agrees to assume obligations of the transferror; (2) the transaction amounts to a consolidation or de facto merger; (3) the purchasing corporation is merely a continuation of the transferror corporation; or (4) the transaction is fraudulently entered into to escape liability, a successor corporation may be held responsible for the debts and liabilities of its predecessor. See *Shane v. Hobam, Inc.*, 332 F. Supp. 526 (E.D. Pa. 1971); *Granthum v. Textile Machine Works*, 230 Pa. Super. 199, 326 A.2d 449 (1974). See generally 15 W. Fletcher, Cyclopedia of the Law of Private Corporations section 7122 (rev. perm. ed. 1983). A fifth circumstance, sometimes included as an exception to the general rule, is where the transfer was without adequate consideration and provisions were not made for creditors of the transferror. *Husak v. Berkel., Inc.*, 234 Pa. Super. 452, 457, 341 A.2d 174, 176 (1975) * * *."

Philadelphia Electric Co. v. Hercules, Inc., 762 F.2d 303, 308–309, (3d Cir. 1985). See also *Pulis v. United States Electrical Tool Co.*, 561 P.2d 68 (OK. 1977); *Kemos, Inc. v. Bader*, 545 F.2d 913 (5th Cir. 1977), *Golden State Bottling Company, Inc. v. National Labor Relations Board*, 414 U.S. 168 (1973). Each of these exceptions may be applicable, alone or in combination, to possible ownership or control relationships where a successor may be held responsible under the Act.

The "grace" period suggested by the commenter is unnecessary because a regulatory authority may conditionally issue a permit under 30 CFR 773.15(b)(1)(i), if a violation is being abated to the satisfaction of the regulatory authority. Consequently, any company which has acquired a subsidiary with an outstanding violation may receive a conditional permit in appropriate circumstances.

Paragraph (b)(6)—Contract Mining. Paragraph (b)(6) covers contract mining operations in which the person controlling the mining operation may be neither the permittee nor the operator, but instead is the owner or lessor of the coal. Specific regulatory language governing contract mining operations was added in response to comments discussed below.

As proposed on April 5, 1985, the rule contained a rebuttable presumption of control for those with the right to receive coal to be mined by another under a lease, sublease or other contract. (50 FR 13727.) Numerous comments were received on this proposal.

The constituent positions surrounding contract mining are not surprising. Citizen and environmental groups desire that reclamation and other responsibilities arising under the Act be as wide-ranging as possible and that *de facto* control by one entity over another, through a contract or other means, is sufficient to establish responsibility by the controlling entity. These groups prefer such widespread responsibility because, typically, the controlling entity has greater resources, stability, and the ability to abate violations than does the entity controlled.

Industry groups take the opposite view and assert that an entity mining under a contract is an independent entity who should bear sole responsibility for its actions. Several industry commenters objected to a rebuttable presumption of control by the owner or lessor of the coal in a contract mining operation, asserting that contract mining is a legitimate business arrangement that has been utilized for generations to finance and mine coal and in the majority of cases is not used to evade the requirements of the Act. One commenter stated that it was unfair to make a coal company responsible for the conduct of its contract operators, especially with regard to past unpaid fines and fees.

In paragraph (b)(6) of the final definition of "owned or controlled," OSMRE has established a rebuttable presumption of control for "captive" contractors of coal owners or lessors. Control over the conduct of a surface coal mining operation will exist by those "[o]wning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation." In situations covered by paragraph (b)(6), applicants would have to prove that a contract mining relationship with a coal lessor does not establish control. In situations involving contract mining where paragraph (b)(6) does not apply, control can be established under one of the other paragraphs of the definition.

OSMRE has adopted the presumption because, in contract mining operations, the owner or lessor of the coal more often than not is controlling the mining operation even though the owner or lessor of the coal purportedly employs "independent contractors." This was the situation in *Rapoca, supra,* discussed below. To the extent that a coal company controls or can exercise control over a contract operator it should be held responsible for any outstanding violations of the Act which it could have prevented or corrected.

Rapoca. The *Rapoca* case support the presumption in paragraph (b)(6). In *Rapoca,* OSMRE sued under section 402(a) of the Act, 30 U.S.C. 1232(a), to collect reclamation fees from the Rapoca Energy Company, which had contracted with others to mine the coal it owned. The issue was "whether a large coal company that contracts with independent companies to produce coal that it owns or leases is an 'operator' responsible for the payment of [such] fees."*Id.* at 1163.

Finding the Rapoca was liable for payment of the fees, the court stated:

> Because of the degree of control which Rapoca Energy Company exerts over the mining companies with respect to crucial aspects of the mining process, along with the corresponding lack of freedom regarding the mining companies ability to sell to anyone other than Rapoca, this court must conclude that the "independent contractors" are no more than Rapoca's agents.

Id. at 1164.

Proof Needed To Rebut Contract Mining Presumption; Relevance of Contract Terms. Commenters objected to OSMRE's statement in the 1985 preamble to the proposed rule (50 FR 13726) that the terms of the contract may not be sufficient to rebut the presumption of control in a contract mining operation and argued that permit applicant would be required to submit "negative" proof to rebut the presumption. The commenters asserted that, by considering factors other than contract terms, OSMRE ignores the integrity of small business entities, and stated that contract miners are often utilized for small coal reserves that cannot be mined economically by larger companies, or by the landowners who own the coal but lack the means to mine it. The commenter stated that the contracts are very precisely worded to specify the responsibilities of all the parties involved.

OSMRE disagrees. The terms of a contract may establish the rights of the parties among themselves, but are not a conclusive determination of the responsibility of the parties under the Act. OSMRE will look to the actual relationship between the parties. Important factors to be considered in determining the actual relationship of the parties include whether the mining company is free to sell the coal it extracts to whenever it wishes and the degree of involvement of the coal owner or lessor in the mining operation. Information which can be used to rebut a presumption of control can include, but is not limited to, data on who provides engineering services, who determines the placement and method of driving entries or making cuts, and to whom the coal may be sold and at what price. As with all of the presumptions contained in the rule, submission of adequate information that is available to the parties involved will suffice to rebut the presumption.

Some commenters objected to the rebuttable presumption of contract mining operations on the gounds that it would allow OSMRE to modify or annual the terms of contracts.

OSMRE disagrees. Contact terms many continue to govern rights as among the parties to a contract. However, the terms of private contracts are not necessarily determinative of obligations under the Act.

Relation to Two-Acre Definition of Control. One commenter asked why, with regard to contract mining, OSMRE has deviated from the position it has taken on control in the "two-acre rulemaking."

The final rule on the two-acre exemption, to which the question relates, appears at 30 CFR 700.11(b), and was promulgated on August 2, 1982 (47 FR 33431). The two-acre rule derives from former section 528(2) of the Act, which was repealed by the Congress on May 7, 1987, Pub. L. 100–34, 100 Stat. 300. For purposes of the two-acre exemption, section 700.11(b)(2)(iii) defines control as:

> [O]wnership of 50 percent or more of the voting shares of, or general partnership in, an entity; any relationship which gives one person the ability in fact or law to direct what the other does; or any relationship which gives one person express or implied authority to determine the manner in which coal at different sites will be mined, handled, sold or disposed of.

The definition of control in section 700(b)(2)(iii), with an exception related to general partners, is consistent with the definition adopted by this rule. The principal difference as to contract mining relates to the manner of proving control, not to the relationship covered. In 1982, OSMRE elected not to include any rebuttable presumptions, choosing instead that the regulatory authority has to establish control. Clearly, however, under the tow-acre definition of control a contract mining relationship could constitute control. In the preamble to § 700.11b(2)(iii), OSMRE explained that:

> If one person exercises sufficient authority over another (whether by contract, lease, other agreement, or implied authority) to determine how that person mines, handles, sells or disposes of coal from a site, there is "control."

47 FR 33428 (August 2, 1982).

As to general partners, OSMRE has decided to allow such persons to attempt to rebut a presumption, rather than to create a conclusive determination of ownership or control.

One commenter cited an example in the preamble to the proposed two-acre definition in support of its assertion that OSMRE had changed its position on control for contract miners. In the two-acre proposal, OSMRE stated that

> if company A, by agreement with operators X, Y, and Z, requires all coal mined at those sites to be sold to company A and delivered to a prescribed tipple, then company A would "control" the operation under the proposed definition.

47 FR 52 (January 4, 1982). The commenter concluded that this example raised an irrebuttable presumption of control which was lacking in the May 4, 1987 and October 5, 1987 options, and therefore OSMRE had changed its position with respect to contract miners.

OSMRE disagrees. The two-acre definition does not contain an irrebuttable presumption of control for contract miners. The regulatory language specifies in general terms the circumstances which constitute control. The cited passage was not intended to establish an irrebuttable presumption, but was intended to be an example of the application of the proposed definition under particular circumstances. One salient fact missing from the example was how Company A derived the authority, such as by being the coal owner or lessor, to require where the coal was to be sold. Depending upon *all* of the circumstances, the same conclusion would likely result from applying this rule.

Relation to IBLA Decision. One commenter inquired as to how the standards set forth in *S & M Coal Co. and Jewell Smokeless Coal Co. V. Office of Surface Mining Reclamation and Enforcement,* 79 IBLA 350 (1984) (S & M Coal) relate to this rule.

The *S & M Coal* decision supports the presumption established by paragraph (b)(6) of the "owned or controlled" definition. In the *S & M Coal* case, the DOI Office of Hearings and Appeals (OHA) held a lessor of coal liable for

violations at a mining site even though the coal produced at that site was mined by another party pursuant to an oral contract. In reaching its decision, OHA noted that the lessor's employees took an active part in the planning and engineering functions in support of the mining operations. OHA also held that while the amount of control actually exercised is indicative of the relationship between the owner of the coal and the company or individual extracting the coal, the determination regarding exercise of control should not solely be based on past exercise of control and that it is important to determine the extent that a party can exercise control.

Irrebuttable and Broader Presumptions Rejected. One commenter wanted an irrebuttable presumption of control in contract mining situations. The commenter argued that contract mining is a major method of mining in various regions of the country. The commenter argued that contract mining has caused untold environmental damage through irresponsible conduct on the part of both the contractor and the entity arranging to have the coal extracted. The commenter further argued that while contract mining is a legitimate method of mining, and in certain cases plainly desirable, there is no question but that contracting has been and is being used on a widespread basis to evade compliance with the Act. The commenter objected to leaving open the issue of lessor/owner liability through a rebuttable presumption when in fact total or almost total control exists in contracting mining situations.

OSMRE does not agree that an irrebuttable presumption is warranted. If in all contract mining operations, the conduct of the relevant surface coal mining operation were controlled by the coal owner or lessor, than a conclusive presumption would be warranted. However, such is not the case. OSMRE agrees that when an owner or lessor of coal controls salient features of an operation performed by a contractor, a determination of control over the whole surface coal mining operation is justified and should be established. This is a reasonable position, which will accomplish the goals which were contemplated by the Act. Because control by the owner or lessor does not always exist, however, it would be inequitable for OSMRE to adopt a rule which conclusively presumes control in all situations.

One commenter suggested that having the right to receive coal under a lease, sublease, or other contract is too restrictive a standard to use to determine control and suggested that a standard using any benefit received from mining and/or marketing of the coal would be more appropriate to determine control.

OSMRE has decided not to establish a standard whereby a coal owner or lessor would be presumed to control the conduct of a surface coal mining operation if it receives any economic benefit from the mining or marketing of coal. Such a presumption would be too broad because in almost every contract mining situation the coal owner or lessor derives some economic benefit from the mining and marketing of the coal produced. What is more relevant is whether the coal owner or lessor can control the manner in which the surface coal mining operation is conducted. A coal lease combined with the right to receive the coal generally establishes such control.

In-Kind Royalties. One commenter asked for clarification of the rebuttable presumption as it applied to lease situations, especially where payment for the lease was in-kind.

OSMRE does not intend that the reference to the right to receive coal in the rebuttable presumption contained in paragraph (b)(6) be construed as applying to royalty payments, such as those received by the Federal government on Federal coal leases. However, simply labeling the receipt of coal as an in-kind royalty payment will not automatically except the operation from the provisions of (b)(6) if the payment is more than a simple royalty or if the lessor otherwise controls the conduct of the surface coal mining operation.

Effect on Business Practices. Some commenters pointed out that the rule might cause companies to eliminate contract mining operations to avoid liability for the violations of the contract miners at other unrelated sites.

OSMRE agrees that this may happen in specific instances. OSMRE does not believe, and no evidence has been presented, that this rule will eliminate contract mining as a business practice in the coal industry. As with any rule of law, many companies seek prudent ways to comply. One way would be not to contract with companies with outstanding violations. This rule does not preclude any company, however, from entering into a contract with any other entity. Whether this rule affects the ability of a particular contract miner to enter into contracts with coal owners or lessors could be dependent on the business reputation of the contract operator. Those who have reputations for operating in compliance with the law should have few problems.

One commenter said the rule would be unfair to a contract miner who may have had difficulties in the past and was trying to rehabilitate himself.

OSMRE disagrees. The rule is necessary to prevent violators from obtaining new permits. The contract miner wishing to rehabilitate himself and obtain a new permit may always enter into an abatement agreement or payment schedule with the regulatory authority.

One commenter stated that the proposed rule might discourage companies from buying coal from other companies because the purchaser might be deemed in control of that company, and thus be liable for any outstanding violations the latter might have.

OSMRE disagrees that the rule will establish responsibility for violations without ownership or control of the violator. In situations covered by Paragraph (b)(6), the rule provides the opportunity to show that control does not exist. In situations covered by paragraph (a)(3), the regulatory authority would have to establish that control does exist. The existence of a contract to purchase coal, without any other relevant factors, would be unlikely to establish control.

Procedures. One commenter was concerned because the proposed rule did not discuss the manner, standard or forum for rebutting the presumptions, and requested clarification.

OSMRE recognize that the reasonableness of the ownership and control definition and of the compliance review required by revised § 773.15(b) is dependent upon the rules being implemented in a fair and effective manner. OSMRE also realizes that permitting decisions by both OSMRE and state regulatory authorities will be based in part upon the information contained in OSMRE's computerized Applicant Violator System (AVS). To assure that recommendations by the AVS are correct, OSMRE has established a clearinghouse to verify recommendations and to respond to queries. Moreover, OSMRE has taken system-wide measures to verify the AVS information. Notwithstanding these precautions, additional procedures exist for adversely affected persons to ensure that determinations of ownership or control and other compliance review related issues are properly made. These are described below.

OSMRE As Regulatory Authority. In applying the rule in situations where OSMRE is the regulatory authority, OSMRE will use the procedures it

currently has in place for reviewing permit applications. When a permit application is received, a preliminary check is made for outstanding violations or unpaid fees or penalties incurred by the applicant, its owners or controllers, or entities they own or control. If a present or past ownership or control link to a violator exists, or if other circumstances exist which would block permit issuance, notice is sent to the permit applicant. The applicant is informed of the links to the violator and that the relationship will result in withholding issuance of a permit unless the violation is abated or is on appeal, or is in the process of being abated, or the permit applicant can demonstrate that the requisite ownership or control relationships between the owners and controllers of the applicant and the violator do not exist. Upon receiving such a notice, the applicant may submit evidence concerning any relevant factors which would rebut an applicable presumption.

The measure of proof needed to rebut a presumption under this rule is a preponderance of the evidence, the standard ordinarily required in civil matters. Any applicant denied a permit by OSMRE may file a request for review with the Hearings Division of the Department of the Interior's Office of Hearings and Appeals in accordance with 43 CFR 4.1360 *et seq.*

States As Regulatory Authorities. When a permit application is filed with a State regulatory authority, the Applicant Violator System is checked by the regulatory authority to determine whether an ownership or control relationship exists between the permit applicant and a current violator. If the permit is denied by the regulatory authority based on a determination that a relationship to a current violator exists, the permit applicant may petition the regulatory authority for review of the permit denial. The petitioner may challenge any basis for the denial, including an outstanding violation or the relationship to the violator. If the petition challenges a State regulatory authority's determination that a relationship to a violator exists, the petition shall be reviewed in a State forum. Challenges to State determinations of ownership or control should be reviewed in a State forum, because rebutting the presumptions in 30 CFR 773.5(b) may be dependent on State laws.

In some cases, Federal review may be required. OSMRE intends that challenges to determinations that Federal violations exist or that monies are owed to the Federal government be resolved in a Federal forum using national standards. The Department of the Interior is prepared to address any problems which may arise on a case-by-case if existing procedures prove insufficient to ensure due process.

Procedures to Amend Applicant Violator System Information. In addition to the procedures described above, both individuals and organizations may seek to amend the information in the Applicant Violator System, independent of the existence of a permit application if they believe that the records are not accurate, relevant, timely or complete. A notice describing the Applicant Violator System, the categories of records contained in the system and the procedures for reviewing those records was published in the Federal Register on August 10, 1987 (52 FR 29570), and an amendment to that notice was published on June 16, 1988 (53 FR 22575).

A determination which OSMRE makes on a request for amending information contained in the Applicant Violator System will be subject to administrative review within DOI. If the request is made by an entity other than an individual, an adverse determination will be subject to review by the Department's Office of Hearings and Appeals. Under different Department of the Interior procedures developed under the Privacy Act of 1974, if the request is filed by an individual, an adverse determination can be appealed to the Assistant Secretary—Policy Budget and Administration, DOI, under 43 CFR 2.74. OSMRE will inform any persons requesting a review and amendment of this information of the proper forum for appeal.

Standards For Rebutting Presumptions. OSMRE published a draft set of guidelines for rebutting the proposed presumptions in the October 5, 1987 notice (52 FR 37164). The guidelines were not extensive and were included in the notice as a starting point for public comment. Public meetings were held on the guidelines at which representatives from the environmental community and the coal industry were present. At the meetings the participants acknowledged that it probably was not possible to achieve a comprehensive agreement on guidelines for rebutting presumptions prior to the issuance of a final rule.

Written comments were also submitted. One commenter stated that standards for rebutting presumptions constitute "rules" within the meaning of the Administrative Procedure Act and therefore cannot be advisory. The same commenter also argued that different guidelines/rules should be developed for large and small companies. It suggested that officers and directors of small companies (those with less than five hundred employees) should be held to a stricter standard of proof for rebutting presumptions, on the theory that in a small company all officers and directors are intimately involved in the management of the business.

A commenter had the following detailed suggestions for inclusion in the guidelines, reasoning that the actions specified would either bring about abatement or show that the officer or director was not in control: Any officer or director who wishes to rebut the presumption should show that he or she did everything within his or her legal authority to bring about abatement of the violation. A director should show that he or she brought the matter to the attention of the chief executive officer and the board of directors (or the partnership) and proposed abatement, including requesting a vote for compliance. This action should then be communicated promptly to the regulatory authority by the director. The communication could be a simple statement of the director's activities. An officer would be required to do everything in his legal authority to bring about abatement, and then promptly notify the regulatory authority of this action. At a minimum, all officers should bring the matter to the attention of the chief executive officer and the board of directors, in writing, advocating abatement of the violation, and should communicate the action taken to the regulatory authority.

Other commenters objected to guidelines. A state regulatory authority wanted the guidelines withdrawn or else to have it stated in the rule that they were advisory and did not have to be used by a State regulatory authority. One commenter objected on the grounds that—

> ([o]nce in place, it is likely that the guidelines will operate much like final rules with one difference—there will be little or no opportunity for the regulated industry to assure itself that the guidelines are not changed unilaterally prior to notice and comment. Nor is there any certainty that the guidelines will be "advisory only" and not subject to rigid, inflexible application by regulatory authorities who are overworked and are looking for a formula approach to regulation.

Although GSMRE appreciates the detailed guidelines suggested by commenters, OSMRE does not believe that it is necessary or possible at this time to incorporate guidelines into the definition. As with any rule, an agency must determine just how prescriptive

and detailed the rule must be and how much discretion must be afforded the implementing authorities. In this instance, neither the statute nor OSMRE's prior rules specify the relationships on which to deny permits. The rule adopted today in large measure fills the gaps and sets sufficient standards for regulatory authorities to follow.

In addition, it is difficult for OSMRE to establish guidelines specifying elements such as precisely how many employees a company need have for the directors to be in control, or the percentage of stock ownership less than 50 percent that would always constitute control. Moreover, it is unlikely that such specific standards would guide private conduct, except as to persons who may seek to use the rules to their advantage. The establishment of the presumptions themselves will impel persons wishing to rebut them to bring all relevant factors to the attention of the regulatory authority, regardless of whether GSMRE specifies such factors.

For the present, however, the proof needed to rebut the presumptions will be determined case-by-case. The data available to OSMRE for predicting what evidence might rebut the presumptions are limited, and until sufficient experience has been gained in processing permit applications under the rule, guidelines are premature.

One commenter asked whether the type of violation, and therefore the remedial action required, alter the factors which will be considered in determining whether the presumption of control has been rebutted.

All pertinent factors should be considered when making determinations of control. If the type of violation and remedial action required affect that determination, then it should be taken into consideration. To date, however, OSMRE has not encountered a permit application where the type of violation or the remedial action was a factor in determining control.

One commenter asked if the requirements for rebutting a presumption would change with different control relationships.

The factual requirements for rebutting a presumption will change depending on the particular situation. For instance, the amount of proof required to rebut a presumption of control for a chief executive officer will likely be greater than that for a junior vice-president of a corporation. Likewise, the amount and kind of proof would vary where different presumptions apply.

Other Comments. Some commenters stated that the proposed rule was not a clarification, but a substantive change in the requirements of the Act. OSMRE disagrees. As stated earlier in this preamble, the rule implements authority granted to OSMRE under a number of sections of the Act and was promulgated in conformity with the requirements of the Administrative Procedure Act.

One commenter objected to the iterative comment periods and referred to the rule as a "rolling" proposal. OSMRE believes that the rule satisfies procedural requirements. The differing options on which OSMRE solicited comments were based upon evolving considerations in response to previous comments. The final rule is substantially like the option described in the October 5, 1987, **Federal Register** notice, and also embodies features from the earlier notices.

One commenter suggested defining the term "party or parties." The commenter did not explain how the definition should be used or why it was needed. The commenter proposed defining the term as follows:

> "Party" or "parties" includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or person with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interests may be treated as though they were one person.

Administrative Record, Document No. 162(a), page 33.

OSMRE did not adopt the suggestion because it considered such a definition unnecessary for the regulatory scheme being adopted. The term "party" or "parties" is not used in OSMRE's rule and therefore need not be defined.

The same commenter also suggested adding a definition for the term "entity," and defining the term as follows:

> "Entity" includes but is not limited to a partnership, incorporated or unincorporated association, society, joint stock company, firm, company, or cooperative, corporation, joint venture or other business organization, whether organized for profit or not.

Administrative Record, Document No. 162(a).

The commenter argued that such a definition is necessary to avoid any questions of whether an unincorporated association constitutes an entity under a particular state's law. The commenter stated that the definition would be in accord with provisions of the Act, such as the definition of "person" in § 701(19).

OSMRE did not adopt the suggestion because it was considered unnecessary. The compliance review at § 773.15(b)(1) uses the term "person," which is defined in § 701(19) of the Act to mean "an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization," and covers the organizations included in the commenter's suggested definition.

B. § 773.15(b)

Section 773.15(b)(1)—Compliance Review

Section 510(c) of the Act requires that if "any surface coal mining operation owned or controlled by the applicant is currently in violation of the Act * * * the permit shall not be issued * * * *" Final § 773.1–5(b)(1) implements section 510(c), as well as other provisions of SMCRA. Former § 773.15(b)(1) required the regulatory authority to make a finding that any surface coal mining and reclamation operation owned or controlled by the applicant was not currently in violation of the Act or certain other environmental laws. It did not, however, expressly require the withholding of a permit when persons who own or control the applicant own or control operations in violation of such provisions.

Under a court order in the case of *Save our Cumberland Mountains, Inc. et al.* v. *Clark*, No. 81–2134 (D.D.C. January 31, 1985), the Secretary of the Interior is required to strengthen the enforcement and implementation of section 510(c) of the Act by withholding a permit when persons who own or control the applicant own or control operations in violation of the Act or certain other environmental laws. This rule imposes such a requirement. Any expanding the scope of the compliance review, OSMRE will gain an effective tool to ensure that persons who own or control an operation will have to abate or be in the process of abating all violations before any other operation they own or control is issued a permit.

On April 5, 1985 (50 FR 13724) OSMRE published a proposed rule to revise the scope of the compliance review and to require the withholding of a permit when persons who own or control the applicant own or control an operation in violation of the Act or certain other environmental laws. On April 16, 1985 (51 FR 12879), OSMRE published for comment another option for the revised compliance review. That option, like the April 1985 proposal, would have expanded the compliance review in § 773.15(b)(1) to entities owning or controlling the applicant. It also included a statement in § 773.15(b)(1) that in the absence of a failure-to-abate cessation order, a notice of violation, except a notice of violation issued for

non-payment of AML fees or civil penalties, would be presumed to be in the process of being corrected to the satisfaction of the agency that had jurisdiction over the violation.

On October 5, 1987, OSMRE published another option for the compliance review, which contained the following proposed language:

> Section 773.15 Review of permit applications. [b](1) Based on available information concerning Federal and State failure-to-abate cessation orders, unabated Federal and State imminent harm cessation order, delinquent civil penalties issued pursuant to section 518(h) of the Act, bond forfeitures, delinquent abandoned mine reclamation fees, and unabated violations of Federal and State laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the regulatory authority shall not issue the permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of the Act or such other law, rule or regulation referred to in this paragraph. In the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation issued pursuant to 843.12 of this chapter or under a Federal of State program, except a notice of violation issued for nonpayment of abandoned mine reclamation fees or civil penalties, is being corrected to the satisfaction of the agency with jurisdiction over the violation. If a current violation exists, the regulatory authority shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either—[submit proof that the violation has been or is in the process of being corrected, or that an appeal has been filed and is being pursued in good faith.]

52 FR 37165.

The revisions to § 773.15(b)(1) contained in this rule are based for the most part on the option published on October 5, 1987. To assist the regulatory authority in making the compliance review required by section 510(c) of the Act, OSMRE is including in § 773.15(b)(1) a list of violations which the regulatory authority will consider. The list of violations includes Federal and State failure-to-abate cessation orders, unabated Federal and State imminent harm cessation orders, deliquent civil penalties assessed pursuant to section 518 of the Act (including penalties assessed under derivative State and Federal programs), bond forfeitures, delinquent abandoned mine reclamation fees, and unabated violations of Federal and derivative State laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation. The list of violations contained in § 773.15(b)(1) includes all outstanding violations, regardless of whether they occurred under the interim or permanent regulatory progam.

Statutory Authority for Compliance Review Including Owners and Controllers of Applicant. The scope of the compliance review required by final § 773.15(b)(1) includes surface coal mining operations owned or controlled by owners or controllers of the applicant.

Commenters asserted that the rule goes beyond congressional intent because section 510(c) of the Act refers only to persons owned or controlled by an applicant, and not to those who own or control the applicant. Some commenters suggested that the legislative history of the Act does not support the proposed change, and that the rule is an inappropriate extension of section 510(c). Other commenters favored the rule, asserting that it was necessary to prevent evasion of the Act through the creation of new business entities or contractual agreements.

Contrary to commenters' assertions, the final rule is not just an exercise of authority under section 510(c) of the Act. Rather it is authorized by multiple sections of the Surface Mining Act, including sections 101, 102, 201(c)(1), 201(c)(2), 412(a), 501(b), 507(b)(4), 510 (a), (b) and (c), 511, 701(16) and 701(19). It is supported by the January 1985 district court order in *Save our Cumberland Mountains, supra,* and avoids the major potential for abuse that would result from examination only of operations controlled by the applicant.

Section 201(c)(1) of the Act provides that:

> The Secretary acting through [OSMRE] shall * * * order the suspension, revocation, or *withholding of any permit for failure to comply* with any of the provisions of this Act or any rules and regulations adopted pursuant thereto. * * * *"

(Emphasis added.)

Section 201(c)(1) authorizes the withholding of any permit for failure to comply and is not limited to operations owned or controlled by a permit applicant.

In addition, section 201(c)(2) contains a general grant of rulemaking authority and empowers OSMRE to "publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act. * * *" Section 412(a) establishes rulemaking authority to administer the provisions of Title IV of SMCRA, which includes the collection of AML fees. Section 501(b) requires the Secretary to publish regulations governing the requirements of State and Federal programs. The other sections enumerated above also lend support.

It is thus proper for the Secretary acting through OSMRE to use this authority to insure that all persons comply with the Act. OSMRE has chosen to implement this authority by withholding a permit where the named "applicant" is owned or controlled by others who own or control surface coal mining and reclamation operations which are in violation of the Act and certain other environmental laws.

Moreover, this rule may be justified as an exercise of authority under section 510(c) by construing the term applicant, as used in that section, to mean more than just the entity whose name appears on the permit application. The legislative history of the Act strongly implies that the Congress intended the purview of section 510(c) to be broader than just the entity identified as the applicant.

As discussed earlier in this preamble, the legislative history of the Act connects the informational requirements in section 507(b)(4) of the Act to the permit approval provisions of section 510(c) to allow identification of the parties ultimately responsible for the operation. See H.R. Rep. No. 94–896, 94th, Cong., 2nd Sess. 111 (1976). See also S. Rep. No. 94–28, 94th Cong., 1st Sess. 206 (1976). By allowing identification in section 507(b)(4) of the "parties ultimately responsible" for purposes of section 510(c), Congress clearly contemplated that the term applicant as used in section 510(c) would not be limited to the entity named as the "applicant" in the permit application and could include persons by whom the applicant is owned or controlled.

One commenter pointed to the definition of "applicant" in section 701(16) of the Act as evidence that the Congress intended to limit responsibility for violations. Another suggested that as an alternative to the proposed rule, OSMRE should define the term "applicant" more broadly to include persons who own or control the applicant. OSMRE disagrees with the former commenter, and agrees in principle with the latter.

The definition of "applicant" does not limit the Secretary's authority under sections 201 (c)(1) and (c)(2) of the Act. The definitions of "applicant" and "person" in sections 701(16) and 701(19) of the Act indicate that the Congress intended these terms to be broadly construed. Section 701(16) defines "applicant" to mean "a person applying for a permit." "Person" is defined by section 701(19) to mean "an individual,

partnership, association, society, joint stock company, firm, company, corporation, or other business organization." Together, these two definitions cover an unlimited range of individuals and organizations which, under appropriate circumstances, OSMRE properly may construe as an applicant. Rather than redefine applicant, however, OSMRE has chosen a regulatory scheme describing persons owned or controlled by the applicant.

Several commenters pointed out that section 507(b)(5) of the Act requires a statement whether the *applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant,* has ever held a Federal or State mining permit which is the five-year period prior to the date of submission of the application has been suspended or revoked or has had a mining bond or similar security deposit forfeited. The commenters argued that the use of different language in section 510(c) limits the allowable review under that section to companies owned or controlled by the applicant.

The inclusion of a specific requirement in section 507 does not limit the Secretary's broad authority under sections 201 (c)(1) and (c)(2). OSMRE also disagrees with the commenters' interpretation of section 510(c). Although neither section 507(b)(4) nor section 507(b)(5) uses the same language as set forth in section 510(c), both provide regulatory authorities with information that may be used in the compliance review. The fact that the Congress required information on affiliates, subsidiaries and companies under common control indicates that the Congress intended such information to be examined by the regulatory authority when reviewing permit applications. This rule makes use of all of the information included under section 507(b), which the Congress considered necessary for processing a permit application.

In support of their interpretation of section 510(c), several commenters pointed out that in the preamble to the 1979 permanent program regulations OSMRE rejected a suggestion that 30 CFR 778.14(c) (1979), the rule requiring a listing of violation notices in permit applications, should require information on the same parties listed in § 778.14(a) (1979). This latter section required a permit applicant to submit information on permit revocations, suspensions and bond forefeitures of the applicant and any subsidiary, affiliate, or persons controlled by or under common control with the applicant. In rejecting this suggestion OSMRE stated in 1979 that the informational requirements of § 778.14(c) are restricted by section 510(c) of the Act, which requires a listing of violations committed by the applicant, while the informational requirements in § 778.14(a) are governed by section 507(b)(5). 44 FR 15025 (March 13, 1979).

The 1979 statement concerning § 778.14(c) was susperseded by a later revision to that section. On September 28, 1983, OSMRE revised § 778.14(c) and expanded the amount of information to be included in permit applications (48 FR 44399). Those regulations, which were not challenged and, pending further revision, are currently in effect, require permit applicants to submit a list of all violations committed by the applicant and by any subsidiary, affiliate or persons controlled by or under common control with the applicant. Thus, although the terminology is not the same, the scope of the compliance review in § 773.15(b)(1) is consistent with the current information submission requirements in existing § 778.14.

Some commenters objected to OSMRE's use of the Secretary's general authority under section 201(c)(1) to deny the issuance of a permit to entities owned or controlled by persons with outstanding violations. The commenters argued that the language of section 510(c) is clear, and that permits should only be blocked if an operation owned or controlled by the applicant is in violation.

OSMRE disagrees. So long as he acts reasonably, the Secretary may exercise all of the authority provided to him by the Congress under the Act, including that of section 201(c)(1). Regardless of whether this rule may be viewed as an exercise of authority under sections 101, 102, 201(c)(1), 201(c)(2), 412(a), 501(b), 507(b)(4), 510 or 701 of the Act, or a combination thereof, its adoption is rational, closely related to the purposes of the Act, and a reasonable exercise of the Secretary's discretion. Such secretarial discretion recently was strongly reaffirmed by the United States Court of Appeals for the District of Columbia Circuit in numerous instances in its January 29, 1988 decision in *NWF v. Hodel,* No. 84–5743 (D.C. Cir. 1988).

Delinquent Civil Penalties and AML Fees Included As Violations. This list of violations is identical to the proposal published on October 5, 1987 (52 FR 37164), with one exception. The October 5, 1987 list referred only to delinquent civil penalties issued pursuant to section 518(h) of the Act. The final rule includes all delinquent civil penalties assessed pursuant to § 518 of the Act, including those issued under section 518(a). This addition makes explicit the OSMRE position that nonpayment of a civil penalty within thirty days of becoming due, like the nonpayment of delinquent AML reclamation fees, is a violation of the Act.

This was proposed as a rule on July 16, 1986 (51 FR 25822) in proposed § 773.15(a)(3), which stated that nonpayment of Federal and State civil penalties within thirty days of a final order shall be considered a violation of the Act for purposes of the compliance review required by § 773.15(b)(1). Although proposed as § 773.15(a)(3), the provision has been modified and logically included in the list of violations in final § 773.15(b)(1).

The inclusion of all delinquent civil penalties in the list of violations will assure that prior to permit issuance the regulatory authority makes a determination that the applicant, and any entity owned or controlled by either the applicant or by any person who owns or controls the applicant, has paid all civil penalties arising from a violation of the Act for which a final order has been issued.

Several comments were received on proposed § 773.15(a)(3) concerning the non-payment of penalties. One commenter suggested that the language be amended by adding language indicating that the nonpayment of AML fees is a violation of the Act requiring permit denial. As proposed on July 16, 1986, § 773.15(a)(3) stated that nonpayment of Federal and State civil penalties is a violation of the Act, but did not mention AML fees. Failure to pay AML fees was covered by proposed § 773.15(c)(7). The same commenter also suggested that language clarifying what constitutes a violation be added to § 773.15(b)(1) rather than being included in § 773.15(a)(3). In response to the comment, OSMRE has included in § 773.15(b)(1) references to both delinquent civil penalties and delinquent abandoned mine reclamation fees, the non-payment of which would be violations that would bar permit issuance.

One commenter requested clarification as to whether the reference to Federal and State civil penalties in proposed § 773.15(a)(3) meant only those civil penalties that arise from violations of the Act, its implementing regulations, and approved State programs, and not civil penalties which may be assessed against a person pursuant to other laws.

OSMRE intends to construe the references to civil penalties in final § 773.15(b)(1) as referring only to those civil penalties that arise from violations

of the Act, its implementing regulations and approved state or Federal programs. The inclusion of a reference to section 518 of the Act in 30 CFR 773.15(b)(1) should eliminate any confusion. Whether failure to pay civil penalties arising under other laws is covered depends upon whether such failure constitutes an unabated violation of other law pertaining to air or water environmental protection.

One commenter suggested that proposed § 773.15(a)(3) be revised to clarify that a person is not in violation for nonpayment of penalties if the person is complying with an approved payment schedule. The commenter stated that if the suggestion were not adopted, then the applicant would be required to submit proof under existing § 773.15(b)(1)(i) that the violation, in this case the nonpayment of civil penalty, was in the process of being corrected.

OSMRE did not adopt the suggestion. If a person has entered into a payment schedule, the violation has not been corrected, but is only in the process of being corrected and the requirements of § 773.15(b)(1)(i) apply. Where a violation is the subject of a payment schedule, a permit may be conditionally approved in accordance with final § 773.15(b)(2).

One commenter suggested that the term "violation" in section 510(c) of the Act be interpreted to include Federal notices of violation, cessation orders, unpaid civil or criminal penalties, and violations of all other laws, rules or regulations pertaining to air or water environmental protection.

OSMRE agrees in part and disagrees in part. As discussed, OSMRE considers the nonpayment of delinquent civil penalties a violation of the Act. Moreover, § 773.15(b)(1) applies to cessation orders and to other Federal and derivative State laws, rules and regulations pertaining to air or water environmental protection. A notice of violation, however, although considered a violation, may be presumed to have been abated or to be in the process of correction unless a failure-to-abate cessation order is issued, or where evidence to the contrary is set forth in the permit application. This presumption is discussed below.

No "Finding" Required. As originally proposed on April 5, 1985, the rule would have required the regulatory authority to make a finding that any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant was not currently in violation of the Act. The proposal to require a finding of compliance prior to the issuance of a permit was based on previous § 773.15(b)(1) that was adopted in 1983. The preceding 1979 rule did not include a finding in the counterpart regulation, 30 CFR 786.17(c) (1979).

This rule revises § 773.15(b)(1) to require a review of available information, including the schedule of violations submitted by the permit applicant and the information contained in the Applicant Violator System. Based on that review, the regulatory authority shall not issue a permit if there is an outstanding violation. The prohibition against issuing the permit, as compared to the previous requirement for a finding, was adopted to conform the rule with the language of section 510(c) of the Act, which does not require a finding, but instead states that "the permit shall not be issued. * * *" This change is a matter of procedure rather than substance. The compliance review will be conducted for every permit. Although no finding is required, unless one of the exceptions applies no permit will be issued where a violation exists.

One commenter objected to the removal of the findings and argued that the run should require an investigatory finding to insure a thorough and complete review and determination that there are no current violations. The commenter quoted the following legislative history of the Act in support of his position:

> [T]he regulatory authority must find * * * that any operation under the applicant's ownership or control currently in violation of the act * * * is in the process of being corrected in a satisfactory manner to [the] respective regulatory agency. (H.R. Rep. No. 95-218, 95th Cong., 1st Sess. 92 (1977).

OSMRE disagrees with the commenter's interpretation. The legislative history quoted above simply requires that the regulatory authority determine that any violation of an operation owned or controlled by the applicant is in the process of being corrected. The rule does just that. The use of a "finding" is an artifice and is not needed as long as the rules embody the substantive requirement. The requirement referred to in the House Report is included in 30 CFR 773.15(B)(i). That section requires that the permit applicant submit to the regulatory authority proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation.

Presumption of Abatement of NOVs. Under the final rule, in the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation has been or is being corrected, except where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. A presumption concerning the abatement of a notice of violation was first proposed in the April 16, 1986, **Federal Register** notice which reopened and extended the comment period (51 FR 12879) and was included in subsequent notices.

The exception concerning contrary information in the permit application has been added to the language in the October 5, 1987, notice to ensure that presumptions made by the regulatory authority do not conflict with the information included in the violations schedule required to be submitted by the applicant under section 510(c) of SMCRA. The presumption may be rebutted based upon submission of specific proof by interested persons that an NOV has not been or is not being abated.

The exception concerning Abandoned Mine Land fees or civil penalties is included to ensure that money owed the government is paid in a timely fashion. Ordinarily, NOVs are not issued with regard to monies owed unless the delinquency is clear.

Commenters were concerned that an expanded compliance review under § 773.15(b)(1) could result in delays in the issuance of a permit where an applicant or an owner or controller of the applicant had insufficient time to complete abatement of a recently issued notice of violation at another site.

This concern is valid. One of the primary purposes for this presumption is to eliminate the disproportionate effect of NOVs issued to a related entity following application but prior to permit issuance. This is of particular concern in cases where the applicant is a subsidiary of a large corporation with many other subsidiaries under common control. In such cases, the applicant may not have ready access to information concerning specific plans to abate NOVs issued to related entities.

One commenter stated that a permit issued subject to the presumption should be issued conditioned on the abatement of the underlying violation for which the notice of violation was written. Then, if the permittee failed to abate the previous violation within the abatement period set forth in the notice of violation, the permit just received should be revoked for failing to meet the permit condition.

OSMRE agrees that where a permit is issued subject to a showing that the notice of violation is being corrected, if the notice of violation is not abated

within the time specified, the permit should be subject to remedial action. As a backup to the NOV presumption, OSMRE included in its July 16, 1986, proposal (51 FR 25822) a section that would authorize a regulatory authority to rescind a permit where a notice of violation existed at the time the permit was issued and a failure-to-abate cessation order subsequently was issued under 30 CFR 840.12 and 843.13. This provision, which OSMRE expects to publish shortly, would provide for permit suspension and rescission. Under a revised proposal published on August 4, 1988 (53 FR 29343), a determination whether to suspend or rescind a permit would be based upon the ownership and control standards of the applicable regulatory program at the time the permit was issued.

Two commenters objected to the proposed presumption because they maintained that it would weaken enforcement measures under the Act, and because the violation should not be considered abated until abatement has been achieved.

OSMRE disagrees. In the absence of evidence to the contrary, it is reasonable for a regulatory authority to presume that a violation subject to an NOV has been abated, or is being corrected to the satisfaction of the agency with jurisdiction over the violation. If a violation is not abated within the time specified in the NOVs, a regulatory authority must issue a failure-to-abate cessation order, which would block permit issuance.

Effect of Bond Forfeiture. One commenter was concerned that the reference in § 773.15(b)(1) to bond forfeitures would result in the denial of a permit if a bond forfeiture had ever occurred.

OSMRE does not intend such a result under the rule. If a bond forfeiture has occurred but the permit site has been reclaimed and no violations remain, the person responsible for the bond forfeiture is not precluded from receiving another permit. The guiding principle is whether any unabated violation remains. The language in § 773.15(b)(1) reflects this policy.

Extent of Regulatory Authority Review. One commenter stated that state regulatory authorities will need guidance on the extent of the compliance review required for a corporate structure.

The rules does not require an investigation beyond the information in the permit application and the Applicant Violator System, or otherwise available to the regulatory authority. OSMRE intends that the regulatory authority evaluate all available information, including: (1) Possible ownership or control relationships listed in an Applicant Violator System report, and (2) possible ownership or control relationships which the regulatory authority may become aware of through its field inspectors, knowledge of local mining practices, and information it receives through public participation in the permitting process under the State program.

One commenter objected to the burden on regulatory authorities resulting from the revised compliance review. The commenter stated that the rule will result in increased administrative burdens and delays in permitting.

OSMRE disagrees. The final rule will not impose a substantial burden on regulatory authorities, and will not result in significant delays in the permitting process. Access to the Applicant Violator System should facilitate compliance with this rule.

Effect of Bankruptcy. One commenter asserted that permits cannot be withheld or revoked for outstanding civil penalties owed by a company which has filed for liquidation or reorganization under the bankruptcy code (11 U.S.C. 101 *et seq.*) because an attempt to collect penalties or AML fees through a permit block under section 510(c) was nothing more than an attempt to circumvent an automatic stay under 11 U.S.C. 362(a), which precludes the commencement or continuation of any judicial or other proceeding "that was or could have been commenced before the commencement of the bankruptcy case." The commenter suggested that OSMRE clarify the effect that a petition for liquidation or reorganization under the bankruptcy code would have on the issuance or revocation of a permit.

Under the bankruptcy code, certain actions are exempt from an automatic stay. They include:

> (4) * * * the commencement or continuation of an action or proceeding by a government unit to enforce such governmental unit's police or regulatory power;
>
> (5) * * * the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; [or]
>
> (9) * * * the issuance to the debtor by a governmental unit of a notice of tax deficiency * * * * (11 U.S.C. 362(b) (1982 & Supplement III, 1985).)

Thus, some actions, while otherwise within the scope of activities stayed by 11 U.S.C. 362(a), are exempt from a stay under 11 U.S.C. 362(b). The effect that a petition for liquidation or reorganization will have on a particular permit application will depend on the facts surrounding the violation and the application. Because of the complexity of the bankruptcy laws and the multitude of factual situations that are possible, regulatory authorities will deal with such applications on a case-by-case basis as they arise. In situations were a petition for liquidation or reorganization has been filed and the automatic stay does not apply, as in the case of post-petition indebtedness, the regulatory authority will perform the compliance review required by § 773.15(b)(1) and deny the permit. However, in situations where the automatic stay does apply, so that the issuance of a permit cannot be blocked on account of pre-petition indebtedness, the permit will be issued, conditioned on the payment, once the stay has expired, of any amount not discharged in bankruptcy.

Effect of Statute of Limitations on Collection Actions. A commenter asserted that permit blocking cannot occur for any civil penalty which has not been reduced to judgment within the applicable statute of limitations in 28 U.S.C. 2462 (barring an action, suit or proceeding for enforcement of any civil fine, penalty unless commenced within five years).

OSMRE disagaree with the commenter's position. Although the statute of limitations may provide a defense to suit for the collection of money filed five years following the entry of a final order, it does not invalidate the final order or cancel the underlying debt, which will continue to be listed in the Applicant Violator System and will result in blocking the issuance of a permit. Also, under Rule 8(c) of the Federal Rules of Civil Procedure, a defense based on the statute of limitations is an affirmative defense which may be waived, and it therefore does not automatically prohibit an action for the collection of unpaid civil penalties.

Violation Pattern Unnecessary for § 773.15(b)(1). One commenter suggested that to eliminate the possibility of permit block due to a remote ownership interest in an affiliated corporation, OSMRE should incorporate into the rule a "triggering mechanism" based on a clearly defined violation pattern with "successive ownerships" present.

OSMRE has not adopted this suggestion. Section 510(c) contains two prohibitions against permit issuance. One prohibition is based on the existence of an outstanding violation (one is sufficient) and requires the blocking of a permit until the violation has been corrected or is in the process

of being corrected. The other is based on a pattern of violations and specifies that "no permit shall be issued" where the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of the Act of such a nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Act. The first prohibition is implemented by regulation at 30 CFR 773.15(b)(1). The other, based on a pattern of violations, is implemented by regulation at 30 CFR 773.15(b)(3). To require a pattern of violations in all instances would substantially weaken the rule and contravene the intent of section 510(c).

No Transfer of Corporate Liability. Some commenters stated that the proposed definition would modify established corporate law with regard to limited liability and corporate separateness. The commenters argued that under the "alter ego" doctrine, any disregarding of the corporate entity must occur on a case-by-case basis and not under a formula similar to OSMRE's proposal. The commenter argued that the presumption should remain that each corporation is separate for purposes of liability, and the burden for displacing that presumption should rest with those who seek to disregard the corporate form.

It is not OSMRE's intent to alter established principles of corporate and business law. This rule does not alter the doctrine of limited liability and does not attempt to "pierce the corporate veil" and shift liability for unabated violations or unpaid money from a corporation or business entity to its owners or controllers. Instead, the rule requires regulatory authorities to consider the compliance history of those who own or control a permit applicant prior to deciding whether to issue a new permit for future mining.

Several commenters asserted that the rule, if finalized, eventually would be expanded to make those deemed to be owners or controllers responsible for reclamation.

OSMRE disagrees with the commenters' characterization. Although this rule provides an incentive for owners and controllers of the applicant to have unabated violations corrected, such persons are not compelled to conduct reclamation. The responsibility for reclamation will continue to fall on the permittee and its agents, as the law requires. This rule does not change that responsibility. OSMRE does intend, however, to encourage owners and controllers of permit applicants to take a more active role in assuring that related entities reclaim in accordance with the Act.

Due Process Provided. Commenters argued that the proposed rule was unconstitutional because remotely related or unrelated companies would be subject to sanctions for the alleged violations of other companies, but would not be afforded due process through the opportunity for a hearing to contest the alleged violations.

OSMRE disagrees. The rule provides due process. As part of the permitting process, a permit applicant may submit information germane to any of the findings necessary for permit issuance. If a permit is denied because of an ownership or control link between the applicant and a violator, the applicant may contest the basis for the denial. If the applicant has not been previously provided an opportunity for review, it may contest the ownership or control link and also the existence of the violation. If companies are either totally unrelated or remotely related, then the applicant may show that no control exists. In some instances, however, an applicant may be prohibited from relitigating an issue that has already been decided. For example, an applicant who has been a party to an earlier administrative or judicial proceeding would be bound by the results of the initial challenge. Further, an applicant cannot create a right of review if earlier it had failed to exhaust its administrative remedies.

Basis and Purpose Not Limited. One commenter objected to the proposed rule on the basis that its only purpose was to satisfy an agreement entered into by OSMRE and private environmental groups.

OSMRE disagrees. As stated previously, this rule will help OSMRE implement a court order in the case of *Save Our Cumberland Mountains, Inc., et al. v. Clark,* No. 81–2134 (D.D.C. January 31, 1985), relating to enforcement measures that can be taken against certain entities with unabated Federal cessation orders and unpaid civil penalties. In addition to satisfying this court order, however, the rule provides an additional means to bring about more effective enforcement of the Act.

One commenter stated that the court order in *Save Our Cumberland Mountains, supra,* only requires OSMRE to track companies with unabated cessation orders and that OSMRE has failed to distinguish between unabated cessation orders and failure-to-abate cessation orders. The commenter stated that OSMRE should only block a permit for unabated cessation orders, and not for an outstanding failure-to-abate cessation order which has not run for thirty days.

OSMRE disagrees. A cessation order may be issued either for the failure to abate a violation for which a notice of violation has been issued, or for a situation which creates imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. In either case the violation represented by the cessation order is a sufficient basis for withholding a permit pursuant to the Act until the violation has been abated even if the period for abatement has not expired.

Responsibility of Applicants. One commenter suggested that the applicant should not bear the burden of investigating the conduct of persons who own or control it.

OSMRE disagrees that the rule will make this happen. Neither this rule nor existing permitting rules require the investigation of the conduct of related entities. Although 30 CFR 778.14(c) requires an applicant to furnish information concerning the compliance history of related entities, such information should be obtainable from the applicant's owners or controllers. OSMRE proposed a separate rulemaking on May 28, 1987 (52 FR 20032), which would revise the amount of information that must be included in permit applications. OSMRE expects this rule to be published in final shortly.

Some commenters objected to the proposed rule on the grounds that it would be physically impossible for a large company to provide a daily listing of all violations nationwide. They stated that the rule would result in the erroneous issuance of permits and their eventual invalidation by any group opposed to their issuance.

OSMRE disagrees with the commenters' assertions. Because the compliance review will not be based on notices of violation unless failure-to-abate cessation orders are issued, an applicant, and its owners and controllers, will have time to learn of and abate violations which might affect the issuance of a permit.

Proposed Alternative Not Adopted. In April 1985, OSMRE specifically requested comments on a less expansive alternative to the proposed rule. 50 FR 13726. The alternative would have included in § 773.15(b)(1) a requirement for a finding pertaining to mining operations owned or controlled by the applicant, but the finding would have applied to those who own or control the applicant only with respect to

outstanding failure-to-abate cessation orders, unpaid civil penalties imposed by OSMRE, and unpaid AML fees.

Commenters favoring the alternative proposal stated that it would be easier to implement, and therefore would lessen the administrative burden on State regulatory authorities.

OSMRE has decided to adopt the language proposed for § 773.15(b)(1), and not the less expansive alternative to maintain a consistent permit blocking policy with regard to all violations encompassed in the compliance review. No justification exists for limiting the review of violations of particular entities, but not others. Also, confusion would have resulted from examining a different set of violations for the applicant than for its owners or controllers.

Relation to § 778.14(a). Some commenters stated that 30 CFR 778.14(a) provides sufficient information to prevent fraud, and therefore this rule was not needed.

OSMRE disagrees. This rule establishes a mechanism for the withholding of permits based on all information available to OSMRE. Section 778.14(a), which governs the submission of information pertaining to the previous suspension or revocation of permits, and the forefeiture of bonds or similar securities, is not a substitute for this rule. In deciding whether to issue a permit, the regulatory authority is not restricted in its investigation by 30 CFR 778.14 (a), (b) or (c). Where the record indicates that it is necessary, a regulatory authority may request from an applicant additional information or clarification.

Statistical Support For Rule. Some commenters questioned whether there were any data indicating that a problem exists and that a rule is needed to solve it.

The statistics available to OSMRE indicate that there indeed has been a problem, and that without close scrutiny permits could be issued to applicants owned or controlled by persons with outstanding violations. For instance, from March 1985 to April 1986 it was found during the permit review process that approximately fifty-six percent of all Federal permit applicants had problems such as unpaid AML fees, unabated violations, or unpaid penalties, or were the subject of a pending appeal. Operation of the Applicant Violator System since October 1987 has also shown that in a number of instances at the state level, permit applicants have been related to violators.

Self-Enforcement Encouraged. Regardless of statistical support, this rule is intended, in part, to foster a future self-enforcement policy whereby actual and potential applicants will strive to ensure that entities which they own or control operate in compliance with the Act. This deterrent aspect of the rule, as much as any permits actually withheld, will contribute to overall compliance with the Act.

One commenter stated that any OSMRE intent for industry to police itself by refusing to enter into business with violators of the Act exceeded OSMRE's statutory authority.

OSMRE disagrees with the commenter's characterization of the rule. Although the rule may affect private conduct, OSMRE is not directing any person to refuse to enter into business with any other person.

Consideration of Past Violations. Some commenters opposed applying the rule to violations that occurred prior to its promulgation. One commenter favored this approach.

OSMRE intends this rule to apply prospectively to pending permit applications whenever it becomes effective in particular States. Although not based upon the time violations first occurred, the rule will apply only to those violations that remain unabated at the time the regulatory authority performs the compliance review required by § 773.15(b)(1). A violation may be abated and debts may be paid at any time, and once the violation is abated and debts are paid, their past existence will not prevent the regulatory authority from issuing a permit.

The Act requires regulatory authorities to consider past conduct in the permitting process. For example, sections 507 (b)(4) and (b)(5) require information from an applicant concerning the five-year period prior to the submission of the application and section 510(c) requires violation information for the three years preceding the date of the application. In view of these provisions of the Act, it is clear that the Congress both contemplated and authorized holding applicants accountable for past violations.

Remedy For Improvidently Issued Permits. One commenter suggested that the rule should contain a provision allowing for the revocation of a permit if an outstanding violation existed at the time the permit was issued.

OSMRE agrees that a rule addressing the issue is appropriate. On July 16, 1986 (51 FR 25822), OSMRE proposed a rule under which regulatory authorities could rescind certain improvidently issued permits. OSMRE expects to publish this proposal in final shortly.

Bond to Guarantee Payment of Penalties and Fees Rejected. One commenter suggested that OSMRE impose an incremental bond to guarantee payment of penalties and AML fees as a method to correct abuses.

The Act requires the submission of a reclamation performance bond prior to the issuance of a permit. Requiring operators to post a bond to cover the payment of fees and penalties is outside the scope of the proposal.

§ 773.15(b)(1)(ii)—Good Faith Appeal. This rule amends § 773.15(b)(1)(ii) by deleting the provision terminating the conditional approval of a permit upon the denial of a stay, and by requiring the submission of proof by the applicant within thirty days of a judicial decision that the violation has been or is in the process of being corrected. These revisions were proposed on July 16, 1986 (51 FR 25822). In addition, the rule adds language to clarify that the responsibility for appealing the violation may lie with another person who is owned or controlled by the applicant, or who owns or controls the applicant.

Conditional Permit Not Affected By Denial of Stay. Section 510(c) of the Act requires with regard to a surface coal mining operation currently in violation of the Act:

> the permit shall not be issued until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority.

By previous regulation at 30 CFR 773.15(b)(1)(ii) OSMRE allowed a regulatory authority to conditionally approve and issue a permit where an applicant established that an outstanding violation was the subject of a good faith administrative or judicial appeal. This regulation implemented the intent of the Congress as expressed in the following excerpt from the Act's legislative history:

> It is not the intention of the Committee that an operator who is charged with the types of violation described in section 510(c) be collaterally penalized through denial of a mining permit if he is availing himself, in good faith, of whatever administrative and judicial remedies may be available to him. S. Rep. No. 95–128, 95th Cong., 1st Sess. 79 (1977).

Previous § 773.15(b)(1)(ii) required the permittee to promptly submit proof that the violation under appeal had been or was in the process of being corrected if "the initial judicial review authority under § 775.13 either denie[d] *a stay applied for* in the appeal or affirmed the violation." (Emphasis added.) The provision requiring proof upon the

denial of a stay treated such a denial as strongly indicating that the violation would be affirmed. However, the denial of a stay should not be considered a determination that the operator is not acting in good faith in pursuing administrative or judicial review. Moreover, the previous provision may have unfairly discouraged the filing of a request for a stay. In the interest of fairness, this final rule allows a conditionally approved permit to remain in force pending the initial judicial affirmation of the violation, regardless of the result of any request for a stay.

One commenter objected to the elimination of a denial of a stay as a trigger for requiring the submission of proof that the violation has been or is being corrected. The commenter argued that elimination of the stay provision would encourage violators to request a stay to protract the administrative process. As an alternative, the commenter suggested that where a stay is denied because the applicant cannot demonstrate a substantial likelihood of prevailing on the merits, the denial should trigger the submission of proof requirement under § 773.15(b)(1)(i).

OSMRE declined to adopt these suggestions. Discouraging a person from applying for a stay is inconsistent with congressional intent in enacting section 525(c) which authorizes stays. As discussed above, § 773.15(b)(1)(ii) implements congressional intent that permits not be blocked where a violation is the subject of a good faith appeal. Whether a stay is granted or denied, or even whether one has been applied for, is not determinative of whether a good faith appeal exists. OSMRE believes, therefore, that the revision is justified.

Thirty-Day Period Imposed. Revised § 773.15(b)(1)(ii) also requires that if the initial judicial review authority affirms the violation, then the holder of a conditional permit shall within thirty days of such decision submit to the regulatory authority proof that the violation has been or is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. The previous rule required submission "promptly" but did not impose a specific deadline. Requiring operators to submit proof within thirty days will preserve a permittee's conditional right to mine while a violation is being appealed, but will put a definite limit on the duration of that right. The thirty-day period requests the time reasonably required for an applicant to demonstrate to the regulatory authority that the violation has been or is being corrected.

One commenter approved of the substitution of a definite time period for the term "promptly," but suggested that the period of time allowed for submission of proof be fifteen days instead of thirty. The commenter stated that thirty days is acceptable for submitting proof that the violation is in the process of being corrected, but that fifteen days is sufficient for the submission of proof that the violation has been corrected. The commenter also stated that fifteen days is a more accurate substitution for the term "promptly" because OSMRE has interpreted "promptly" as meaning "immediately."

OSMRE disagrees. Since the thirty days allowed for the submission of proof will begin to run from the date of the decision, part of the time allowed will be lost in transmitting the decision to the applicant. Consequently, the fifteen days proposed by the commenter might be insufficient time for the submission of proof, especially if the respondent is a large corporation with numerous offices and departments. Having two different time periods, fifteen days for the submission of proof that the violation has been corrected, and thirty days if the violation is in the process of being corrected, would unnecessarily complicate the regulatory scheme.

Another commenter agreed with the substitution of the thirty day period for the term "promptly," but suggested that the thirty days should run from the date of receipt of the judicial decision, because of delays that might result between the date the decision is issued and the date it is received by the appellant.

OSMRE has declined to adopt this suggestion because the regulatory authority would have no way of knowing when the decision was received by the applicant, and therefore could not keep accurate count of the thirty day period.

Conditional Permit Allowed For Appeals By Owners or Controllers. One commenter pointed out that the proposed revision overlooked the expanded ownership or control concept in § 773.15(b)(1), and that not only the applicant, but also any person who owns or controls the applicant or who is owned or controlled by the applicant might be pursuing a good faith administrative or judicial appeal of an applicable violation.

OSMRE agrees and has incorporated the commenter's suggestion into the final rule. OSMRE has added language allowing the conditional issuance of a permit not just where the applicant has filed an appeal, but also where an appeal has been filed by any person owned or controlled by either the applicant or any person who owns or controls the applicant. Where any such person is pursuing a good faith appeal, conditional permit issuance should be authorized.

Other Comments. One commenter suggested that a good faith appeal of a violation should also include a proceeding contesting the amount of the penalty.

OSMRE did not adopt the suggestion. Before a person may contest the amount of a penalty, 30 CFR 845.19 requires that an amount equal to the penalty be paid into an escrow account. Therefore, in such circumstances, the amount in dispute would not be considered an unpaid civil penalty and would not result in permit blocking. Appeals of individual civil penalties, for which no prepayment requirement exists, will allow conditional permit issuance.

A commenter suggested that a provision be added to § 773.15(b)(1)(ii) requiring OSMRE to carefully examine those situations where an administrative or judicial appeal is pending to ensure that such appeals are not frivolous efforts to avoid the requirements of section 520(c).

OSMRE did not adopt the suggested provision because § 773.15(b)(1)(ii) already requires the applicant to establish that the administrative or judicial appeal was filed in good faith. Any appeal which is clearly frivolous and which was filed merely for the sake of avoiding the requirements of section 510(c) would not be considered to have been filed in good faith, and in such circumstances the regulatory authority could block the issuance of a permit. OSMRE does not expect regulatory authorities to conduct extensive inquiries, however, on the collateral issue of whether pending appeals were filed in good faith. Typically such appeals could be pending in other forums outside of the jurisdiction in which the permit application was filed, and the intent of the appellant could be difficult to establish.

One commenter suggested that OSMRE include a provision delaying the requirement for the submission of proof if an appeals court grants a stay from a lower court decision affirming the violation. OSMRE declined to adopt the suggestion because it is outside the scope of the proposed revisions. Also, OSMRE continues to believe that a conditional approval of a permit should terminate following affirmation of the violation at both the administrative and initial judicial levels. Allowing the

conditional approval to continue beyond that time could enable operators to complete their operations prior to a ruling in the appellate judicial proceeding.

§ 773.15(b)(2)—Conditional Issuance of a Permit. Previous § 773.15(b)(2) allowed conditional permit issuance when a violation which would otherwise prevent permit issuance is subject to a good faith appeal. This rule revises § 773.15(b)(2) to allow the conditional issuance of a permit also whenever an existing violation is being corrected to the satisfaction of the appropriate agency. Previous § 773.15(b)(2) provided that the regulatory authority "may issue a permit conditionally pending the outcome of an appeal * * *." (Emphasis added.) Confusion has arisen regarding the meaning of the term "may." The intent of the previous rule was to allow the issuance of a permit under the circumstance of a good faith appeal, while recognizing that the regulatory authority has other obligations associated with the review of a permit, and thus is not required to issue a permit if other problems exist. To clarify the intent, revised § 773.15(b)(2) provides that any permit issued pending the outcome of a good faith appeal shall be conditionally approved.

The proposed rule would have revised § 773.15(b)(2) to specify that the regulatory authority will issue a notice of rescission, requiring the immediate cessation of mining operations and the commencement of reclamation of all areas for which a reclamation obligation exists.

This portion of the proposal has not been adopted because it is not needed. Even without a specific rule, a conditional approval implies that if the condition is not satisfied, the approval will be withdrawn. This is not a new concept and was expressly recognized when § 773.15(b)(2) was initially adopted in 1983. See 48 FR 44365.

Several comments were received on proposed § 773.15(b)(2).

One commenter stated that the proposed revision failed to follow through on the ownership and control concept, and that where the rule states that the applicant who is issued such a permit fails to comply with the provisions of paragraph (b)(1)(i) or (b)(1)(ii), it should include "the applicant or anyone who owns or controls the applicant or who is owned or controlled by the applicant."

OSMRE disagrees. Although another person may be responsible for correcting the violation, the applicant must comply with paragraphs (b)(1)(i) and (b)(1)(ii). Under paragraph (b)(1)(i), the applicant is responsible for submitting proof that the violation is being corrected, whether or not the applicant is directly responsible for the corrective activities. Similarly, when the violation is affirmed, under paragraph (b)(1)(ii) the applicant is responsible for demonstrating to the regulatory authority within thirty days that the violation is in the process of being corrected, whether or not the applicant is directly responsible for the corrective measures.

One State regulatory authority objected to this provision allowing the conditional issuance of a permit because under its State program a good faith appeal of an existing violation does not allow the conditional permit issuance. The commenter was concerned that requiring conditional permit issuance would eliminate an effective tool the State has to obtain compliance before a permit is issued.

A change in the rule is not needed to address the commenter's concerns. The final rule does not require that a permit has to be issued in the situation addressed by the commenter. It just provides that if a permit is issued at all, the permit must be conditional. Additionally, a State program need not provide for conditional approval of a permit pending appeal of a violation. Pursuant to 30 CFR 730.5(b), the laws and regulations of a State must be no less effective than the Secretary's regulations in meeting the requirements of the Act, and pursuant to section 505(b) of the Act may be more stringent. A State program without a provision for conditional permit approval would be more stringent and no less effective than § 773.15(b)(2).

One commenter suggested that a conditionally issued permit should specify that it is conditionally issued, should list the conditions, and should specify that it is subject to rescission.

OSMRE agrees, and already has a policy of listing conditions in federally issued permits. However, this degree of detail need not be incorporated in the rule.

One commenter opposed conditional permit issuance if the violation that is being corrected is the payment of AML fees or civil penalties. The commenter asserted that no reason exists why an applicant cannot pay delinquent fees or fines prior to permit issuance. The commenter further stated that if the applicant is so insolvent that payment of penalties and fees is impossible prior to permit issuance, it may not be prudent to allow further surface disturbance under a new permit to generate moneys to pay such debts.

OSMRE disagrees. If an applicant is paying penalties or AML fees pursuant to a payment schedule, such a person is in the process of correcting a violation to the satisfaction of the responsible agency. Such payment indicates that the applicant intends to comply with the requirements of a new permit. Paying money on an installment basis does not necessarily mean that a person is insolvent. It could represent many things, including, for instance, a tight cash flow situation resulting from start-up costs for a new operation. If the applicant does need the new permit to generate moneys to pay debts, then issuing a permit would be in the public interest.

One commenter said that the rule should be "modified to include a requirement that the State regulatory authority periodically review and update information on outstanding violations which led to the conditioning of a permit and any administrative or judicial proceedings regarding such violations, to assure that the violations have been abated, to monitor the compliance of the operator with the duty to submit proof of correction and to abate outstanding violations, and to allow for prompt rescission in the event of operator default in these duties."

No specific review requirement is needed because state regulatory authorities are ordinarily expected to monitor permits as part of their program implementation responsibilities.

A commenter requested that explicit requirements be incorporated into the rule to insure that State regulatory authorities comply with the permit rescission provisions in § 773.15(b)(2).

State regulatory authorities are required to comply with all provisions of their state programs, including those in § 773.15(b)(2). Moreover, OSMRE verifies such compliance as part of its permitting oversight activities.

Section 773.15(b)(3)—Pattern of Violations. On July 16, 1986 (51 FR 25826), OSMRE proposed a revision to 30 CFR 73.15(b)(3), concerning applicants and operators with patterns of violations. Section 773.15(b)(3) implements the part of section 510(c) of the Act which states:

> [N]o permit shall be issued to an applicant after a finding by the regulatory authority, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this Act of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this Act.

The previous rule required the regulatory authority to withhold the granting of a permit if it made a finding

corresponding with the above-quoted provision. This rule amends § 773.15(b)(3) by expanding the scope of the finding to include anyone who owns or controls the applicant. The purpose of this revision is to prevent evasion of the requirements of section 510(c) and to enhance overall compliance with the Act. OSMRE also has revised the previous phrase, "the application shall not be granted," to read "no permit shall be issued" to track the language of section 510(c).

Several comments were received on the proposed revision. One commenter approved of the change. Several commenters objected to the revised finding on the grounds that it exceeded the authority granted by the Act.

OSMRE's response to this objection is similar to its response to objections to its authority to promulgate revised § 773.15(b)(1). See the earlier discussion of § 773.15(b)(1).

Another commenter objected to the lack of criteria for making a determination that there is a demonstrated pattern of willful violations of the Act of such nature and duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act. The commenter did not suggest any criteria.

OSMRE has not included criteria in this rulemaking because such criteria are addressed by 30 CFR 843.13 and are not within the scope of the proposal.

One commenter requested that OSMRE clarify that nonpayment of AML fees cannot provide the basis for a determination under § 773.15(b)(3), since it does not fall within the criteria for irreparable damage to the environment.

OSMRE agrees. The nonpayment of AML fees, alone, would not be sufficient to make such a determination. Nevertheless, under the compliance review required by § 773.15(b)(1), a current failure to pay AML fees is sufficient to block permit issuance.

Miscellaneous Comments. One commenter considered the rule too broad and vague, and questioned how the States would implement it.

The rule is neither too broad nor too vague. The rule clearly specifies what regulatory authorities must examine during the compliance review and the standards for determining owners or controllers. In most instances, the compliance review will require case-by-case determinations, to insure that permit decisions are supported by the facts which is essential to insure due process is provided. In addition, OSMRE has met with the States on a regular basis to answer questions and provide guidance.

Some commenters argued that OSMRE did not comply with Executive Order 12291 in proposing the rule. Others stated that OSMRE did not comply with the requirements of the Regulatory Flexibility Act.

The requirements of Exeuctive Order 12291 and the Regulatory Flexibility Act were complied with in promulgating the rule. The conclusions reached as a result of the analyses required by Executive Order 12291 and the Regulatory Flexibility Act are discussed in the Procedural Matters portion of this preamble.

Some commenters argued that the proposed rule would make it more difficult for United States-based industry to meet foreign competition, and would impose major new costs on the coal industry and on consumers.

OSMRE disagrees. Because the rule imposes no new regulatory burden on operators, who are already required to comply with the Act, it will not affect the ability of United States-based industry to compete with foreign operators, and will not add to the costs of industry or of consumers.

Another commenter stated that the rule would cost jobs. OSMRE has analyzed the effects of the rule on jobs, small entities, and on other economic factors, and found that the effects will be minimal, if any.

Effect of the Rule in Federal Program States and on Indian Lands. The rule will apply through cross-referencing to the following Federal program States: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. No comments were received concerning any unique conditions which exist in any of these States which would have required changes to the national rules or a State-specific amendment to any or all of the Federal programs.

The rule will also apply through cross-referencing in 30 CFR Part 750 to surface coal mining and reclamation operations on Indian lands.

Effect of the Rule on State Programs. Following promulgation of this rule, OSMRE will evaluate State programs to determine whether any changes in these programs will be necessary. If the Director determines that any State program will be necessary. If the Director determines that any State program provisions should be amended to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with of 30 CFR 732.17.

III. Procedural Matters

Federal Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12291

The DOI has examined this rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not a major rule and does not require a regulatory impact analysis because it will impose only minor costs, if any, on the coal industry and coal consumers. This rule will not add new regulatory burdens on operators. It will provide regulatory authorities with definitions to be used in performing the compliance review required by section 510(c) of the Act prior to the issuance of a permit. Therefore, the rule will not add to the cost of operating a mine in compliance with an approved regulatory program.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities for the same reasons as discussed in the previous paragraph.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA), and has made a finding (FONSI) that the rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 NEPA), 42 U.S.C. 4332(2)(C). The rule should result in better compliance with the environmental standards of the Act, and therefore result in better protection of the environment. The EA and the FONSI are on file in the OSMRE Administrative Record at the address specified previously (see **"ADDRESSES"**).

Author

The principal author of this final rule is Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–5241.

List of Subjects in 30 CFR Part 773

Administrative practice and procedure, Reporting and record-

keeping requirements, Surface mining, Underground mining.

Accordingly, 30 CFR Part 773 is amended as follows:

Dated: August 9, 1988.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

1. The authority citation for Part 773 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, 16 U.S.C. 470 *et seq.*, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a *et seq.*, 16 U.S.C. 469 *et seq.*, 16 U.S.C. 470aa *et seq.*, and Pub. L. 100-34.

2. Section 773.5 is added to read as follows:

§ 773.5 Definitions.

For purposes of this subchapter:

Owned or controlled and *owns or controls* mean any one or a combination of the relationships specified in paragraphs (a) and (b) of this definition—

(a)(1) Being a permittee of a surface coal mining operation; (2) Based on instrument of ownership or voting securities, owning of record in excess of 50 percent of an entity; or (3) Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

(1) Being an officer of director of an entity;

(2) Being the operator of a surface coal mining operation;

(3) Having the ability to commit the financial or real property assets or working resources of an entity;

(4) Being a general partner is a partnership;

(5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or

(6) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation;

3. Section 773.15 is amended by revising paragraphs (b)(1) introductory text, (b)(1)(ii), (b)(2) and (b)(3) to read as follows:

§ 773.15 Review of permit applications.

* * * * *

(b) *Review of violations.* (1) Based on available information concerning Federal and State failure-to-abate cessation orders, unabated Federal and State imminent harm cessation orders, delinquent civil penalties issued pursuant to section 518 of the Act, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of Federal and State laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the regulatory authority shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of the Act or any other law, rule or regulation referred to in this paragraph. In the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation issued pursuant to § 843.12 of this chapter or under a Federal or State program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the regulatory authority shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either—

* * * * *

(ii) Establish for the regulatory authority that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under § 775.13 of this chapter affirms the violation, then the applicant shall within 30 days of the judicial action submit the proof required under paragraph (b)(1)(i) of this section.

(2) Any permit that is issued on the basis of proof submitted under paragraph (b)(1)(i) of this section that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (b)(1)(ii) of this section, shall be conditionally issued.

(3) If the regulatory authority makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in § 775.11 of this chapter.

* * * * *

[FR Doc. 88-22541 Filed 9-30-88; 8:45 am]

BILLING CODE 4310-05-M

Federal Register

Monday
October 3, 1988

Part VI

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Magnetic Tape Manufacturing Industry; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3332-4]

Standards of Performance for New Stationary Sources; Magnetic Tape Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for new, modified, and reconstructed facilities that manufacture magnetic tape were proposed in the Federal Register on January 22, 1986 (51 FR 2996). This action promulgates the standards of performance for affected facilities that manufacture magnetic tape. These standards implement section 111 of the Clean Air Act (CAA) and are based on the Administrator's determination that emissions from industrial paper coating cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. Magnetic tape manufacturing is part of the industrial paper coating category, which includes coating of foil and plastic film. The intended effect of these standards is to require all new, modified, and reconstructed facilities that manufacture magnetic tape to control emissions of volatile organic compounds (VOC) to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

EFFECTIVE DATE: October 3, 1988. These standards apply to affected facilities for which construction, reconstruction, or modification commenced after January 22, 1986.

Under section 307(b)(1) of the CAA, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document:* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Magnetic Tape Manufacturing Industry—Background Information for Promulgated Standards" (EPA-450/3-85-029b). The BID contains (1) a summary of all of the public comments made on the proposed standards and EPA's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

Docket: Docket No. A-82-45, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 3:30 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), 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 further information and official interpretations of applicability, compliance requirements, enforcement decisions, and reporting aspects of the promulgated standard, contact the appropriate Regional, State, or local office contact as listed in 40 CFR 60.4. For technical information contact Ms. Karen Catlett (telephone (919) 541-0835) or Mr. James C. Berry (telephone (919) 541-5605), Chemicals and Petroleum Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information on compliance testing and monitoring provisions of the promulgated standard, contact Mr. Gary D. McAlister (telephone (919) 541-2237) or Mr. Joseph E. McCarley (telephone (919) 541-5546), Emission Measurement Branch, Technical Support Division (MD-14), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information on the regulatory decisions in the promulgated standard, contact Mr. Sims L. Roy (telephone (919) 541-5263) or Mr. Gilbert H. Wood (telephone (919) 541-5625), Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

I. Background
II. The Standards
  A. Requirements for Mix Equipment
  B. Requirements for Coating Operations
  C. Coating Formulation Alternative
  D. Selection of the Format of the Standards
  E. Enforcement Provisions
III. Environmental Impacts
IV. Energy Impacts
V. Cost Impacts
VI. Economic Impacts
VII. Public Participation
VIII. Significant Comments and Changes to the Proposed Standards
  A. Level of the Standard
  B. Best Demonstrated Technology
    1. Coating operations
    2. Mix equipment
  C. Affected Facilities and Modification and Reconstruction
  D. Solvent Storage Tanks
  E. Compliance Provisions
  F. Cost and Economic Assumptions and Impacts
  G. Suspension of the Standards
IX. Administrative

I. Background

The magnetic tape manufacturing industry is classified as a segment of the industrial paper coating stationary source category. Sources in this category emit VOC, which have been shown to take part in atmospheric reactions producing ozone and other compounds that are well established as having adverse effects on health and welfare.

Section 111 of the CAA requires the Administrator to publish a list of categories of major stationary sources that cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The categories have been placed on the list (40 CFR 60.16) in order of priority based on the quantities of air pollutant emissions, the mobility and competitive nature of the sources within each category, and the extent to which the pollutants endanger public health and welfare. Industrial paper coating is fourth on the list. Today's action promulgates new source performance standards (NSPS or "standards") for the magnetic tape manufacturing segment of this source category as required by section 111 of the CAA.

The NSPS occupy a unique place in the management of air quality. They require new, modified, and reconstructed sources to meet uniform reasonable minimum emission limits nationwide. They are intended to reduce potential increases in air pollution from new sources and to improve air quality as older plants and equipment eventually are retired from service. State and local regulations applicable to the same sources and pollutants are designed to protect local air quality values and to ensure that air quality does not deteriorate significantly. They vary widely from place to place and are usually least stringent in areas with the cleanest air. The NSPS provide a minimum nationwide requirement for new, modified, and reconstructed sources, thereby lessening the incentive

to locate in areas with less-restrictive regulations.

The CAA stipulates that costs be considered in setting NSPS requirements. This evaluation of costs is carried out in the context of a nationwide program encompassing an entire class of sources without consideration of the local air quality conditions that must be considered in nonattainment areas or in prevention of significant deterioration (PSD) in accordance with permitting activities associated with the CAA. As a result, NSPS cost effectiveness and reasonable-cost analyses are inappropriate decision criteria where source-specific air quality (and related public health considerations) are important factors. Therefore, State standards, which may need to be more stringent than the NSPS, may need to be based on analyses that are specific to a particular air quality situation.

The regulation promulgated today is the culmination of a lengthy process. In the phase leading to proposal, several control options were studied for each type of emission source found at magnetic tape manufacturing plants. Environmental impact and cost analyses were performed on each control option for each type of emission source. A wide range of regulatory alternatives was developed representing combinations of the control options. The regulatory alternatives were analyzed for the economic impacts each would have on the industry nationwide. The control options and regulatory alternatives are presented in detail in the proposal BID. An extensive summary is in the proposal preamble.

In the proposed rule, two affected facilities were defined: each solvent storage tank less than 75 cubic meters (m^3) in capacity and each coating operation and its associated coating mix preparation equipment. The proposed standard for solvent storage tanks required a submerged fill pipe and a pressure relief valve with a setting of at least 103 kilopascals or the capture and ventilation of all emissions to a 95 percent efficient control device. Coating mix preparation equipment was to be controlled by capturing and venting all emissions to a 95 percent efficient control device. The standard proposed for a coating operation required that emissions be controlled by recovering or destroying at least 93 percent of the VOC content of the coating applied at the coating applicator. These standards were based on the control options yielding the greatest reductions in emissions with reasonable cost effectiveness.

New information provided by industry during the public comment period has resulted in several changes in this regulation. All provisions pertaining to solvent storage tanks were withdrawn in a separate notice published in the **Federal Register** on November 25, 1986 (51 FR 42800). The final rule is summarized in section II below. Additional information on public participation can be found in section VII. The changes made to the standards between proposal and promulgation are summarized at the beginning of section VIII, followed by a presentation of the major comments and the Agency's response to each. The rationale for the changes made to the standards can be found in these responses.

II. The Standards

Section 111 of the CAA requires that standards of performance be established at levels that reflect the performance of best demonstrated technology (BDT) for emission control. Two affected facilities have been designated in the promulgated standards: each piece of coating mix preparation equipment (mix equipment) and each coating operation. New coating operations utilizing less than 38 m^3 of solvent annually and modified or reconstructed coating operations utilizing less than 370 m^3 of solvent annually are subject only to specified recordkeeping and reporting requirements. A cross reference table has been included in the regulation to help users determine which sections are applicable.

A. Requirements for Mix Equipment

Two categories of mix equipment have been distinguished based on the associated control equipment. A logic flow diagram of the mix equipment standards is presented in Figure 1. For new mix equipment constructed with concurrent construction of a new VOC control device (other than a condenser) on a magnetic tape coating operation at the plant (i.e., construction of a new control device occurring within the period beginning 6 months before and ending 2 years after construction of the mix equipment), BDT is the installation of covers and ductwork and the venting of all emissions to a control device that is at least 95 percent efficient. The standard based on this BDT requires the installation and use of covers and the venting of VOC emissions from the equipment to a 95 percent efficient control device. For modified or reconstructed mix equipment and for new mix equipment constructed with no concurrent installation of a new control device (or with concurrent installation of a condenser), BDT is the installation and use of covers alone or covers and venting to a control device. No control device efficiency is specified in this latter case. A cover is defined as a device that lies over the equipment opening, that is attached to or extends at least 2 centimeters (cm) beyond the rim of the opening, and that maintains contact with the rim along its entire perimeter. A cover must be in place at all times that the equipment is in use except when ingredients are being added, samples are being withdrawn, the contents are being transferred, or visual inspection is necessary. The distinction made between BDT for new mix equipment constructed with concurrent construction of a new control device and all other affected mix equipment is based on the Administrator's judgment that the cost effectiveness of controlling modified or reconstructed mix equipment or new mix equipment constructed without concurrent construction of a control device is unreasonable. Venting of emissions to a condenser, even when constructed concurrently, is not required because the moist, intermittent, low-concentration airstreams from mix equipment are incompatible with the operation of a closed-loop condenser on a drying oven.

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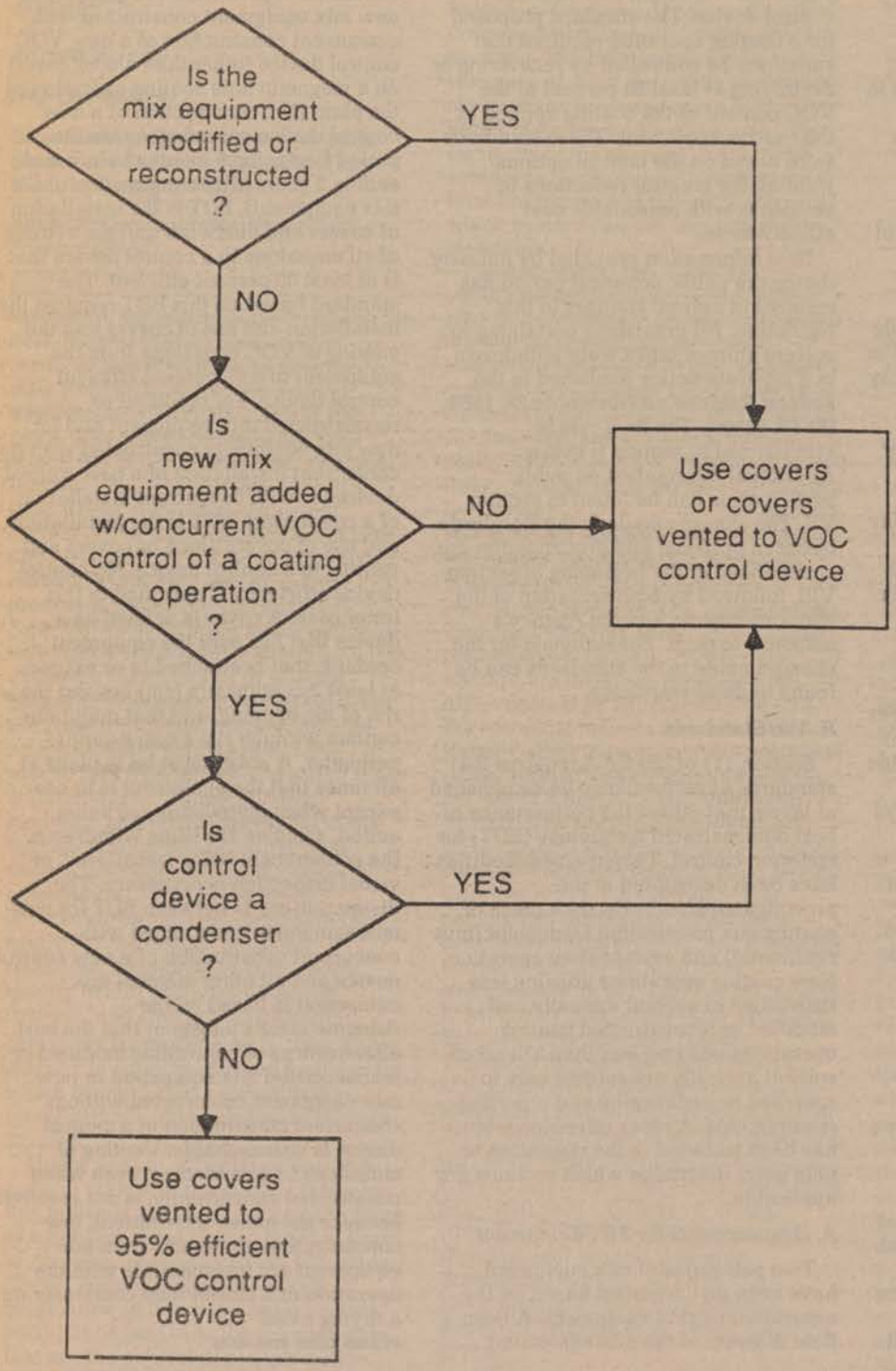


Figure 1. Logic flow diagram for Magnetic Tapes NSPS.

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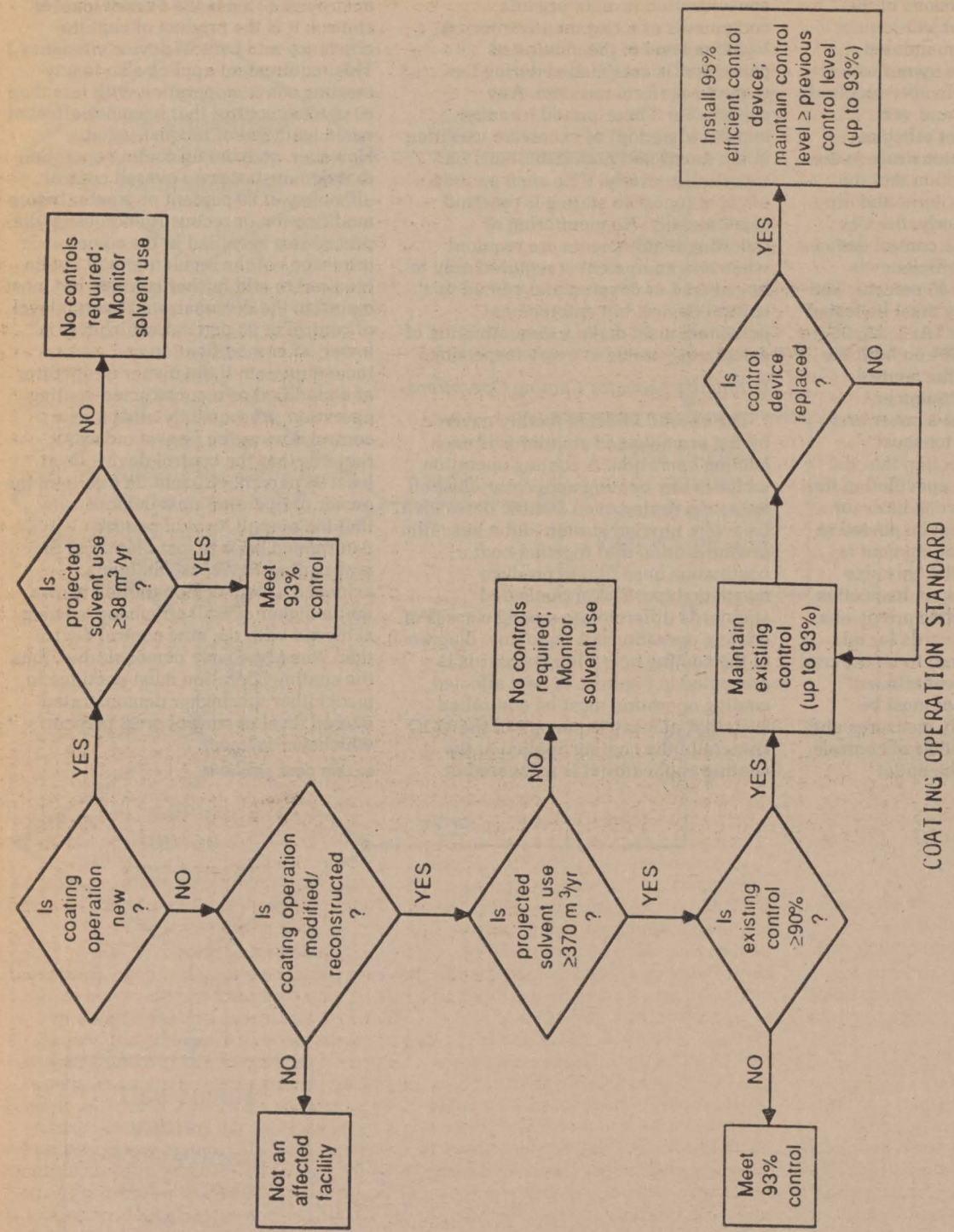
The compliance provisions of the standards for mix equipment require a demonstration that the mandated equipment is in use. The owner or operator of an affected facility required to cover the equipment and vent emissions to a 95 percent efficient control device must demonstrate to the Administrator's satisfaction that the covers meet specified criteria and are installed and used properly, the mix equipment is vented to a control device, and the control device efficiency is greater than or equal to 95 percent. The control device efficiency must be tested using EPA Methods 1 or 1A; 2, 2A, 2C, or 2D; 3; 4; and 18, 25, or 25A on both the inlet(s) and outlet(s) of the control device. A piece of mix equipment requiring only a cover or a cover and venting to a control device must demonstrate upon inspection that the cover meets the criteria specified in the standard. In addition, procedures for proper use of covers must be posted in areas of use. If the mix equipment is vented to a control device, this also must be demonstrated upon inspection.

Monitoring and reporting provisions are included in the standards for mix equipment that is required to be covered and vented to a 95 percent efficient control device. A monitor must be installed that continually measures and records a critical parameter of control device operation (e.g., the outlet concentration level of organic compounds of a carbon adsorber). A baseline level of the monitored parameter is established during the required performance test. Any subsequent 3-hour period (or other stipulated period) of excessive variation in the monitored parameter must be reported quarterly. If no such periods occur, a report so stating is required semiannually. No monitoring or reporting requirements are required when mix equipment is required only to be covered or covered and vented to a control device, but enforcement personnel must make a determination of compliance status at every inspection.

B. Requirements for Coating Operations

The second affected facility covered by the promulgated standards is each coating operation. A coating operation includes any coating applicator, flashoff area, and drying oven located between a base film unwind station and a base film rewind station that together coat a continuous base film to produce magnetic tape. The promulgated standards differentiate among classes of coating operations. A logic flow diagram of the coating operation standards is presented in Figure 2. A new affected coating operation must be controlled such that at least 93 percent of the VOC content of the coating applied at the coating applicator(s) is recovered or destroyed. (This is the overall level of control; it is the product of capture efficiency and control device efficiency.) This requirement applies also to any existing coating operation with less than 90 percent control that becomes affected when modified or reconstructed. However, an existing coating operation that demonstrates an overall control efficiency of 90 percent or greater before modification or reconstruction using the procedures specified in the compliance provisions of the regulation will not be required to add further controls but must maintain the demonstrated overall level of control or 93 percent, whichever is lower, after modification or reconstruction. If the owner or operator of a modified or reconstructed coating operation subsequently adds a new control device, the final standards requires that the control device be at least 95 percent efficient. In addition, the owner or operator must demonstrate that the overall level of control determined prior to installation of the new control device is still being achieved. If this demonstration shows that a higher overall efficiency is being achieved with the new control device than was previously demonstrated, then the coating operation must continue to meet either this higher demonstrated overall level of control or 93 percent, whichever is lower.

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BILLING CODE 6560-50-C

Figure 2. Logic flow diagram for Magnetic Tapes NSPS--Coating operation standard.

These standards are based on BDT for capture and reduction of VOC emissions. Theoretically, capture of all VOC emissions can be accomplished by use of a total enclosure around the coating operation; however, 100 percent capture at all times is probably never realized in practice. Extensive emission test data from many industries, including magnetic tape manufacturing and other web-coating industries, have demonstrated that carbon adsorbers can consistently achieve 95 percent efficiency. Thus, for new, modified, and reconstructed facilities, BDT consists of a total enclosure vented to a highly efficient control device. However, the overall level of control that must be met by new versus modified or reconstructed facilities differs. The distinction in the regulation between source types recognizes that unreasonable expense could be incurred if existing well-controlled facilities that undergo modification or reconstruction were required by a national standard to make sizeable capital outlays (e.g., replacement of an entire control device) to increase emission control only incrementally. Of course, additional control may well be warranted in specific circumstances under the requirements of PSD or new source review (NSR) regulations in attainment or nonattainment areas, respectively. In such circumstances, the cost-effectiveness and reasonable-cost analyses performed in development of the NSPS are not appropriate decision criteria. Additional detail on the considerations leading to these standards is contained in the proposal preamble, in Section VIII of this preamble, and in the promulgation BID.

Compliance with the standards for coating operations can be demonstrated in a variety of ways depending upon the control device in use and the configuration of affected and nonaffected facilities. For a solvent recovery device that controls only the affected coating operation, a liquid material balance is performed over each and every nominal 1-month period. Solvent use is determined from coating consumption and solvent content as measured by EPA Method 24. The quantity of solvent used is then compared to the solvent recovered. When a destruction device is used to control emissions or when a recovery device controls both affected and nonaffected facilities, a two-part gaseous emission test is used. Capture efficiency is measured by ducting fugitive emissions through a testable stack and comparing this measurement with the measured total captured emissions. Control device efficiency is computed by testing the inlet and outlet VOC concentrations. The product of the capture efficiency and control efficiency is the total or overall efficiency of the system. The VOC flows are measured by EPA Methods 1 or 1A; 2, 2A, 2C, or 2D; 3; 4; and 18, 25, or 25A.

Compliance determinations using the liquid material balance procedures are made for each nominal 1-month period. Any months of noncompliance must be reported quarterly. Compliance under any other procedure is demonstrated initially, and continued compliance is indicated by monitoring critical parameters of the control system in use. If these parameters subsequently vary by a prescribed amount over a 3-hour period (or the stipulated period) from the values maintained during the performance test, periods of excess variation must be reported quarterly. When operations do not dictate quarterly reports, a semiannual report so stating is required.

There is an alternative means of demonstrating compliance with the standards for coating operations. Under this alternative, the owner or operator must first demonstrate that the coating operation is contained within a total enclosure. The owner or operator can demonstrate that an enclosure is a total enclosure by showing that it meets the requirements set out in the rule (see section VIII.E). If the enclosure does not meet the requirements, the owner or operator can gain approval on a case-by-case basis by demonstrating to the satisfaction of the Administrator that all VOC emissions within the enclosure are captured and vented to the control device. Second, a measurement of control device efficiency also must be made. All measurements are made using an appropriate combination of EPA Methods 1 or 1A; 2, 2A, 2C, or 2D; 3; 4; and 18, 25, or 25A. The control device must be 95 percent efficient for those coating operations required to recover or destroy 93 percent of the applied VOC. For those owners or operators of existing coating operations wishing to demonstrate the applicability of the lower standard prior to modification or reconstruction, the control device must be at least 92 percent efficient. After modification or reconstruction, the control device efficiency must be maintained at or above the level demonstrated prior to modification or reconstruction (up to 95 percent). The lower control device efficiency has been specified for existing well-controlled facilities because the cost to remove an existing control device and to add a new control device to control the incremental emissions is considered unreasonable. However, if the owner replaces the existing control device, the owner or operator must install at least a 95 percent efficient control device to demonstrate compliance with the standard. Therefore, the owner or operator can defer replacing an existing control device with a new control device when the modification is made, but must consider the consequences of meeting the standard in the future when the existing control device is replaced. With the replacement of the control device, the cost of controlling the incremental emissions is reasonable.

C. Coating Formulation Alternative

A low-solvent coating cutoff for both affected facilities is based on a high-solids coating formulation, defined as coatings that contain a maximum of 0.20 kilogram of VOC per liter (kg VOC/l) of coating solids. This cutoff was calculated to be the level above which add-on controls become cost effective. Demonstration of the use of high-solids coatings can be made in lieu of the other compliance provisions for both affected mix equipment and affected coating operations. If this method of compliance demonstration is selected, the owner or operator must calculate the weighted average kg VOC/l coating solids for each nominal 1-month period. The weighted average is computed from the VOC content of each coating as determined by EPA Method 24 and the quantity of each coating used during the period in question. Any nominal 1-month period of noncompliance must be reported quarterly. Compliance must be reported semiannually.

The averaging period for this compliance method has been designated as each nominal 1-month period to afford the source some flexibility in coating formulations. Magnetic tape manufacturers typically manufacture a variety of products, often on the same coating line. The solvent content of the coatings generally varies somewhat by product. In addition, ambient conditions or variations in other raw materials may necessitate slight variations in solvent content between batches of coating for a single product. While no coatings are now in use that approach the compliance coating formulation, it is expected that, if and when they are developed, they will similarly vary in solvent content. Because the coating formulation standard is very stringent, it is likely that some formulations in this range will be slightly below the cutoff and that others will be slightly above. The monthly averaging period will allow greater flexibility in formulations and

production than would a shorter averaging period, adding to the incentive to pursue the development of high-solids coatings.

A switch to high-solids coating technology would be environmentally beneficial because the prescribed average formulation (0.20 kg VOC/l coating solids) corresponds to a greater emission reduction than does 93 percent control of the solvent applied in traditional coating formulations and because the adverse secondary environmental and energy impacts that normally result from add-on controls would be avoided. In any case, the coating formulation standard is so stringent that it is very unlikely that coatings with appreciably lower solvent content will be developed. Thus, in order to maintain an average solvent content that complies with the standard, all coatings used by a source will have to be near the prescribed solvent content. For this reason, sources complying with the NSPS by this method are not expected to experience the type of high emission rate over a short period that leads to significant local ambient air quality impacts and that shorter averaging periods are meant to discourage.

D. Selection of the Format of the Standards

As discussed in the proposal preamble, an emission standard is not feasible for mix equipment. Because mix equipment is generally operated for relatively short periods, airflow rates are relatively low and intermittent, making representative emission measurements expensive and difficult, if not impossible. Therefore, equipment standards have been promulgated for mix equipment. The CAA requires that equipment standards include procedures for ensuring proper operation and maintenance. The procedures developed for mix equipment are described in detail in Section II.A. of this preamble.

A "percent reduction" standard has been promulgated for coating operations. This type of emission standard was deemed appropriate because it consistently reflects the application of BDT at all facilities yet allows flexibility in the methods selected to achieve the standard.

The use of high-solids coatings has been promulgated as an alternative standard for both affected facilities. Although no such coatings are known to be in use commercially, the standard will allow their use should they become available.

E. Enforcement Provisions

The provisions of today's rule that require initial performance tests and subsequent monitoring and reporting will ensure that the compliance status of affected coating operations can be tracked. Most coating mix preparation equipment will require periodic inspection to determine compliance status. Enforcement may be delegated to State and local agencies, but the Agency retains the right to act. When it is determined that the owner or operator of a stationary source is violating the NSPS or has failed to comply with the applicable testing, recordkeeping, or reporting requirements, the Agency may bring an enforcement action under section 113 of the CAA. The Agency may issue an administrative order to comply under section 113(a); initiate a civil action under section 113(b) seeking a court order to comply and civil penalties; or, where appropriate, initiate a criminal action under section 113(c). Section 120 of the CAA authorizes the Agency or a State to assess and collect noncompliance penalties against any owner or operator of a stationary source that is not in compliance with any requirement established under Section 111 of the CAA. Noncompliance penalties are to be an amount that is no less than the economic value that the owner has derived from noncompliance. Regulations governing their assessment and collection of noncompliance penalties have previously been promulgated in 40 CFR Part 66 and 40 CFR Part 67.

III. Environmental Impacts

Since the time of proposal, revised growth projections for the magnetic tape manufacturing industry and revisions to the standards applicable to some emission points have resulted in changes in the anticipated impacts of the standard. Based on recent information received from industry representatives, the projected number of coating lines (coating operations and associated mix equipment) to become affected by the fifth year of applicability (1991) has been revised downward from 21 to 16. Of these, 5 will be new, and 11 will be modified or reconstructed. However, one new line and two modified lines are expected to fall below the applicable minimum annual solvent utilization cutoffs and, thus, are not expected to be required by today's rule to control emissions. In addition, under today's standards, two of the modified and reconstructed coating operations are not expected to be required to increase control efficiency. Of the remaining 11 projected lines, one new and three modified or reconstructed lines are expected to be 0.33 meter (m) wide, and three new and four modified or reconstructed lines are expected to be 0.66 m wide (the "typical" production size discussed in this preamble). The proposed standard for solvent storage tanks has been deleted from the final rule.

The reduction in the number of facilities to become affected and in the level of control required for some equipment has reduced both the beneficial and adverse environmental impacts estimated at the time of proposal. The nationwide VOC emissions in the fifth year after promulgation from affected facilities controlled to the level of the standards is now expected to be about 960 megagrams (Mg) (60 percent) below the regulatory baseline, the emission level required by the typical State implementation plan (SIP). The typical new coating line subject to NSPS emission reductions will emit about 131 Mg less VOC than would a line subject to the typical SIP. This represents a decrease in emissions of about 73 percent. The typical modified or reconstructed coating line will emit about 92 Mg less VOC than a line at baseline control, a decrease of about 51 percent.

Estimates of the other environmental impacts are based on the use of fixed-bed carbon adsorbers (the most common control device) to control coating operation emissions. This assumption results in worst-case estimates for wastewater and solid waste impacts. Under the final rule, annual wastewater discharges from the typical new coating line will increase by about 380 m^3 or 24 percent over the level resulting from control under the SIP's. Discharges from a typical modified or reconstructed coating line will exceed the baseline control level by 190 m^3 or 12 percent. Nationwide wastewater discharges in the fifth year after promulgation will increase by a total of about 2,400 m^3 (17 percent). Solid waste (spent carbon) generated by the typical new and modified or reconstructed coating lines as a result of the final regulation is expected to exceed the amount attributable to SIP control by 120 kg (17 percent) and 70 kg (10 percent), respectively, for a nationwide total of 800 kg (13 percent) in the fifth year after promulgation.

The secondary environmental impacts of the NSPS will also be lower than estimated at proposal. The typical new coating line is expected to discharge 35 kg more VOC annually in wastewater than a line controlled to the level of the

typical SIP. The typical modified or reconstructed line will discharge only 20 kg more. These increases (23 and 11 percent, respectively) will result in an estimated nationwide increase of 225 kg (16 percent) over the regulatory baseline in the fifth year after promulgation. These estimates should be considered as highly tentative, however, as the actual increased levels of VOC in wastewaters will be subject to the permitting actions of State and Federal regulatory officials charged with implementation of the Clean Water Act. Accordingly, the inclusion in this document of the above estimated increases in future discharges of VOC in wastewaters does not constitute a determination or finding, either express or implicit, that such a discharge from any particular point source will comply with applicable water quality or technology based effluent standards. This judgment can only be made by the applicable local, State, or Federal regulatory agency on a case-by-case basis.

The adverse environmental impacts of the small increases in wastewater discharges and solid waste generation resulting from the NSPS are minor in comparison to the environmental benefits of the resulting reduction in VOC emissions. Proper treatment and disposal techniques render wastewater and solid waste virtually harmless. Emissions of VOC contribute to the formation of ozone and other photochemical oxidants on the atmosphere. In light of the persistent nationwide problems with these air pollutants, the benefits to be derived from the NSPS far outweigh the adverse impacts.

IV. Energy Impacts

The anticipated impact of the standards on energy consumption has been revised downward for the same reasons that environmental impacts were revised. A typical coating line that is controlled to the level required by typical SIP's would consume about 10.5 terajoules (TJ) for emission control. As a result of the standards, this energy usage will increase 13 percent to about 12 TJ for a typical new coating line and 6 percent to about 11 TJ for a typical modified or reconstructed line. Total nationwide energy consumption in the fifth year will exceed that due to control at the level of the typical SIP's by approximately 8 TJ. These energy requirements will have negligible effect on the cost and availability of energy.

V. Cost Impacts

The estimates of the cost impacts of the standards promulgated today have undergone extensive revision since proposal. Information received from industry on the type of equipment purchases that may be needed to achieve compliance at modified facilities has been incorporated into the cost functions used in the Agency's analysis. The recalculated cost estimates reflect the current trend in the industry toward modification of existing coating lines.

The estimated costs of compliance for new coating lines have not changed since proposal. Control of a typical new line to the level mandated by the NSPS can be accomplished with a relatively small marginal capital expenditure (about $32,000) over that required to meet the typical SIP. This increase includes the approximate cost of a total enclosure around the application/flashoff area (assuming that the drying oven itself functions as a total enclosure in the drying area), the ductwork associated with it, and the ductwork required to vent emissions from the mix equipment to the control device. The marginal annual capital recovery and operating costs for a typical new line equipped to meet the NSPS are more than offset by the value of the additional recovered solvent, however, and a net credit of about $73,000 per year results.

Information received from industry sources since proposal indicates that, at times, some control equipment, although adequate to meet the typical SIP, will have to be replaced to meet the NSPS at modified or reconstructed coating lines. In some cases, existing control devices will be too old or will lack sufficient capacity to meet the standards. In others, old, leaky drying ovens or those currently operating under positive pressure will have to be replaced to ensure adequate capture efficiency to meet the standards. Based on contacts with the industry and the model plant parameters and costs developed prior to proposal, it is estimated that the average capital cost of compliance for a typical modified or reconstructed coating line will be about $477,000. The average increase in annual costs for a typical modified or reconstructed coating line is expected to be approximately $31,000.

Taken across all 11 coating lines expected to become subject to the emission limitations, the average capital cost for the equipment required to meet the standards promulgated today is expected to be approximately $274,000 per coating line more than is required to comply with the typical SIP's. The annualized control cost for the average coating line (including capital recovery, utilities, raw materials, labor, and the value of the recovered solvent) is expected to be below that of the SIP level of control by $3,000 per year. In the fifth year after promulgation, it is estimated that cumulative nationwide capital costs will be $3 million above the amount required to meet the SIP's. The total annualized cost in the fifth year is expected to be a credit of about $32,000 per year. These figures represent an increase over the estimates at the time of proposal. At proposal, the expected fifth year totals were $455,000 in capital costs over the expenditures necessary to meet the SIP's and a net credit of $777,000 per year in annualized costs. As discussed in Section VI below, the economic impact of the standards on the magnetic tape manufacturing industry has been assessed, and the Administrator has concluded that those costs will result in negligible economic impact on the industry.

VI. Economic Impacts

The economic impacts of today's rule have been recalculated since proposal using information received from industry and current market prices. This recalculation has resulted in revised impacts but no change in the conclusion that the economic impacts are negligible.

Generally, new coating lines subject to the NSPS will experience a savings due to solvent recovery credits. An exception has been included for small lines for which these credits may not completely offset the cost of control. As a result, an annual solvent use cutoff of 38 m^3 has been established below which new coating operations are subject only to recordkeeping and reporting requirements. This cutoff was discussed in the proposal preamble and has been retained in today's rule. In addition, an annual solvent use cutoff of 370 m^3 has been added for modified or reconstructed coating operations because of the increased costs they may incur to comply with the standards. For coating lines above these cutoffs, the actual and relative cost increases are insignificant compared to the current production costs and retail prices. If all cost increases were passed through to the consumer, the retail price increase is predicted to be less than 0.5 percent.

Modification or reconstruction of coating lines typically results in increased production and, thus, reduced production costs. However, because these changes may also increase emissions, additional control costs will be incurred that will offset some of the reduction in production costs. To evaluate the probable production cost and price impact of added controls on modified lines, the Agency analyzed

several different cost and production line modification scenarios that were submitted by industry. Because of the limited data provided and its confidential nature, it was not possible to analyze the direct effect of compliance with the NSPS on actual production costs after modification. It was only possible to calculate the change in control costs that would result from the regulation and estimate the impact of these costs on retail prices. For the four different products manufactured at the plants that provided information, the average per-unit control cost increases range from less than $0.01 to $0.06. As a percentage of retail prices, the resulting cost increases represent less than 0.5 percent.

The environmental, energy, and economic impacts are discussed in greater detail in the BID for the promulgated standards ("Magnetic Tape Manufacturing Industry—Background Information for Promulgated Standards" [EPA–450/3–85–029b]).

In addition to the economic impact analysis, an analysis also was made of the cost effectiveness of alternative standards to determine which alternative achieves the greatest emission reduction for a reasonable cost and to ensure that the controls required by this rule are reasonable relative to other regulations. In this case, the promulgated standards would reduce the operating costs of the affected facilities and produce an average 5-year total cost effectiveness savings of about $30 per Mg of emission reduction. Annual solvent use cutoffs are being promulgated for new and modified or reconstructed coating operations so that small plants will not be forced to add controls that are not cost effective for a national standard of this type. Similarly, a baseline control efficiency cutoff for modified and reconstructed facilities is being promulgated. Additional details on costs can be found in the proposal and promulgation BID's.

VII. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the Federal Register (49 FR 26807) (June 29, 1984) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the standards recommended for proposal for the magnetic tape manufacturing industry. This meeting was held on August 29, 1984. The meeting was open to the public, and each attendee was given an opportunity to comment on the standards recommended for proposal.

The proposed standards were published in the Federal Register on January 22, 1986 (51 FR 2996). The preamble to the proposed standards discussed the availability of the BID ("Magnetic Tape Manufacturing Industry—Background Information for Proposed Standards" [EPA–450/3–85–029a]), which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the BID were distributed to interested parties.

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on March 11, 1986, at Research Triangle Park, North Carolina. The hearing was open to the public and each attendee was given an opportunity to comment on the proposed standards.

The public comment period was from January 22 to September 5, 1986. Eighteen comment letters were received and 7 interested parties testified at the public hearing concerning issues relative to the proposed standards of performance for the magnetic tape manufacturing industry. The comments have been carefully considered, and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

VIII. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry. No State or local agencies, environmental groups, or other interested parties submitted comments. A detailed discussion of the comments and responses can be found in the promulgation BID, which is referenced in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID and the additional information contained in the docket that was gathered to supplement and verify the assertions made by the commenters serve as the basis for the revisions that have been made to the standards between proposal and promulgation.

Several changes have been made to the standards since proposal. All provisions pertaining to solvent storage tanks have been deleted after a reevaluation of costs. This change was accomplished prior to today's action through a notice published in the Federal Register on November 25, 1986 (51 FR 42800). The definition of affected facilities has been changed to define mix equipment and coating operations as separate affected facilities. The definition of "total enclosure" has been clarified, and requirements for demonstrating that a structure qualifies as a total enclosure have been added. Associated monitoring, recordkeeping, and reporting requirements have been modified accordingly. Flexibility has been maintained by allowing structures not meeting the requirements to be approved by the Administrator on a case-by-case basis. One portion of a compliance test that might have been interpreted to allow the efficiency of a total enclosure to be assumed to be 100 percent has been deleted. An alternative compliance provision for coating operations that would have allowed apportionment of long-term liquid material balances based on a single short-term gaseous emission test has been deleted. A number of minor changes have been made to the monitoring and reporting provisions for clarity and consistency with other VOC standards. Minor changes also have been made to some test and compliance provisions and definitions to clarify that the standards for coating operations are intended to apply to the net quantity of VOC actually emitted from the coating operation in the gaseous phase. Thus, any dilution solvent added to the coatings must be accounted for, and any VOC contained in waste coatings or retained in the final product may be measured and subtracted from the total when performing a liquid-liquid VOC material balance. (These adjustments are not necessary for the gaseous emission test compliance procedures.) Also, EPA Methods 18 and 25 have been added as acceptable methods for determining VOC concentrations.

The performance testing and monitoring provisions for fixed-bed carbon adsorption systems have been revised to represent more accurately the performance of multibed systems. This revision was an indirect result of a public comment concerning the performance of fixed-bed carbon adsorbers. Performance tests are the direct means of determining the compliance status of an affected facility and serve as the basis for legal enforcement actions against noncomplying sources. In contrast, the monitoring devices required by these standards serve only as indicators of control device performance to aid enforcement agencies in targeting inspections and performance tests toward potential violators. The revised procedures will ensure that the performance test runs and monitoring averaging periods will parallel the adsorption cycles of all the individual adsorber vessels or the system's complete sequential rotation through the adsorption cycles of all the vessels. Use

of a testing or monitoring period that does not correspond to an integral number of adsorber vessel cycles or system rotations could bias the results slightly in either direction. Efficiencies would be biased high if the test run or monitoring period did not include the elevated emissions typical at the beginning and end of a vessel's adsorption cycle; efficiencies would be biased low if the period included a disproportionate number of these emission peaks.

The revised carbon adsorption system performance testing provisions include separate requirements for systems with a single common exhaust stack and for systems with individual stacks for each adsorber vessel. The Agency believes that a common exhaust stack allows simpler performance testing that is more representative of the entire system's performance but has included provisions for individual exhaust stacks because this is currently the more typical configuration.

For adsorption systems with a common exhaust stack serving all the adsorber vessels, the entire system must be tested. Three test runs are required; each run must correspond to one or more complete rotations through the sequential adsorption cycles of all the adsorber vessels.

For adsorption systems with individual exhaust stacks, each adsorber vessel must be tested individually. Three test runs are required for each vessel; each run must correspond to one or more complete adsorption cycles. A procedure has been added to the compliance provisions for computing a system efficiency from the individual adsorber vessel efficiencies.

The final adsorber monitoring provisions parallel the final performance testing provisions. Again, separate provisions apply to systems with a common exhaust stack and those with individual stacks.No increase in monitoring costs is anticipated.

For adsorption systems with a common exhaust stack, a monitoring device must be installed on the common exhaust stack and one also may be installed on the common inlet duct. The owner or operator must report each occurrence when the average emission level or system efficiency (depending on whether the outlet only, or the inlet and outlet gas streams are monitored) over three successive system rotations varies outside the specified range.

For adsorption systems with individual vessel exhaust stacks, a monitoring device must be installed on each individual exhaust stack, and a monitoring device also may be installed on the common inlet duct or on each individual inlet duct. Each adsorber vessel must be monitored for a minimum of one complete adsorption cycle per day. A 3-day rolling average emission level or efficiency for each vessel (depending on whether the outlet only, or the inlet and outlet gas streams are monitored) must be computed each day from the daily averages, and these 3-day rolling averages must be reported when they vary outside the specified ranges.

Significant changes also have been made to the standards as a result of comments on the costs involved in retrofitting modified or reconstructed equipment. Several companies submitted modification scenarios that were evaluated by the Agency. It was concluded that in some cases, the costs to meet the proposed standards would be unreasonable for a national standard in light of the relatively small reduction in emissions obtained. This finding has prompted changes to the standards for both mix equipment and coating operations.

New mix equipment that is constructed with concurrent construction of a new VOC control device (other than a condenser) on a magnetic tape coating operation at the plant requires the installation and use of covers on each piece of mix equipment and the venting of the equipment to a 95 percent efficient control device. The wording of this standard has been modified to reflect more closely the practical application of BDT for this category of mix equipment. Construction of the control device is considered concurrent if it occurs within the period beginning 6 months before and ending 2 years after construction of the mix equipment. All modified or reconstructed mix equipment, new mix equipment that is constructed without concurrent construction of a control device, and new mix equipment that is constructed with concurrent construction of a condenser is simply required to be fitted with covers alone or fitted with covers and vented to a control device. Venting of emissions to a control device is not required on new mix equipment constructed with concurrent construction of a condenser because the moist, intermittent, low-concentration airstreams from mix equipment are incompatible with the operation of a closed-loop condenser on a drying oven.

The standards applicable to new coating operations remain unchanged from those proposed. The same is true of modified or reconstructed coating operations recovering or destroying less than 90 percent of the VOC applied at the coating applicator prior to modification or reconstruction. However, an existing coating operation that demonstrates recovery or destruction efficiency equal to or greater than 90 percent will be required only to maintain the existing level of control or 93 percent, whichever is lower, upon modification or reconstruction. If a new control device is subsequently added to a modified or reconstructed coating operation, the new control device must be 95 percent efficient. Also, if a higher overall control efficiency is achieved with the new control device, this higher level of control or 93 percent, whichever is lower, must be maintained. In addition, modified or reconstructed coating operations utilizing less than 370 m^3 of solvent annually will be subject only to certain recordkeeping and reporting requirements. Appropriate revisions have been made to the regulation reflecting these changes.

The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: Level of the Standard, Best Demonstrated Technology, Affected Facilities and Modification and Reconstruction, Solvent Storage Tanks, Compliance Provisions, Cost and Economic Assumptions and Impacts, and Suspension of the Standards. All comments and responses are included in the promulgation BID.

A. Level of the Standard

Two commenters said that EPA did not properly consider the normal process variability associated with carbon adsorbers in proposing a standard requiring 93 percent control of the coating operation. One commenter reviewed the long-term operating data for three carbon adsorbers presented in Tables C–6 and C–8 of the proposal BID and concluded that the standard deviation for all three systems exceeds 2 percent. According to this commenter, if the long-term operational variability results in a normal distribution of monthly measurements, two-thirds of all results would be expected to be within plus or minus one standard deviation from the mean, and 95.5 percent of all results would fall within plus or minus two standard deviations from the mean. The commenter concluded that for a control system functioning at an average long-term efficiency of 95 percent and with a standard deviation of 2 percent, a point would be expected to fall below 91 percent about once every 4 years. If so, a 100 percent efficient capture device ducting emissions to a control device with a long-term average efficiency of 95 percent would be expected to fail the

proposed standard of 93 percent control efficiency for each and every month at least once and possibly twice every year. The two commenters recommended that the standard be established at 90 percent for the coating operation in order to take process variability into account.

The commenter is correct in stating that the standard deviations of the monthly efficiency data presented in Tables C–6 and C–8 of the proposal BID exceed 2 percent. The EPA undertook additional investigation into the circumstances of the reported efficiencies to determine if these variations were indeed the result of normal process variability.

The data in Table C–6 are from an IBM Corporation facility. A representative of IBM Corporation indicated that the first 4 months of data listed in Table C–6 (January through April 1982) coincide with the startup phase of both the carbon adsorber and the process equipment it serves. These months should, therefore, be deleted from consideration of the normal variability of the system. The data from the remaining 8 months in 1982 have a mean efficiency of 98.7 percent with a standard deviation of 0.53 percent. Assuming a normal distribution of monthly measurements, the probability of this carbon adsorber falling below an efficiency of 95 percent due to random variability would be less than 10^{-9}, i.e., one chance in a billion. These data show that with the use of BDT, i.e., a total enclosure and a carbon adsorber, the standard of 93 percent overall reduction is achievable.

Information on this subject also was sought from carbon adsorber manufacturers. The representatives unanimously agreed that if properly designed and operated, fixed-bed carbon adsorption systems can achieve efficiencies of 95 percent or above at all times. The operation of such systems must be coordinated with production, and adsorption/desorption cycles must be based on monitored outlet concentrations rather than elapsed time. Also, a program of regular maintenance must be established and carried out. Magnetic tape manufacturers adhering to these operation and maintenance principles should have little difficulty maintaining the necessary adsorber efficiency.

In light of the information at hand, EPA has determined that proper consideration has been given to carbon adsorber performance capabilities. The data from the industry derived from a period of normal operation indicate that continuous long-term efficiency in excess of 95 percent is achievable even with variations in operation. Thus, based on these data, which vendors support, the Agency concludes that the standard as proposed provides sufficient margin to account for the normal variability of control devices.

One commenter questioned whether any supporting data exist for the Agency's position that 95 percent VOC removal efficiency can be achieved continuously by carbon adsorption systems over all averaging periods, including short-term periods. The commenter submitted information indicating that 24-hour averages of efficiency of his adsorption system vary dramatically from day to day. Days when the average efficiency was above 95 percent were followed quickly by days with an average efficiency of less than 90 percent. It was this information that caused the commenter to question the Agency's decision to determine compliance and assess adsorber operation and maintenance based on short-term measurements of adsorber performance.

In response to this comment, EPA has evaluated existing short-term performance data; collected additional design, operation, and performance data from plants inside and outside the magnetic tape industry; and reexamined, with the help of carbon manufacturers and custom carbon adsorption equipment designers, the elements that could affect short-term adsorber efficiency. This analysis has reinforced the Agency's original conclusion that a properly designed, operated, and maintained carbon adsorption system can continuously maintain a VOC removal efficiency of 95 percent or greater. The promulgation BID, Section 2.1.2, includes a detailed technical discussion of the issues raised by the commenter, and the data are in the project docket.

The Agency's analysis is based on the theory, design, and operation of carbon adsorption systems. It is well recognized in carbon adsorption theory that the affinity of activated carbon for organics is so great that carbon will collect essentially all organics from an airstream for a period of time. As the carbon begins to saturate, it will allow organics to escape (or break through). For adsorber vessels containing fresh (virgin) carbon, the quantity of organic-laden gases that may be treated and the time before breakthrough are functions of the carbon bed design and size. As the carbon undergoes successive cycles of adsorption and regenerating, fouling gradually decreases the active sites within the carbon bed available for adsorbing organics. This process reduces the total amount of organics the carbon bed will adsorb in a single adsorption cycle (the "working capacity" of the bed). If the operator does not coincidentally reduce the duration of the adsorption cycle, the amount of organic allowed to pass through the system increases greatly as the bed operates in a post-breakthrough period. In such cases, the average efficiency over the adsorption cycle will drop significantly. Therefore, the air pollution control efficiency is a function of how long the carbon bed remains in service after breakthrough and before regeneration, and not necessarily the age of the carbon bed or its remaining working capacity. In a properly designed and operated adsorber, the volume of the carbon beds and the duration of the adsorption periods between regeneration cycles are established to accommodate the reduction in working capacity that occurs over time.

In actual operation, a properly designed adsorber vessel will achieve exceedingly high (99 percent) overall efficiency during the bulk of its adsorption cycle. Only after breakthrough does the instantaneous efficiency fall enough to influence the average efficiency of the entire cycle. Through proper operation and monitoring, breakthrough can be anticipated, and the adsorber vessel removed from adsorption service at or prior to breakthrough, resulting in a high average efficiency over the adsorption cycle. Continuous monitoring of the outlet concentration of organics from each bed provides a means of determining the appropriate moment to remove a bed from adsorption service regardless of the amount of time it takes to reach breakthrough for a particular adsorption cycle.

In summary, the performance factors that affect the efficiency of a carbon adsorber are controllable, and the system can be properly designed to handle the organic material actually delivered to it. A sudden or erratic decrease in the efficiency with which an adsorber removes organics from an airstream is a result of improper design, operation, and/or maintenance.

Because the carbon adsorber performance data supplied by the commenter have been claimed to be confidential, no specific details about the commenter's system are presented in this preamble or in the promulgation BID. The data were submitted after the comment period had closed. Nevertheless, a detailed study was conducted as a result of the comment, and the nonconfidential results of this study are discussed in more detail in the BID. In general, the carbon adsorber

system cited by the commenters to support their claims is significantly underdesigned for the actual solvent loading it is required to control. This results in the system being operated a significant portion of the time when the solvent-laden air (SLA) has already broken through one or more of the carbon beds. As a result, this system shows significantly reduced efficiency and also significant variations in efficiency from day to day and cycle to cycle. There is no evidence to show that the poor performance of this system stems from any inherent difficulty in absorbing the particular solvent blend in use. Therefore, the Agency has concluded that those data are not representative of a properly designed, operated, and maintained system and that the erratic performance of the commenter's adsorption system can be traced to these problems.

The Agency has found no basis for concluding that the standard cannot be achieved continuously and, hence, over both short-term and long-term averaging periods. For this reason, the standard requiring 93 percent overall VOC emission reduction for new coating operations and most modified or reconstructed coating operations has not been revised. However, review of information obtained in response to the comment has led the Agency to revise the averaging periods for the testing and monitoring requirements from periods of a fixed duration to periods that include an integral number of complete adsorber cycles. The revised periods remain short-term averaging periods. It is believed that these revisions will result in more accurate characterization of the performance of carbon adsorption systems. The new requirements are included in the promulgated standard and are discussed in more detail elsewhere in this preamble (see the general section on changes since proposal located at the beginning of Section VIII).

Three commenters noted that the standard for the pressure sensitive tapes and labels (PSTL) industry, which includes the plant that the Agency is relying on for technology transfer, was set at only 90 percent control. One commenter indicated that the standard for the magnetic tape industry should, therefore, be no higher. Another commenter believes that the standard should be less than 90 percent. The third commenter stated that EPA must justify the imposition of a stricter standard on the magnetic tape manufacturing industry.

The PSTL data were used in the development of the magnetic tape manufacturing industry standard because these two industries are similar both in the processes used and in the controls determined to be BDT. However, some products manufactured at PSTL plants retain sufficient solvent in the dried web such that 93 percent control of applied solvent was judged not to be achievable in all cases. There is virtually no solvent retained in magnetic tape products after they leave the drying ovens; thus, all the applied solvent is available for capture by a well-designed capture device. If, however, an owner or operator submits specific information to the Administrator that justifies the need for retained solvent in the product, the revised standards now allow the fraction of retained solvent to be included in the material balance calculation as VOC recovered rather than as a fugitive emission. In addition, data gathered on the level of control of coating operations achieved at existing magnetic tape plants support the level of the promulgated standard. (Additional detail on this subject is presented in Section 2.1 of the promulgation BID. See section VIII.C of this preamble for further discussion of the level of control on new and modified coating operations.)

B. Best Demonstrated Technology

1. Coating Operations

Several commenters stated that magnetic tape products, particularly computer tape, cannot be produced in the type of negative-pressure total enclosure required by the proposed standard for the coating operation. One commenter stated that neither the proposal BID nor the proposal preamble adequately addresses the quality issue and that there is no information in the proposal BID about the actual use of negative-pressure enclosures at magnetic tape plants.

A meeting of EPA and industry representatives was held on May 7, 1986, to discuss industry concerns with the proposed NSPS. Attendees from industry included most of those who presented comments at the public hearing (IV–F–1). At the meeting, industry representatives agreed that all types of magnetic tapes can be manufactured at facilities equipped with BDT. The concern expressed by industry was the cost to achieve the standard at modified and reconstructed facilities (see section VIII.C), not the achievement of 93 percent control or problems with product quality. The air handling techniques designated as BDT are currently in use in the magnetic tape industry, including at least two plants manufacturing computer tape. On this basis, the Agency concludes that BDT is practical and that the standard is technologically achievable for all segments of this industry.

Because of the concerns for product quality discussed above, some commenters said that BDT has not been demonstrated for the magnetic tape industry and that extensive development costs would be required by the industry to meet the proposed standard. One commenter said that the standards should be rewritten "using a BDT from the magnetic tape industry" (i.e., control of the oven only) and that "different BDT's might be needed for each segment" of the industry. Other commenters said that the PSTL plant that provided the data supporting the proposed standard would not be capable of producing high-quality magnetic tape and should, therefore, not be considered an adequate demonstration of BDT for the magnetic tape industry. One commenter said that according to his review of previous court cases, technology transfer should be based on specific equipment rather than a process.

This last commenter was contacted for additional information about the court cases to which he referred in his comments. He was unable to supply specific citations. The Agency has located several decisions that deal in part with appropriate considerations in the determination of BDT. In no case was the issue raised concerning a distinction between processes and specific pieces of equipment. The overriding concern voiced in these decisions is that the Administrator arrive at an achievable standard through a reasonable determination of BDT.

The NSPS for the magnetic tape manufacturing industry is an achievable standard based on a reasonably determined BDT. The control technology designated as BDT has been demonstrated at a PSTL plant to achieve the percent reduction required by this standard. These air handling and control technologies are currently in use in the magnetic tape industry, including the computer tape sector where product quality is critical. The equipment, solvents, and processes used in these two web coating industries are similar and would be expected to produce similar SLA streams. A technological system that can control the SLA streams of the PSTL industry to the required degree can be reasonably expected to do the same in the magnetic tape industry. Thus, having made a reasonable determination of BDT and

formulated an achievable standard, the Agency has satisfied the requirements mandated by the courts. (See related discussion of the level of the standard in section VIII.A of this preamble and the issue of product quality above. Additional detail on this subject is contained in section 2.2 of the promulgation BID.)

2. Mix Equipment

Two commenters addressed the selection of carbon adsorption as BDT for mix room emissions. According to one commenter the cost to install control equipment is not justified, particularly for an existing facility, because only 3 percent of plant-wide emissions are from the mix room. The commenter recommended that BDT for mix equipment be redefined as tight covers. A second commenter said that control costs for a separate carbon adsorber are significantly underestimated in the BID and result in unrealistic cost-effectiveness values.

The Agency's cost analysis presented in the proposal BID demonstrated that the cost to control mix room emissions with an add-on control device was reasonable only if the same control device could be used to control coating operation emissions and mix room emissions. The standard for the mix room and the proposed affected facility definition presented at proposal were selected so that carbon adsorption control of mix room emissions would occur only when there was also an affected coating operation, and, thus, emissions from the two sources could be controlled by the same control device. At that time, growth in the industry primarily resulted from construction of new lines. Thus, new or existing mix equipment would become subject to the NSPS when a new coating operation and its control devices were being constructed and capacity for the mix equipment could be included in the control device design.

Since proposal, EPA has accepted the industry's allegation that growth in the industry will occur primarily from modification or reconstruction of existing lines rather than construction of new lines (see section VIII.C). In this situation, existing mix equipment may be modified when there is no construction of a new control device and the existing control device may not have sufficient extra capacity to incorporate mix room emissions. Two modification scenarios were provided by industry after the public hearing, and the site-specific control costs were determined not to be reasonable because of high airflow rates. Older pieces of mix equipment frequently have makeshift covers, and dry ingredients are added by open pouring rather than by closed pumping systems. Thus, older, modified mix equipment may require higher airflows than new mix equipment to keep the VOC concentrations in the work area at safe levels (below the threshold limit value and the lower explosive limit). These high airflows further exacerbate the problem of limited control device capacity.

The Agency's original analysis of BDT and the mix room standard at proposal were never intended to include the scenario of controlling the entire room ventilation air from the mix room. The original analysis was based on new mix equipment, which has covers that can be easily adapted to ventilation to a carbon adsorber at low airflows. After discussions with personnel at the two plants submitting comments, the Agency has concluded that there is no practical and cost-effective way to retrofit this type of low-airflow capture device to all existing modified mix equipment. Therefore, the Agency agrees that BDT for modified mix equipment should be covers instead of ventilation to a control device. However, the Agency still believes that control of new mix equipment can be achieved at a reasonable cost by carbon adsorption when a new control device is being constructed on a magnetic tape coating operation at the plant and the SLA from the mix equipment is considered in the design of the device.

The standard has been changed to require covers or covers and venting to a control device on all modified or reconstructed mix equipment and on new mix equipment when there is no concurrent construction of a control device on a coating operation at the plant or when the control device installed concurrently is a condenser. Covers alone are expected to reduce emissions by approximately 40 percent compared to open mix equipment. The use of covers and venting to a control device will provide additional control beyond 40 percent. If new mix equipment is installed at a time when there is concurrent construction of a control device (other than a condenser) on a coating operation at the plant, covers must be used on the mix equipment, and emissions must be vented to a control device that is 95 percent efficient. The Agency selected 95 percent for the control efficiency because carbon adsorption is part of the BDT selected for this industry. In its review of the operating data for carbon adsorbers in this and other industries, the Agency has concluded that 95 percent is achievable on a long-term continuous basis for a properly designed device. Thus, any new carbon adsorber should be capable of maintaining this level of control. "Concurrent" means within the period from 6 months before until 2 years after the installation of the mix equipment. This period is designated because it is consistent with the normal planning and purchase cycles for equipment of this type. The 2-year period also coincides with the period for which records required under this standard must be retained. A definition of covers and compliance and reporting requirements for the covers have been added to the regulation.

A cover is defined as a device that (1) lies over the equipment opening, (2) either extends at least 2 cm beyond the rim of the equipment or is attached to the rim, (3) maintains contact with the rim for the entire perimeter, and (4) is opened as seldom as possible. A nonpermanent cover such as a polyethylene sheet may be used if it meets these criteria. A notification of actual startup is the only reporting requirement; all other monitoring, recordkeeping, and reporting requirements have been waived for plants with only mix equipment requiring covers.

According to one commenter, there is a strong bias in the proposal BID toward carbon adsorption control of mix room emissions that is unwarranted because of the problems that are encountered with the use of this technology to recover some solvents. In particular, cyclohexanone is unsuited for carbon bed recovery because of potential hot spot formation that would result in bed fires and plugging of the bed by oxidation products. According to the commenter, emissions from new or modified mix equipment cannot be added to the condenser controlling oven emissions without upsetting oven control because the oven and condenser have a closed-loop, steady-state gas balance that would be disrupted by intermittent and variable airflow and low VOC levels from the mix room.

The Agency reviewed the available data on types of solvent and associated control devices used in this industry. Plants using cyclohexanone as part of a blend of solvents have successfully controlled mix room and oven emissions with carbon adsorbers. However, those plants electing to use pure cyclohexanone have installed condensers for control of oven emissions. According to one vendor, bed fires did, in fact, occur in the carbon adsorber installed by his company at a magnetic tape plant using pure cyclohexanone. The vendors of

condensers used in this industry have agreed with the commenters' statements regarding the impact of venting mix room emissions to a closed-loop condenser on the oven. The moist, intermittent SLA streams from mix equipment are incompatible with finely tuned closed-loop oven/condenser systems. Use of a separate control device to control mix equipment emissions has been found not to be cost effective. Based on these data, the Agency will allow a different level of control for those plants using a condenser to control coating operation emissions. For such plants, covers that meet specific criteria must be used to control VOC emissions.

C. Affected Facilities and Modification and Reconstruction

Many comments were received on these interrelated subjects. Some commenters suggested that the affected facility definition be changed to separate mix equipment from coating operations. They were concerned that minor modifications to mix equipment would make existing coating operations subject to the NSPS, particularly at those plants that are already so highly controlled that an emission offset could not be achieved. It would also be difficult to determine the "comparable" capital value of an entirely new "facility" to determine if reconstruction has occurred when common mix equipment serves two coating operations.

These concerns were brought about by changes in this industry. At the time leading up to proposal, it was indicated by the industry that expansion would occur through the construction of new coating lines. However, after proposal, several commenters stated that the current trend is to modify existing equipment. These commenters stated that the costs to retrofit improved controls to existing equipment would be excessive and have not been adequately evaluated. Several suggested that the affected facility definition be changed to exclude existing equipment.

Six commenters submitted actual or theoretical scenarios for coating line modifications at their plants and the necessary control system changes and costs. Three of these scenarios involved changes to the coating line to increase production speed, two scenarios involved changes in the mix room equipment, and one scenario did not specify the type of modification. Four of the scenarios included the installation of new control devices for the entire modified line.

In addition to the six modification scenarios submitted by industry, EPA surveyed the remaining plants in the industry and confirmed that the industry now believes that growth, at least in the next several years, will occur primarily as a result of modifications to both mix equipment and coating operations. The Agency performed detailed site-specific analyses of the control costs for the modification scenarios supplied by industry (see docket item IV–B–12). The details of these scenarios and the cost analyses will not be presented here because confidential treatment of all of the information submitted was requested by the plants. Three of the scenarios are likely modifications as defined under the criteria in 40 CFR 60.14. One scenario is not likely to be a modification. The remaining two scenarios were entirely hypothetical, and not enough information could be provided to make a modification determination despite the Agency's requests for further information. However, EPA conducted a cost analysis on the five scenarios for which sufficient data were supplied on the assumption that, even if the specific case was not a modification, the general concept might be valid in other cases. The cost analyses were performed for the control strategies presented by the commenters and for alternative strategies. Each cost analysis was specific for the operating practices and equipment at the plant.

As discussed in section VIII.B, based on these analyses and information from plant personnel regarding modification of mix equipment, EPA has revised BDT to be covers or covers and venting to a control device for modified mix equipment, new mix equipment at plants without concurrent construction of a control device, and for new mix equipment at plants with concurrent construction of a condenser. The BDT for new mix equipment at plants with concurrent construction of a control device (other than a condenser) on a magnetic tape coating operation remains control by that device. The control device must be operated at 95 percent efficiency. Because the standard for mix equipment is an equipment standard, these new BDT determinations are also the new standards for the mix equipment.

Three scenarios concerned increasing the level of control on the coating operation after a modification. The analyses showed that if the baseline overall level of control on an existing coating operation is 83 to 88 percent, the cost to achieve 93 percent overall control after modification is reasonable even if a new control device must be built. However, for the plant with a baseline overall level of control of 90 percent or greater, the cost of adding any control equipment, even a small carbon adsorber to control only the incremental airflow, is unreasonable. Based on these results, the Agency has revised the regulation to include different standards for new and modified or reconstructed coating operations. New coating operations and modified or reconstructed coating operations with a baseline overall level of control less than 90 percent prior to making the change must still achieve 93 percent overall control of applied solvent (see section VIII.A for the justification of this level). If an existing coating operation can be demonstrated to achieve 90 percent overall control or better, it must maintain the existing overall level of control or 93 percent, whichever is lower, following modification or reconstruction. If, following a modification or reconstruction, a new control device is installed, the final standards require that the control device be at least 95 percent efficient and that the overall level of control be maintained at or above the level demonstrated prior to modification or reconstruction. However, if the overall level of control demonstrated with the new control device is higher than was previously demonstrated with the old control device, then the higher overall level of control (up to 93 percent) must continue to be met. With the replacement of the control device, the cost of controlling the incremental emissions is reasonable.

The methods of demonstrating the baseline level of control prior to modification or reconstruction are (1) the performance tests described in the regulation or (2) the use of a total enclosure that meets the new definition (see Section VIII.E) and a control device that is demonstrated by the procedures in the regulation to be at least 92 percent efficient. The Agency considered requiring that the lower overall level of control required at modified facilities be contingent on the demonstration of both 90 percent overall control or greater and insufficient control device capacity to accommodate the increased VOC loading due to the modification. However, no practical method was found that industry and compliance officers could use to make capacity determinations easily and accurately.

An annual solvent utilization cutoff of 38 m^3 for coating lines was included in the NSPS at proposal. The 38 m^3 cutoff is the annual solvent throughput below which the control costs for new lines become unreasonable relative to the emission reduction achieved. This cutoff has been retained for new coating

operations in the final rule. However, the information received from industry on the compliance costs at modified or reconstructed coating operations prompted a review of the cutoff for these facilities. The EPA used cost information, emission data, and plant parameters for model lines developed prior to proposal plus information supplied by industry to determine the cutoff for modified or reconstructed lines. Even when the emission reduction achieved by a modified or reconstructed line is the same as that achieved by a new line, the incremental control costs above baseline can be greater for modified lines than for new lines. For new lines, most of the capital costs are incurred in reaching the baseline level of control, and only a small additional cost is needed to achieve the extra control required by the recommended standard. For modified or reconstructed lines, a complete new control system may be required, and the total cost of that system must be compared only to the incremental emission reduction above the baseline level of control. Therefore, the annual solvent throughput at which control costs are reasonable may be higher for modified lines than for new lines. Based on this analysis, an annual solvent utilization cutoff of 370 m^3 has been added for modified or reconstructed coating operations (see docket item IV–B–7). Of the projected eight modified or reconstructed lines that would otherwise be required to reduce emissions by 1991, only one would be below this annual solvent use cutoff.

At proposal, each coating operation and its associated mix equipment were defined as a single affected facility. This definition was expected to result in a greater emission reduction than separate affected facilities for two reasons. First, it allowed the selection of common carbon adsorption control (i.e., a carbon adsorber that controls both mix room and coating operation emissions) as BDT, which would result in 93 and 95 percent control of emissions from the coating operation and mix room, respectively. (A separate carbon adsorber for mix room emissions was found not to be cost effective.) Second, the definition would have resulted in a greater emission reduction than separate affected facilities because more mix equipment would be brought under the standard at this high level of control, i.e., when a coating operation was constructed or modified, all new and existing associated mix equipment would become affected.

As described in section VIII.B, the Agency has revised its BDT determination for mix equipment because it has been demonstrated that the cost and feasibility of retrofitting carbon adsorption control to mix equipment may not always be reasonable. As a result of the revised standards, emissions from affected coating operations will be 90 or 93 percent controlled, and emissions from most affected mix equipment will be about 40 percent controlled through the installation and use of covers. Because the level of control required by the standard for the coating operation is more than twice that required for the mix equipment, the greatest overall emission reduction will be achieved when the greatest possible number of coating operations become subject to the standard. Therefore, the Agency has selected the affected facility definition that would achieve this result. The Agency has decided to separate the coating operation and mix equipment into two separate affected facilities. This separation reduces the capital expenditure necessary to qualify as a modification or reconstruction, which increases the likelihood that a facility would be subject to the modification or reconstruction provisions. The following factors raised by commenters also were considered in changing the affected facility definition: (1) Interpretation of the regulation, particularly compliance, modification, and reconstruction determinations, is more straightforward and (2) the possibility is eliminated that a modification to one coating operation may cause an unchanged coating operation to become affected because they share common mix equipment, a result that was never intended with the definition at proposal.

For the mix equipment affected facility, the following possible definitions were considered: (1) Each piece of mix equipment and (2) all mix equipment at a plant. Under the presumption that the narrowest definition is the most desirable because it will result in including the most modifications and reconstructions and, thus, the greatest emission reductions, the affected facility was defined as individual mix tanks. This definition will also make compliance, modification, and reconstruction determinations easier at plants with many pieces of mix equipment.

The commenters' concerns that very minor modifications would cause existing facilities to become subject to the standards are unfounded. As discussed on the proposal BID, an increase in production that is accomplished without a capital expenditure is not considered a modification. A "capital expenditure" is defined in 40 CFR 60.2 as an expenditure exceeding the product of the applicable "annual asset guideline repair allowance percentage" (specified in the latest addition of Internal Revenue Service Publication 534) and the existing facility's fixed capital cost. In addition, when emissions elsewhere within the same affected facility can be reduced by an amount equal to or greater than the increase caused by a modification, the facility does not become subject to the NSPS.

Additional detail on the comments received on these subjects and the Agency's response is contained in Section 2.3 of the promulgation BID.

D. Solvent Storage Tanks

Five commenters questioned several aspects of the storage tank cost analysis and proposed standard. Comments were made on the selection of the baseline tank, the cost of a pressure vessel relative to an atmospheric tank, the safety of pressure vessels, the justification for submerged fill pipes, underground tanks, selection of BDT, and the level of the standard. The details of these comments can be found in the docket.

Based on the cost issues raised by the commenters, a cost reevaluation was performed. The details of this cost analysis are contained in docket item IV–B–2. The new cost analysis demonstrates that there is no cost-effective control technology for solvent storage tanks in the magnetic tape manufacturing industry. As a result, a notice was published in the **Federal Register** on November 25, 1986, withdrawing the proposed standard for storage tanks (51 FR 42800). This notice was published separately rather than at the time of promulgation of the revised regulation so that facilities would not needlessly install tanks complying with the proposed standard in the interim between proposal and promulgation.

E. Compliance Provisions

Two commenters requested that EPA provide the criteria that would be used by the Administrator to evaluate enclosure designs submitted by industry as part of complying with the alternative means of emission limitation. One commenter noted that the technologies for testing such a total equipment enclosure do not exist or are not practical and that the standard as written is not capable of being administered.

The Agency agrees with the commenters that more complete criteria for total enclosures are needed.

Therefore, total enclosure requirements were developed after a review of air handling techniques already in use in this and other industries. The suggested physical structure of the total enclosure was developed from EPA's experience with enclosures in a wide range of industries. The relative positions of ducts and openings and the locations of measurement points were developed from this experience and from industrial hygiene measurement requirements.

The requirements have been included in the final rule. Those enclosures that conform to the requirements will receive automatic approval as total enclosures. An enclosure that does not conform to the requirements may be approved by the Administrator on a case-by-case basis provided that it is demonstrated that all VOC emissions from the coating operation are contained by the enclosure and vented to the control device. It should be noted that the Agency does not intend to limit the possible configurations of total enclosures. A total enclosure could range from a close-fitting structure around the application/flashoff area coupled with the drying oven all the way up to the room (or entire plant) housing the coating operation. Thus, where product quality concerns dictate an enclosure under positive pressure immediately around the coating operation, this enclosure may, in turn, be contained within a larger, negative-pressure total enclosure.

The current requirements and their bases are discussed below. The Agency is continuing its investigation of appropriate requirements for total enclosures and the related procedure for capture efficiency testing using temporary enclosures. The most up-to-date guidance on these matters may be obtained by contacting the individuals listed in this preamble under the heading "**FOR FURTHER INFORMATION CONTACT.**" If necessary, the total enclosure requirements in the rule will be revised during the required 4-year reviews.

The Agency has selected average face velocity across the natural draft openings as the best indicator of complete capture. Natural draft openings are defined as any openings in the total enclosure that remain open during operation of the facility and that are not connected to a duct in which a fan is installed. An example of a natural draft opening is a slot where the base film (or "web") enters the total enclosure. The inward face velocity of the enclosure must be sufficient to overcome outward velocity due to dispersive forces. Because face velocity cannot be measured directly and accurately while the enclosure is in operation, the Agency has chosen to specify that an average face velocity be calculated using flow measurements in the forced makeup air ducts and the outlet ducts. The American Conference of Governmental Industrial Hygienists (ACGIH) recommends minimum average face velocities of 2,700 to 3,600 meters per hour (m/h) for enclosures around belt conveyors, bins/hoppers, and packaging machines, and through paint spray booths. The Agency has selected an average face velocity of at least 3,600 m/h as the requirement for natural draft openings in total enclosures in this industry. A test procedure based on EPA methods is included in the compliance provisions of the promulgated regulation for determination of the average face velocity across the natural draft openings.

It is expected that most enclosures can easily meet this requirement. For instance, the "typical" model coating operation developed by EPA for impact analyses prior to proposal coats a web that is 0.66 m wide. This facility would need a net exhaust from the enclosure of only 0.30 standard m^3 per second (m^3/s) to maintain an average face velocity of 3,600 m/h across entrance and exit web slots measuring 1 m by 0.15 m. This can easily be accomplished with the exhaust from the drying oven to the control device, which is expected to be on the order of 2.6 standard m^3/s. In the event that an enclosure does not meet this requirement, the owner or operator can apply to the Administrator for approval on a case-by-case basis.

When the static pressure inside the enclosure is negative with respect to the static pressure outside the enclosure, an inward flow will result. However, the static pressure differential that results in an average face velocity of 3,600 m/h is so small (approximately 1 pascal [Pa] across a flanged opening) that motion near a natural draft opening could be enough to overcome this pressure differential, resulting in outward flow. For this reason, the requirements state that when the average face velocity is between 3,600 m/h and 9,000 m/h, continuous inward flow must be verified during the determination of average face velocity by observation using smoke tubes, streamers, tracer gases, or other means approved by the Administrator. Above 9,000 m/h, the average face velocity recommended by ACGIH when emissions are actively generated into a turbulent area, the static pressure differential is high enough (approximately 6.5 Pa across a flanged opening) that continuous inward flow can be assumed without verification.

To differentiate a partial enclosure and a total enclosure, it is necessary to limit the total area of the draft openings (e.g., web slots). The Agency has included requirements in the final rule that restrict the total area of the natural draft openings and the locations of such openings with respect to any source of emissions within the enclosure. The maintenance of a prescribed face velocity through a large opening or through an opening very near a source of emissions would not ensure complete capture because of the increased possibility of localized airflow patterns such as backwash, channeling, and eddies that could carry VOC out of the enclosure. (There is no need to set size restrictions or minimum face velocity requirements for the forced makeup air ducts because the purpose of these ducts is to direct air into the enclosure, and sufficient face velocity will be maintained.) In addition, the frequency with which access doors into the enclosure are opened must be kept at a minimum.

The requirements based on these principles require that the total area of all natural draft openings not exceed 5 percent of the total surface area of the total enclosure's walls, floor, and ceiling. Any sources of emissions within the enclosure, such as the coater, must be at least four equivalent diameters away from each natural draft opening. (The equivalent diameter of an opening is four times the area of the opening divided by its perimeter.) Access doors must be tightly closed during process operation. Brief, occasional openings of such doors to accommodate process equipment adjustments are acceptable, but, if such openings are routine or if an access door remains open during the entire operation, the access door must be considered a natural draft opening. The average inward face velocity across the natural draft openings of the enclosure must be calculated including the area of such access doors.

The requirement that natural draft openings comprise a maximum of 5 percent of the surface area of the enclosure's walls, floor, and ceiling is expected to be easily met. The smallest enclosure would be a small structure around the application/flashoff area coupled with the drying oven. Entrance and exit web slots measuring 1 m by 0.15 m would be natural draft openings totaling 0.3 square meters (m^2). With these natural draft openings, an enclosure with a total surface area of 6 m^2 or more would meet the requirement. Any drying oven alone will exceed this

surface area. Coating operations that require additional natural draft openings (e.g., access doors that are routinely opened) may not meet this requirement as readily with such a small enclosure. However, such facilities can be contained in a larger total enclosure in which operators remain during operation of the facility. The natural draft openings in such an enclosure can easily be designed not to exceed 5 percent of the total surface area. In this configuration, the small structure immediately around the application/flashoff area would serve as a local ventilation system to ensure that the VOC concentration within the larger enclosure is maintained at safe levels. This larger type of enclosure also can readily be designed to comply with the requirements pertaining to distances between natural draft openings and VOC sources and to the opening of access doors. Alternatively, the owner or operator can gain approval of an enclosure that does not meet the requirements by demonstrating to the satisfaction of the Administrator that all VOC emissions from the coating operation are contained and vented to the control device.

Operation of the total enclosure also must be monitored. The final standards allow the owner or operator to select the most appropriate parameter to be monitored, subject to approval by the Administrator.

Based on the preceding discussion, the total enclosure definition; test procedure; and monitoring, recordkeeping, and reporting requirements described below have been added to the regulation.

1. Definition

A total enclosure is a structure that is constructed around a source of emissions so that all VOC emissions are collected and exhausted through a stack or duct. With a total enclosure, there will be no fugitive emissions, only stack emissions. The only openings in a total enclosure are forced makeup air and exhaust ducts and any natural draft openings such as those that allow raw materials to enter and exit the enclosure for processing. All access doors or windows are closed during routine operation of the enclosed source. (Otherwise they are considered natural draft openings.) The drying oven itself may be part of the total enclosure. A permanent enclosure that meets the requirements found in § 60.713(b)(5)(i) is assumed to be a total enclosure. (These requirements are discussed above.) The owner or operator of a permanent enclosure that does not meet the requirements may apply to the Administrator for approval of the enclosure as a total enclosure on a case-by-case basis. Such approval shall be granted upon a demonstration to the satisfaction of the Administrator that all VOC emissions are contained and vented to the control device.

2. Test Procedure

All forced-air inlet ducts to the enclosure and exhaust ducts from the enclosure will be tested according to EPA Methods 1 or 1A and 2, 2A, 2C, or 2D (40 CFR 60 Appendix A). These measurements will be made to determine (1) the amount of air evacuated from the enclosure (or any component within the enclosure) and (2) the amount of forced makeup air entering the enclosure. By subtracting (2) from (1), the value of the net airflow into the enclosure through the natural draft openings is obtained. When this net airflow is divided by the total area of all natural draft openings, the value of the average face velocity is determined. These measurements also indicate whether the static pressure within the enclosure is positive or negative. When the net airflow is positive, the enclosure static pressure is negative with respect to the exterior.

3. Monitoring, Recordkeeping, and Reporting

The owner or operator must submit a monitoring plan for the total enclosure along with notification of anticipated startup. The plan must identify the parameter to be monitored (e.g., the amperage of the exhaust fans or duct flow rates) and the methods for continuously monitoring the chosen parameter. All 3-hour periods during which the average monitor readings vary by 5 percent or more from the average value measured during the most recent performance test that demonstrated compliance must be reported.

One commenter raised concerns about the technical feasibility, accuracy, and cost of conducting the performance evaluations under the gaseous emissions options, particularly at plants with many coating lines and multiple-bed carbon adsorbers. The commenter questioned the accuracy of measurements taken in a temporary enclosure around the coater. The commenter also noted a problem in determining accurately the total VOC exiting a multiple-bed carbon adsorber because the VOC concentration in all the stacks would have to be measured and integrated over time to determine emissions from the recovery plant.

The performance test using gas-phase measurements for determining compliance is based on two independent measurements that may be conducted simultaneously. One measurement is capture efficiency or the efficiency of the VOC collection and containment device(s) around the affected facility. The other measurement is the efficiency of the control device. The product of these two efficiency measurements is the overall control system efficiency.

The measurement of capture efficiency is dependent on the ability to measure fugitive emissions. There are two methodological approaches. One approach would be to shut down all other sources of VOC that are located in the same room as the affected facility and continue to exhaust the fugitive emissions from the affected facility through the building ventilation system and other room exhausts such as ovens or roof fans. The preferred approach is to build a temporary enclosure around the coating operation and its VOC capture system and to discharge the fugitive emissions through a common stack so that all fugitive emissions can be measured simultaneously at a single point.

A temporary enclosure built to measure fugitive emissions must be constructed and ventilated so that it has minimal impact on the performance of the permanent VOC capture system. A temporary enclosure will be assumed to achieve total capture of fugitive VOC emissions if it conforms to the requirements for a total enclosure discussed above and if all natural draft openings are at least four duct or hood equivalent diameters away from each exhaust duct or hood. (This requirement is included to avoid drawing air through a nearby natural draft opening directly into the exhaust duct or hood. This sort of "short circuit" could (1) dilute the SLA vented to the control device, (2) allow stagnant areas to develop within the enclosure where the VOC concentration might build up to unsafe levels, and (3) preferentially influence the face velocities across the natural draft openings. With a distance of four equivalent diameters or more between the exhaust ducts or hoods and the natural draft openings, these potential problems will be minimized. In nearly all cases, a temporary enclosure can readily be designed to meet this requirement.) Alternatively, the owner or operator may apply to the Administrator for approval of his temporary enclosure on a case-by-case basis. The development of this capture efficiency test procedure is ongoing. Additional guidance on the design of a temporary enclosure may be obtained as

indicated above in the discussion of total enclosure requirements.

For the performance test, all emission streams including fugitive emissions must be transported through ducts or stacks suitable for conducting the gas-phase measurements of flow rate and VOC concentration. Once this requirement is met, every stream is subjected to the same battery of sampling and analytical tests. These tests are EPA methods that have been prescribed for compliance determinations in numerous other NSPS. The EPA has promulgated these methods with instructions for obtaining maximum accuracy and precision.

The cost of Method 25A and the complementary methods for determining the gas flow rate will probably range from $6,000 to $10,000 per stack. The cost of Method 18 or 25 will be somewhat higher. The cost of a temporary enclosure will vary depending on the complexity of the site and the design of the fugitive emission exhaust system.

The presence of a multiple-bed carbon adsorber will not introduce significant error into the test results. The performance testing provisions in the promulgated standards require that the test runs coincide with discrete adsorption cycles. Each bed of multiple-bed systems with individual exhaust stacks are to be tested individually. Also, in a properly operated system, a bed would not be desorbed in such a way as to direct the steam into the exhaust streams of the beds that are adsorbing. If residual humidity poses a problem, a drying agent can be used in the sample lines.

It is the Agency's determination that the test method described above and in the regulation provides an accurate means of determining compliance at a reasonable cost. In addition, each owner or operator has the option of selecting the alternative method of demonstrating compliance presented in § 60.713(b)(5), which is the installation of a permanent total enclosure and the ventilation of all emissions to a 95 percent efficient control device. Because owners or operators selecting this option must measure only total enclosure average face velocity (see previous comment) and the control device efficiency, the cost of a compliance test is reduced. Additional detail on this comment and response is contained in section 2.5 of the promulgation BID.

F. Cost and Economic Assumptions and Impacts

One commenter stated that the Agency has not adequately addressed the problems associated with the use of ketones by the magnetic tape industry. The commenter submitted data that, in the commenter's opinion, demonstrated the problems caused by the use of ketones. The commenter also implied that the variability in carbon adsorber performance is greater when ketones are present in the SLA stream and that ketones shorten the useful life of the carbon in adsorption systems, resulting in greater cost impacts attributable to the NSPS than indicated by the cost analysis carried out by EPA prior to proposal.

As a result of this comment, the Agency sought additional information on the effect of ketones in the SLA stream delivered to a carbon adsorber. Based on EPA's analysis and responses by designers of carbon adsorption systems, carbon manufacturers, and operators of adsorption systems, the Agency agrees that ketones (particularly cyclohexanone) appear to accelerate fouling in an adsorption bed. The accelerated fouling will reduce bed life and increase recovery costs above those experienced for other organics. Nevertheless, carbon adsorbers have been the control system of choice at a number of plants that use solvent mixtures containing ketones in the absence of an NSPS. The NSPS should place no additional demands on such systems which would significantly affect their useful life or cost. If the adsorber is properly designed and operated, recovery efficiency can be maintained above 95 percent in spite of accelerated fouling.

Accelerated fouling is caused by some ketones (particularly cyclohexanone) that react on the surface of the carbon in the bed, forming large molecules that are difficult to desorb. The result is an incremental reduction in the working capacity of the carbon which, when added to the normal incremental decay of working capacity, can significantly reduce the effective life of the carbon. However, this does not affect efficiency if the bed is placed in the regeneration cycle at the proper time. As the working capacity of the bed is reduced by fouling, a cycle change to regeneration that is initiated by a constant time interval rather than outlet concentration would result in an apparent, rapid degradation in the recovery efficiency of a carbon bed. The reason for this apparent degradation is that efficiency is a function of the time that elapses after breakthrough and before the adsorber vessel is switched off line. When accelerated fouling causes breakthrough to occur before the set time interval for switching adsorber vessels has passed, the efficiency averaged over the complete cycle falls off rapidly. Additional technical information on carbon bed fouling and its implications for carbon bed life and adsorber efficiency is included in the promulgation BID.

In a system where accelerated fouling occurs, the bed life will be a function of the rate of fouling and the capacity initially designed into the system. Although the exact mechanisms of accelerated fouling are poorly understood, the rate is probably dependent on the type and quantity of organic in the SLA stream, the regeneration procedures, and the type of carbon. Reports by this industry of bed lives as brief as 3 to 18 months when ketones are used indicate that the fouling rate is indeed greater than that commonly encountered when other solvents are used. Bed lives up to 10 years are commonly reported when solvents other than cyclohexanone are used.

Although reduced bed life need not affect the efficiency achieved by a properly designed and operated carbon adsorption system, it will affect the cost of operating the system. When the bed life is reduced, the annualized cost of carbon replacement will increase. As explained in the following discussion, essentially the same amount of cyclohexanone will be vented to the adsorber under the regulatory baseline (the typical SIP) as under the NSPS, so the reduction in bed life (and attendant increase in control costs) will also be the same in both cases. Thus, the cost effectiveness of the NSPS relative to the baseline regulation is not changed directly by the use of cyclohexanone.

However, as suggested by the commenter, the bed life may be reduced slightly under the NSPS relative to the baseline regulations. This effect can be examined in two ways, as discussed below.

The first approach is that of EPA's preproposal cost analysis. In that analysis, a carbon adsorber efficiency of 95 percent was assumed for both the baseline and NSPS cases. The difference in the overall control levels achieved by the two alternatives was assumed to result from greater capture efficiency achieved in the NSPS case by containing emissions from the application/flashoff area that would be emitted to the atmosphere as fugitive emissions in the baseline case. The increase in the mass of VOC vented to the adsorber under the NSPS as a result of increased capture efficiency (a maximum of about 10 percent) would be expected to reduce carbon bed life slightly through a small increase in the rate of fouling and a proportional reduction in the length of

the adsorption cycle prior to breakthrough.

The carbon fouling effect on the bed life would not be great. For those plants that use cyclohexanone, no appreciable change in the fouling rate would occur. The increased capture in the application/flashoff area would result in only a marginal increase in the quantity of cyclohexanone vented to the adsorber because cyclohexanone has a low vapor pressure and is emitted almost exclusively in the drying oven. (In fact, it is this slow drying property that makes cyclohexanone a desirable solvent for the magnetic tape manufacturing industry.) The contribution to the overall fouling rate from the increase in the mass of other compounds reaching the adsorber likely would not be noticeable. For those plants where cyclohexanone is not used, the rate of fouling might increase slightly, depending on the identity of the fouling component(s) and the point(s) of generation in the coating process. Compounds with relatively high vapor pressure, the type that are captured in the application/flashoff area, normally are easily removed from the carbon and contribute very little to the fouling rate.

The second effect of an increased mass flow rate to the adsorber is a reduction in the length of the adsorption cycle prior to breakthrough. In all carbon adsorption systems, the carbon gradually loses capacity with use, and the length of the adsorption cycle prior to breakthrough decreases. The carbon must be replaced when the adsorption cycle reaches the minimum acceptable length. Thus, the starting point of the process, the initial length of the adsorption cycle with fresh carbon, is critical in determining the bed life. The reduction in the initial length of the adsorption cycle due to increased capture under the NSPS would be expected to be approximately proportional to the increase in the mass flow rate, in this case, about 10 percent. The absolute magnitude of the reduction will depend on the design of the system but normally will not exceed several minutes. In a well-designed system, such a change will represent only a small fraction of the difference between the initial length of the adsorption cycle and the minimum acceptable length. The combination of this effect and the minimal increase in the rate of fouling will result in only a small reduction in bed life.

The commenter suggested a second approach that implied that the difference between the NSPS and baseline control levels lies not in capture efficiency but in the efficiency at which the adsorption system is operated. Under this scenario, the capture efficiency would be constant under baseline and NSPS control situations, but the efficiency of the adsorber would have to rise from 85 percent at the baseline to 95 percent under the NSPS.

This scenario, like the one discussed above, would result in a slight decrease in the carbon bed life. The use or nonuse of cyclohexanone has no bearing on this fact; the same quantity of cyclohexanone would reach the adsorber under either of the control options. In addition, the total mass flow rate to the adsorber of all compounds would be identical in the two cases, so the effects discussed above would not occur. However, operation at a higher control efficiency (95 percent) would require that the adsorption cycle be ended earlier than if operation were at a lower efficiency (85 percent). This would reduce the initial length of the adsorption cycle with fresh carbon, and the bed life would be reduced correspondingly.

The exact magnitude of the reduction in cycle length would be determined by a number of site-specific conditions. However, the majority of emissions over the course of a carbon bed's adsorption cycle occurs at the end of the cycle as the solvent front begins to break through the bed. The emission rate rises very rapidly at this time. Thus, the length of an adsorption cycle over which 95 percent efficiency is achieved would be, at most, a few minutes shorter than an 85 percent efficient cycle. With a properly designed, operated, and maintained system, this would result in only slightly more frequent carbon replacement, and the bed life reduction would be small.

The cost-effectiveness implications of the small bed life reduction under the NSPS relative to baseline regulations were analyzed using the "typical" model line (developed for the preproposal cost analysis), which more closely approximates the commenter's situation than do the other model lines that were developed by EPA. For this case, the annualized control cost of the NSPS (with a bed life of 6 months) compared to the baseline control level (with a bed life of 12 months) was found to be a net credit. Additional information on the Agency's analysis of the cost effectiveness of the NSPS at various bed lives is included in the promulgation BID.

Based on the discussion presented above, the Agency has concluded that the NSPS is achievable and cost effective when solvent blends containing ketones are used. No revisions have been made to the standards as a result of this comment.

Several commenters noted that EPA's projections of growth in the industry (21 new lines by 1990) are out-of-date and that, in fact, 17 or 18 lines have been shut down, retired, or put on stand-by since the National Air Pollution Control Techniques Advisory Committee meeting. The commenters claimed that because so many lines are no longer in operation, VOC emissions from this industry have decreased, and there is no longer a need for the NSPS.

Another commenter presented the results of an independent survey of magnetic tape manufacturers, which indicated that most lines affected by the standard will be modified or reconstructed lines rather than new lines as asserted by EPA at proposal. The survey concluded that significantly more facilities would become subject to the NSPS than the 20 estimated by EPA.

The Agency has confirmed that there are several lines that are not currently in operation. However, these shutdowns do not prove that there will be no facilities affected by the standards in the next 5 years. In fact, as stated by the last commenter and by industry representatives at the public hearing, there will be modifications to existing lines that would cause additional lines to become subject to the proposed standards. Also, at least one new facility has been announced, and other firms have made inquiries of EPA that suggest additional new facilities are under serious consideration. Following the public hearings, six modification scenarios were provided by industry (see Section VIII.C). The EPA determined that three of these are likely to meet the criteria given in 40 CFR 60.14 and would be actual modifications. The EPA conducted its own survey of the industry for information on plans to construct new lines or modify existing lines.

Based on this new information, the projected number of coating lines to become affected by the fifth year of applicability (1991) has been revised downward from 21 to 16. Of these, 5 will be new and 11 will be modified or reconstructed. However, one new line and two modified lines will fall below the applicable minimum annual solvent utilization cutoffs and, thus, are not expected to be required by today's rule to control emissions. In addition, under today's standards, two of the modified and reconstructed coating operations are not expected to be required to increase control efficiency. In summary, 16 affected lines are expected in the

next 5 years, of which 11 will be required to increase their level of control; the remaining 5 lines will be subject only to monitoring and reporting requirements. The reduction in nationwide VOC emissions due to the standards in the fifth year after promulgation is expected to be about 960 Mg. Thus, the decline in the number of plants manufacturing magnetic tape does not negate the need for the NSPS.

The Agency believes that the current growth projection is reasonable based on the information at hand. Of course, economic conditions are always changing, and industry growth patterns will change concurrently. While future changes may result in impacts somewhat different from those now estimated, today's rule is expected to remain cost effective with reasonable economic impacts even in the face of these changes.

Three commenters noted that industry-wide emissions have not increased as projected in the proposal BID; instead, industry has reduced VOC emissions as a result of increasing the packing density of information bytes and/or reducing coating thickness (and solvent consumed) per unit of tape produced. One commenter stated that because decreased emissions have resulted in decreased cost effectiveness, the costs of controls should be reevaluated.

No data have been received supporting the contention that VOC use per unit of tape has decreased. However, even if this is the case, total VOC emissions from the industry may not decrease. According to industry representatives, some new lines will be built and modifications of existing lines will occur in this industry. Of the modification scenarios received, the most common is an increase in production (see section VIII.C). Thus, any decrease in VOC use per unit of tape may be offset by increased tape production.

In any case, as discussed above, a net decrease in emissions from this industry would not negate the impact of the NSPS. In addition, the proposed NSPS included an annual solvent use cutoff below which the cost to install a control device is not reasonable. This cutoff was discussed at proposal and has been retained for new coating operations. A higher cutoff has been added for modified or reconstructed coating operations. Thus, the evaluation of control costs for lower VOC emission rates has already been performed and the Agency does not need to perform another evaluation.

Two commenters stated that the economic assumptions and forecasts contained in Chapter 9 of the proposal BID are not representative of the economic situation and price competition faced by the domestic magnetic tape manufacturing industry today. One commenter was particularly concerned that the references in Chapter 9 are not more current than 1983 and requested that the economic assumptions and forecasts be reevaluated prior to promulgation of the standard. Another commenter stated that the proposed NSPS will have a negative impact on the domestic magnetic tape industry.

One commenter contended that, contrary to EPA's position, the regulation would have negative economic impacts. The commenter disagreed with the Agency's conclusion that solvent recovery credits would more than offset the NSPS compliance costs, creating a net cost savings. The commenter's own survey of eight plants indicated that savings in new solvent purchases resulting from recovery and reuse of spent solvent from the incremental VOC controls necessitated by the NSPS were not sufficient to offset the total annualized costs of the proposed regulation. Thus, the commenter concluded that the regulation would create net compliance costs for the industry.

The economic impacts of today's rule have been recalculated since proposal using information received from industry and current market prices. This recalculation has resulted in revised impacts but no change in the conclusion that the economic impacts are negligible. The actual impacts may differ from those now estimated as a result of the ever-changing economic climate. These changes are not expected to alter the conclusion that the standards will have negligible economic impacts. More detail on this subject is presented in Section VI (Economic Impact) of this preamble.

One commenter pointed out that this decade has brought dramatic changes to the magnetic tape industry. The domestic industry's market share has fallen, while the retail price of tape has declined sharply. The combination of these two factors has caused retail price to become a key factor in this competitive industry with the result that retail price is much less elastic now than it was a few years ago. This fact makes it difficult for domestic producers to pass on to their customers price increases necessitated by the NSPS. Any increase in retail price places domestic producers at a disadvantage to the foreign competition and increases the foreign share of the market. The commenter stated that, because offshore facilities are subject to less environmental regulation than those in the U.S., driving the industry offshore would also result in a net detriment to the environment.

Another commenter concurred that an already shrinking margin of profit would be reduced further by foreign competition that is not subject to the regulations and that the proposed regulations would accelerate the trend of exporting coating lines offshore. A third commenter noted that foreign competition would not be subject to the limits on technological innovation as would domestic manufacturers subject to the proposed standards, while a fourth commenter stated that his company would build a new line offshore rather than add further control on an existing line modified under the proposed NSPS.

Foreign competition is an important element in the magnetic tape industry. During recent years, depressed market prices have discouraged the domestic development of new production lines or the entry of new firms in the industry. Lower prices also have encouraged the exit of other firms from the industry and the modification of existing lines to reduce production costs.

Because the NSPS has an insignificant impact on new lines and has little impact on production costs, it is doubtful that the NSPS for new lines would disadvantage U.S. producers relative to their competitors. With modified lines, some additional control costs may have to be incurred, but even these are insignificant, and the production cost reductions that will result from these modifications are expected to far outweigh any additional cost of the added controls. In addition, recent changes in the foreign exchange rates should improve the competitive position of domestic producers.

Environmental regulations are only one of the many factors that must be weighed in determining the comparative advantage of one country over another in the production and marketing of products in international markets. Based upon the evidence to date, however, the economic impacts of the NSPS on the ability of domestic producers to compete in the international market is negligible.

Most of the companies in this industry are large multinational companies with annual revenues and assets in excess of $1 billion (Table 9–13, pp. 9–27 and 9–28 of proposal BID). These companies each have a minimum of several hundred million dollars of long-term debt. Even the most costly investment for new or modified lines would not increase the debt loadings of the companies by more

than 1 percent. Furthermore, with the recent decrease in interest rates, a greater supply of investment funds at lower cost is now available, thus improving the affordability of new investments.

The proposed standards do not affect or limit technological innovation. All products known to be manufactured in the magnetic tape industry can be coated in a total enclosure. The use of a total enclosure does not affect coating composition or necessitate changes in other aspects of the production process.

The combination of the factors discussed above indicates that the cost to comply with the NSPS would not drive the industry offshore.

A commenter representing an industry trade organization submitted information on an independent survey of the magnetic tape manufacturing industry. Survey forms were sent to 12 companies that indicated a willingness to participate, and six of these firms, representing eight plants, responded. The information included an economic impact analysis of the proposed NSPS that was based on the survey results. The major conclusions drawn by the commenter from the results of this survey and analysis that are not discussed elsewhere are presented below.

The commenter stated that the NSPS would result in significant costs in the form of increased VOC control expenditures and reduced investments in innovations designed to enhance economic productivity. Based on extrapolation of survey findings, the commenter estimated that cumulative capital costs would total $38.1 million industry wide through 1991, with associated net annual operating costs reaching $2.6 million in 1991. Thus, the commenter estimated total annualized costs (annualized capital costs plus operating costs) of $9.2 million in 1991. The commenter also contended that the NSPS would not pass EPA's criterion of cost effectiveness in 4 of the 5 years subject to analysis. The commenter estimated the fifth year (1991) annualized cost per ton of VOC emission reduction to be $1,816 for 2,452 total estimated tons of reduced emissions. This value is higher than the value alleged by the commenter to be the cutoff criterion used by EPA for NSPS ($1,075 per ton). Furthermore, the commenter stated that, because nearly all of the anticipated reduction in emissions resulting from the NSPS is expected to occur in areas that have already attained EPA's ambient air standards, the reduction would be less valuable in terms of environmental benefit.

The commenter believed the survey results demonstrated the potential for significant impacts in the form of financial hardship for domestic plants (if costs are not passed on to the consumer) and reduced international competitiveness (if costs are passed on to the consumer). If the increased costs are absorbed by the industry, the commenter felt that the regulation would have an adverse impact on profitability and investment potential. If, on the other hand, the increased costs are borne by the consumer in the form of higher prices, this would result in smaller market shares and fewer jobs for the domestic industry. The commenter concluded that in either case, there are significant factors that fall within the definition of "major rule" in Executive Order 12291, and questioned EPA's position that the proposed rule is not a major rule.

As indicated earlier in this section, EPA has conducted a new survey of the growth plans in this industry since the time the regulation was proposed. This survey agreed with the survey conducted by the commenter in that, over the next 5 years, there is likely to be more modification or reconstruction of existing lines than construction of new lines. Subsequently, a new cost analysis was carried out which resulted in a change in the levels of control required for some modified and reconstructed coating operations and for most mix equipment (see the introductory portion of section VIII and section VIII.C). The revised NSPS takes into account the greater expense of retrofitting modified or reconstructed facilities. Because the commenter's economic analysis was based on the proposed standards and not on the revised ones, the results of the commenter's analysis are no longer applicable. Not enough data were submitted to allow a determination of whether the changes included in the commenter's analysis would legally qualify as modifications and reconstructions, whether the incremental control measures and costs claimed to be required were realistic, or what effect the revisions to the standards would have. Because the commenter's study did not raise any significant new concerns that were not addressed by the revisions already made to the standards, it was determined that the level of effort required to verify the costs and adjust the survey results to reflect the revised NSPS was not justified. The Agency's new economic analysis, based on the revised NSPS, indicates that the standard is cost effective and will result in an industry-wide net credit of $32,000 per year in 1991.

The Agency does not agree with the commenter's allegation that the anticipated emission reductions due to the NSPS are environmentally less valuable simply because they are expected to occur primarily in attainment areas. The cost-effectiveness value considered reasonable for an NSPS for this industry ($1,200/Mg) was determined in the context of a national standard for an entire class of sources without consideration of local air quality conditions. Thus, when source-specific air quality and related public health considerations are important factors (e.g., in nonattainment areas and in PSD permitting activities), the cost-effectiveness value that would be considered reasonable would be expected to exceed the value determined for the NSPS program. Also, VOC emitted in some attainment areas can be transported to nonattainment areas, adding to the air quality problems experienced there.

The EPA maintains its position that this rule is not a major rule based on the three criteria required to meet this classification. First, the new economic analysis conducted by the Agency has verified that industry-wide annualized costs are less than $100 million. As previously stated, it is estimated that the standard would result in a net credit of $32,000 per year in the fifth year. Secondly, the revised economic analysis showed that no significant increase in retail price is expected as a result of the standard; therefore, it would not be considered a "major increase in costs or prices" as specified in the second criterion in the Order. Thirdly, the revised economic analysis did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms.

In summary, since the time of proposal of the standard, the Agency has considered the higher costs of retrofitting modified or reconstructed facilities to comply with the standards, and revised the regulation accordingly. Even assuming the increased control costs of the NSPS presented in the commenter's study and the decreased prices and competitive market conditions facing the industry are applicable, the conclusion that the proposed rule is not a major rule is still correct. Using the commenter's estimates, the costs to the industry that result from the regulation ($9.2 million total annualized costs) are considerably less than the $100 million criterion, and

the subsequent production cost and product price increases, assuming full costs are passed through to the consumer, remain small. Consequently, the net impact of the regulation on the domestic industry's ability to compete is also likely to be minimal.

Based on the data presented in the commenter's study, percentage increases in retail product prices were calculated. These calculations indicate that increases in retail prices of less than 1 percent would occur for most products and scenarios (maximum price increase of 1.52 percent) if all costs are passed through to the consumer. This illustrates that, even assuming the commenter's data are still applicable under the revised regulation, the cost and price effects of the NSPS are relatively insignificant.

G. Suspension of the Standards

Four commenters questioned the need for an NSPS for the magnetic tape industry and suggested either that the NSPS be suspended pending a thorough reevaluation or rescinded. This argument is based on the decrease in VOC emissions due to fewer coating lines and thinner coatings, the reduced growth projected for the industry, and the relatively small share of total national VOC emissions originating from magnetic tape manufacturing facilities (see section VIII.F). One commenter stated that the existing State regulations, at least in the Bay Area of California, are sufficiently stringent and that a new NSPS is not needed.

Because the magnetic tape manufacturing industry is a subcategory of the industrial paper coating industry, which is ranked fourth on the NSPS Priority List (40 CFR 60.16), the CAA authorizes EPA to promulgate standards. For the reasons discussed in section VIII.F, the Agency has determined that the NSPS will have a favorable impact on VOC emission levels despite a lower growth projection and the possible decrease in VOC use per unit of tape. Because the standard will have a favorable environmental impact and reasonable cost and economic impacts, the proposed standard will not be suspended or rescinded.

The VOC regulations in California are more stringent than the baseline used in the analysis of this industry. However, the regulations in all other States generally require a level of control of 83 percent or lower. The NSPS would set a new floor of 93 percent control for facilities subject to its provisions and, thus reduce nationwide emissions from this industry. Therefore, the Agency believes there is a need for the standards. Of course, State and local agencies are free to require more stringent control as dictated by the needs of specific locations subject to PSD or NSR.

IX. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [section 307(d)(7)(A)].

The effective date of this regulation is October 3, 1988. Section 111 of the CAA provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities upon which construction or modification was commenced after the date of proposal, January 22, 1986.

As prescribed by section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 4922, dated August 21, 1979) that industrial paper coating contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The magnetic tape manufacturing industry is included in the industrial paper coating source category. In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the CAA. 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 reporting requirements.

Section 317 of the CAA requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0171.

Public reporting burden resulting from this rulemaking is estimated to be 16 hours per response (on average), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Initial performance testing is estimated to vary from 450 to 650 hours (on average) per facility.

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, marked "Attention: Desk Officer for EPA."

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would 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." The maximum cost increase resulting from the NSPS for any product in this industry will be only approximately 0.5 percent. Such an increase will have an insignificant impact on the industry. In the fifth year after promulgation, the total annualized cost of the NSPS will amount to a net credit of approximately $32,000. The Agency has concluded, therefore, that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose only negligible adverse economic impacts, a Regulatory

Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Magnetic tape manufacturing (SIC Codes 3679, 3573), Reporting and recordkeeping requirements.

Date: September 16, 1988.

Lee Thomas,

Administrator.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. By adding a new Subpart SSS to read as follows:

Subpart SSS—Standards of Performance for Magnetic Tape Coating Facilities

Sec.

60.710 Applicability and designation of affected facility.
60.711 Definitions, symbols, and cross-reference tables.
60.712 Standards for volatile organic compounds.
60.713 Compliance provisions.
60.714 Installation of monitoring devices and recordkeeping.
60.715 Test methods and procedures.
60.716 Permission to use alternative means of emission limitation.
60.717 Reporting and monitoring requirements.
60.718 Delegation of Authority.

Subpart SSS—Standards of Performance for Magnetic Tape Coating Facilities

§ 60.710 Applicability and designation of affected facility.

(a) The affected facilities to which the provisions of this subpart apply are:

(1) Each coating operation; and

(2) Each piece of coating mix preparation equipment.

(b) Any new coating operation that utilizes less than 38 m^3 of solvent or any modified or reconstructed coating operation that utilizes less than 370 m^3 of solvent for the manufacture of magnetic tape per calendar year is subject only to the requirements of § 60.714(a), § 60.717(b), and § 60.717(c). If the amount of solvent utilized for the manufacture of magnetic tape equals or exceeds these amounts in any calendar year, the facility is subject to § 60.712 and all other sections of this subpart. Once a facility has become subject to § 60.712 and all other sections of this subpart, it will remain subject to those requirements regardless of changes in annual solvent utilization.

(c) This subpart applies to any affected facility for which construction, modification, or reconstruction begins after January 22, 1986.

§ 60.711 Definitions, symbols, and cross reference tables.

(a) All terms used in this subpart that are not defined below have the meaning given to them in the Act and in Subpart A of this part.

(1) "Base film" means the substrate that is coated to produce magnetic tape.

(2) "Capture system" means any device or combination of devices that contains or collects an airborne pollutant and directs it into a duct.

(3) "Coating applicator" means any apparatus used to apply a coating to a continuous base film.

(4) "Coating mix preparation equipment" means all mills, mixers, holding tanks, polishing tanks, and other equipment used in the preparation of the magnetic coating formulation but does not include those mills that do not emit VOC because they are closed, sealed, and operated under pressure.

(5) "Coating operation" means any coating applicator, flashoff area, and drying oven located between a base film unwind station and a base film rewind station that coat a continuous base film to produce magnetic tape.

(6) "Common emission control device" means a control device controlling emissions from the coating operation as well as from another emission source within the plant.

(7) "Concurrent" means construction of a control device is commenced or completed within the period beginning 6 months prior to the date construction of affected coating mix preparation equipment commences and ending 2 years after the date construction of affected coating mix preparation equipment is completed.

(8) "Control device" means any apparatus that reduces the quantity of a pollutant emitted to the air.

(9) "Cover" means, with respect to coating mix preparation equipment, a device that lies over the equipment opening to prevent VOC from escaping and that meets the requirements found in § 60.712(c)(1)–(5).

(10) "Drying oven" means a chamber in which heat is used to bake, cure, polymerize, or dry a surface coating.

(11) "Equivalent diameter" means four times the area of an opening divided by its perimeter.

(12) "Flashoff area" means the portion of a coating operation between the coating applicator and the drying oven where solvent begins to evaporate from the coated base film.

(13) "Magnetic tape" means any flexible substrate that is covered on one or both sides with a coating containing magnetic particles and that is used for audio or video recording or information storage.

(14) "Natural draft opening" means any opening in a room, building, or total enclosure that remains open during operation of the facility and that is not connected to a duct in which a fan is installed. The rate and direction of the natural draft across such an opening is a consequence of the difference in pressures on either side of the wall containing the opening.

(15) "Nominal 1-month period" means a calendar month or, if established prior to the performance test in a statement submitted with notification of anticipated startup pursuant to 40 CFR 60.7(a)(2), a similar monthly time period (e.g., 30-day month or accounting month).

(16) "Temporary enclosure" means a total enclosure that is constructed for the sole purpose of measuring the fugitive emissions from an affected facility. A temporary enclosure must be constructed and ventilated (through stacks suitable for testing) so that it has minimal impact on the performance of the permanent capture system. A temporary enclosure will be assumed to achieve total capture of fugitive VOC emissions if it conforms to the requirements found in § 60.713(b)(5)(i) and if all natural draft openings are at least four duct or hood equivalent diameters away from each exhaust duct or hood. Alternatively, the owner or operator may apply to the Administrator for approval of a temporary enclosure on a case-by-case basis.

(17) "Total enclosure" means a structure that is constructed around a source of emissions so that all VOC emissions are collected and exhausted through a stack or duct. With a total enclosure, there will be no fugitive emissions, only stack emissions. The only openings in a total enclosure are forced makeup air and exhaust ducts and any natural draft openings such as those that allow raw materials to enter and exit the enclosure for processing. All access doors or windows are closed during routine operation of the enclosed source. Brief, occasional openings of such doors or windows to accommodate

process equipment adjustments are acceptable, but, if such openings are routine or if an access door remains open during the entire operation, the access door must be considered a natural draft opening. The average inward face velocity across the natural draft openings of the enclosure must be calculated including the area of such access doors. The drying oven itself may be part of the total enclosure. A permanent enclosure that meets the requirements found in § 60.713(b)(5)(i) is assumed to be a total enclosure. The owner or operator of a permanent enclosure that does not meet the requirements may apply to the Administrator for approval of the enclosure as a total enclosure on a case-by-case basis. Such approval shall be granted upon a demonstration to the satisfaction of the Administrator that all VOC emissions are contained and vented to the control device.

(18) "Utilize" refers to the use of solvent that is delivered to coating mix preparation equipment for the purpose of formulating coatings to be applied on an affected coating operation and any other solvent (e.g., dilution solvent) that is added at any point in the manufacturing process.

(19) "VOC content of the coating applied" means the product of Method 24 VOC analyses or formulation data (if the data are demonstrated to be equivalent to Method 24 results) and the total volume of coating fed to the coating applicator. This quantity is intended to include all VOC that actually are emitted from the coating operation in the gaseous phase. Thus, for purposes of the liquid-liquid VOC material balance in § 60.713(b)(1), any VOC (including dilution solvent) added to the coatings must be accounted for, and any VOC contained in waste coatings or retained in the final product may be measured and subtracted from the total. (These adjustments are not necessary for the gaseous emission test compliance provisions of § 60.713(b).)

(20) "Volatile Organic Compounds" or "VOC" means any organic compounds that participate in atmospheric photochemical reactions or that are measured by Method 18, 24, 25, or 25A or an equivalent or alternative method as defined in 40 CFR 60.2.

(b) The nomenclature used in this subpart has the following meaning:

(1) "A_k" means the area of each natural draft opening (k) in a total enclosure, in square meters.

(2) "C_{aj}" means the concentration of VOC in each gas stream (j) exiting the emission control device, in parts per million by volume.

(3) "C_{bi}" means the concentration of VOC in each gas stream (i) entering the emission control device, in parts per million by volume.

(4) "C_{di}" means the concentration of VOC in each gas stream (i) entering the emission control device from the affected coating operation, in parts per million by volume.

(5) "C_{fk}" means the concentration of VOC in each uncontrolled gas stream (k) emitted directly to the atmosphere from the affected coating operation, in parts per million by volume.

(6) "C_{gv}" means the concentration of VOC in the gas stream entering each individual carbon adsorber vessel (v), in parts per million by volume. For the purposes of calculating the efficiency of the individual adsorber vessel, C_{gv} may be measured in the carbon adsorption system's common inlet duct prior to the branching of individual inlet ducts.

(7) "C_{hv}" means the concentration of VOC in the gas stream exiting each individual carbon adsorber vessel (v), in parts per million by volume.

(8) "E" means the control device efficiency achieved for the duration of the emission test (expressed as a fraction).

(9) "F" means the VOC emission capture efficiency of the VOC capture system achieved for the duration of the emission test (expressed as a fraction).

(10) "FV" means the average inward face velocity across all natural draft openings in a total enclosure, in meters per hour.

(11) "G" means the calculated weighted average mass of VOC per volume of coating solids (in kilograms per liter) applied each nominal 1-month period.

(12) "H_v" means the individual carbon adsorber vessel (v) efficiency achieved for the duration of the emission test (expressed as a fraction).

(13) "H_{sys}" means the carbon adsorption system efficiency calculated when each adsorber vessel has an individual exhaust stack.

(14) "L_{si}" means the volume fraction of solids in each coating (i) applied during a nominal 1-month period as determined from the facility's formulation records.

(15) "M_{ci}" means the total mass in kilograms of each coating (i) applied at an affected coating operation during a nominal 1-month period as determined from facility records. This quantity shall be determined at a time and location in the process after all ingredients (including any dilution solvent) have been added to the coating, or appropriate adjustments shall be made to account for any ingredients added after the mass of the coating has been determined.

(16) "M_r" means the total mass in kilograms of VOC recovered for a nominal 1-month period.

(17) "Q_{aj}" means the volumetric flow rate of each gas stream (j) exiting the emission control device, in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration.

(18) "Q_{bi}" means the volumetric flow rate of each gas stream (i) entering the emission control device, in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration.

(19) "Q_{di}" means the volumetric flow rate of each gas stream (i) entering the emission control device from the affected coating operation, in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration.

(20) "Q_{fk}" means the volumetric flow rate of each uncontrolled gas stream (k) emitted directly to the atmosphere from the affected coating operation, in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration.

(21) "Q_{gv}" means the volumetric flow rate of the gas stream entering each individual carbon adsorber vessel (v), in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration. For purposes of calculating the efficiency of the individual adsorber vessel, the value of Q_{gv} can be assumed to equal the value of Q_{hv} measured for that adsorber vessel.

(22) "Q_{hv}" means the volumetric flow rate of the gas stream exiting each individual carbon adsorber vessel (v), in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration.

(23) "$Q_{in\ i}$" means the volumetric flow rate of each gas stream (i) entering the total enclosure through a forced makeup

air duct, in standard cubic meters per hour (wet basis).

(24) "$Q_{out\ j}$" means the volumetric flow rate of each gas stream (j) exiting the total enclosure through an exhaust duct or hood, in standard cubic meters per hour (wet basis).

(25) "R" means the overall VOC emission reduction achieved for the duration of the emission test (expressed as a percentage).

(26) "RS_i" means the total mass (kg) of VOC retained on the coated base film after oven drying for a given magnetic tape product.

(27) "V_{ci}" means the total volume in liters of each coating (i) applied during a nominal 1-month period as determined from facility records.

(28) "W_{oi}" means the weight fraction of VOC in each coating (i) applied at an affected coating operation during a nominal 1-month period as determined by Method 24. This value shall be determined at a time and location in the process after all ingredients (including any dilution solvent) have been added to the coating, or appropriate adjustments shall be made to account for any ingredients added after the weight fraction of VOC in the coating has been determined.

(c) Tables 1a and 1b present a cross reference of the affected facility status and the relevant section(s) of the regulation.

TABLE 1A.—CROSS REFERENCE [a] [b]

Status	Standard [c]	Compliance provisions [d]—§ 60.713
A. Coating operation alone:		
New	§ 60.712(a): Recover or destroy at least 93 percent of the VOC applied	(b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (c), (d)
Modified or reconstructed:		
1. If at least 90 percent of the VOC applied is recovered or destroyed prior to modification/reconstruction.	§ 60.712(b)(1): (i) Maintain demonstrated level of VOC control or 93 percent, whichever is lower. (ii) If the VOC control device is subsequently replaced, the new control device must be at least 95 percent efficient, a demonstration must be made that the overall level of VOC control is at least as high as required with the old control (90 to 93 percent) and, if the demonstrated level is higher than the old level, maintain the higher level of control (up to 93 percent).	(a)(1), (a)(3), (b)(1), (b)(2), (b)(3), (b)(4), (c), (d)
2. If existing coating operation has a total enclosure vented to a control device that is at least 92 percent efficient.	§ 60.712(b)(2): (i) Continue to vent all VOC emissions to the control device and maintain control efficiency at or above the demonstrated level or 95 percent, whichever is lower. (ii) If the VOC control device is subsequently replaced, the new control device must be at least 95 percent efficient and all VOC emissions must be vented from the total enclosure to the new control device.	(a)(2), (b)(5), (c), (d)
3. If existing coating operation is not in the previous two categories.	§ 60.712(b)(3): Recover or destroy at least 93 percent of the VOC applied	(b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (c), (d)
B. Coating mix preparation equipment alone:		
New:		
1. With concurrent construction of new VOC control device (other than a condenser) on the coating operation.	§ 60.712(c): Install and use covers and vent to a control device that is at least 95 percent efficient [e].	(b)(6)
2. Without concurrent construction of new VOC control device on the coating operation *or* with concurrent construction of a condenser.	§ 60.712 (d)(1) *or* (d)(2): Install and use covers and vent to a control device *or* install and use covers [e].	(b)(7), (b)(8)
Modified or reconstructed	§ 60.712 (d)(1) *or* (d)(2): Install and use covers and vent to a control device *or* install and use covers [e].	(b)(7), (b)(8)
C. Both coating operation and coating mix preparation equipment: New and modified or reconstructed.	§ 60.712(e): In lieu of standards in § 60.712(a)-(d), use coatings containing a maximum of 0.20 kg VOC per liter of coating solids.	(b)(9)

[a] This table is presented for the convenience of the user and is not intended to supercede the language of the regulation. For the details of the requirements, refer to the text of the regulation.

[b] Refer to Part B to determine which subsections of § 60.714, § 60.715, and § 60.717 correspond to each compliance provision (§ 60.713).

[c] As per § 60.710(b), any new coating operation with solvent utilization $< 38\ m^3/yr$ or any modified or reconstructed coating operation with solvent utilization $< 370\ m^3/yr$ is exempt from the VOC standards (§ 60.712). Such coating operations are subject only to § 60.714(a), § 60.717(b), and § 60.717(c). However, should a coating operation once exceed the applicable annual solvent utilization cutoff, that coating operation shall be subject to the VOC standards (§ 60.712) and all other sections of the subpart. Once this has occurred, the coating operation shall remain subject to those requirements regardless of changes in annual solvent utilization.

[d] As applicable.

[e] Section 60.716 permits the use of an alternative means of VOC emission limitation that achieves an equivalent or greater VOC emission reduction.

TABLE 1B.—CROSS REFERENCE

Compliance provisions [a]—§ 60.713	Test methods—§ 60.715	Category/equipment [b]	Installation of monitoring devices and recordkeeping—§ 60.714	Reporting and monitoring requirements [c]—§ 60.717
A. Coating operation alone:				
(b)(1)—When emissions from only the affected coating operation are controlled by a solvent recovery device, perform a liquid-liquid VOC material balance.	(a)		(b), (i), (k)	(a), (d)(1), (e), (h), (i)
(c)(2)—When emissions from only the affected coating operation are controlled by an incinerator or when a common emission control device (other than a carbon adsorption system with individual exhaust stacks for each adsorber vessel) is used to control emissions from an affected coating operation as well as from other sources of VOC, perform a gaseous emission test.	(b)-(g)	General CA CO TI CI PE, TE	(i), (k) (c) (d) (e) (f) (g)	(a), (e), (h), (i) (d)(3), (d)(4) (d)(5) (d)(6) (d)(7) (d)(8)

TABLE 1B.—CROSS REFERENCE—Continued

Compliance provisions [a]—§60.713	Test methods—§ 60.715	Category/equipment [b]	Installation of monitoring devices and recordkeeping—§ 60.714	Reporting and monitoring requirements [c]—§ 60.717
(b)(3)—When emissions from both the affected coating operation and from other sources of VOC are controlled by a carbon adsorption system with individual exhaust stacks for each adsorber vessel, perform a gaseous emission test.	(b)–(g)	General CA PE, TE	(1), (k) (c) (g)	(a), (e), (h), (i) (d)(3), (d)(4) (d)(8)
(b)(4)—When emissions from more than one affected coating operation are vented through the same duct to a control device also controlling emissions from nonaffected sources that are vented separately from the affected coating operations, consider the combined affected coating operations as a single emission source and conduct a compliance test described in § 60.713(b) (2) or (3).	(b)–(g)	General CA CO TI CI PE, TE	(i), (k) (c) (d) (e) (f) (g)	(a), (e), (h), (d)(3), (d)(4) (d)(5) (d)(6) (d)(7) (d)(8)
(b)(5)—Alternative to § 60.713(b) (1)–(4): Demonstrate that a total enclosure is installed around the coating operation and that all VOC emissions are vented to a control device with the specified efficiency.	(b)–(g)	General CA CO TI CI TE	(i), (k) (c) (d) (e) (f) (h)	(a), (e) (h), (i) (d)(3), (d)(4) (d)(5) (d)(6) (d)(7) (d)(8)
B. Coating mix preparation equipment alone:				
(b)(6)—Demonstrate that covers meeting the requirements of § 60.712(c) (1)–(5) are installed and used properly; procedures detailing the proper use of covers are posted; the mix equipment is vented to a control device; and the control device efficiency is greater than or equal to 95 percent.	(b)–(g)	General CA TI CI	(k) (c) (e) (f)	(a), (e), (h), (i) (d)(3), (d)(4) (d)(6) (d)(7)
(b)(7)—Demonstrate that covers meeting the requirements of § 60.712(c) (1)–(5) are installed and used properly; procedures detailing the proper use of covers are posted; and the mix equipment is vented to a control device.				
(b)(8)—Demonstrate that covers meeting the requirement of § 60.712(c) (1)–(5) are installed and used properly and that procedures detailing the proper use of the covers are posted.				
C. Both coating operation and coating mix preparation equipment: (b)(9)—Determine that weighted average mass of VOC in the coating per volume of coating solids applied for each month.	(a)		(i), (j) (k)	(d)(2), (e), (g), (h), (i)

[a] Section 60.713(a) specifies the procedures to be used prior to modification/reconstruction to establish the applicability of the VOC standards in §§ 60.712(b) (1) and (2) for modified/reconstructed coating operations. Section 60.713(a)(1) requires the use of the procedures of § 60.713(b) (1), (2), (3), or (4) to demonstrate prior to modification/reconstruction that 90 percent of the applied VOC is recovered or destroyed. Section 60.713(a)(2) requires the use of procedures of §60.713(b)(5) to demonstrate prior to modification/reconstruction that the coating operation has a total enclosure vented to a control device that is at least 92 percent efficient. Sections 60.713(c) and (d) do not have corresponding test methods, monitoring, reporting, or recordkeeping requirements.

[b] TI = thermal incinerator; CI = catalytic incinerator; CA = carbon adsorber; CO = condenser; PE = partial enclosure; TE = total enclosure.

[c] See § 60.717(f) for additional reporting requirements when coating mix preparation equipment is constructed at a time when no coating operation is being constructed. See § 60.717(g) for addition reporting requirements when coating mix preparation equipment is constructed at the same time as an affected coating operation.

§ 60.712 Standards for volatile organic compounds.

Each owner or operator of any affected facility that is subject to the requirements of this subpart shall comply with the emission limitations set forth in this section on and after the date on which the initial performance test required by § 60.8 is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated or 180 days after initial startup, whichever date comes first.

(a) Each owner or operator shall control emissions from a new coating operation by recovering or destroying at least 93 percent of the VOC content of the coating applied at the coating applicator.

(b) Each owner or operator of a modified or reconstructed coating operation shall meet the appropriate standard set out in (b)(1), (2), or (3) of this section.

(1) For coating operations demonstrated prior to modification or reconstruction pursuant to § 60.713(a)(1) to have emissions controlled by the recovery or destruction of at least 90 percent of the VOC content of the coating applied at the coating applicator.

(i) Subject to the provisions of (b)(1)(ii) of this section, each owner or operator shall continue to control emissions from the coating operation to at least the demonstrated level or 93 percent, whichever is lower.

(ii) If the VOC control device in use during the emission reduction demonstration made pursuant to § 60.713(a)(1) is subsequently replaced, each owner or operator shall:

(A) Install a control device that is at least 95 percent efficient; and

(B) Control emissions from the coating operation to at least the level determined pursuant to § 60.713(a)(3)(ii).

(2) For coating operations demonstrated prior to modification or reconstruction pursuant to § 60.713(a)(2) to have a total enclosure installed around the coating operation and all VOC emissions ventilated to a control device that is at least 92 percent efficient.

(i) Subject to the provisions of (b)(2)(ii) of this section, each owner or operator shall continue to ventilate all VOC emissions from the total enclosure to the control device and maintain control device efficiency at or above the demonstrated level or 95 percent, whichever is lower.

(ii) If the VOC control device in use during the control device efficiency demonstration made pursuant to § 60.713(a)(2) is subsequently replaced, each owner or operator shall install a VOC control device that is at least 95 percent efficient and ventilate all VOC emissions from the total enclosure to the control device.

(3) For coating operations not subject to paragraph (b)(1) or (2) of this section, each owner or operator shall control emissions from the coating operation by recovering or destroying at least 93 percent of the VOC content of the

coating applied at the coating applicator.

(c) Each owner or operator constructing new coating mix preparation equipment with concurrent construction of a new VOC control device (other than a condenser) on a magnetic tape coating operation shall control emissions from the coating mix preparation equipment by installing and using a cover on each piece of equipment and venting the equipment to a 95 percent efficient control device. Each cover shall meet the following specifications:

(1) Cover shall be closed at all times except when adding ingredients, withdrawing samples, transferring the contents, or making visual inspection when such activities cannot be carried out with cover in place. Such activities shall be carried out through ports of the minimum practical size.

(2) Cover shall extend at least 2 cm beyond the outer rim of the opening or shall be attached to the rim;

(3) Cover shall be of such design and construction that contact is maintained between cover and rim along the entire perimeter;

(4) Any breach in the cover (such as an opening for insertion of a mixer shaft or port for addition of ingredients) shall be covered consistent with (c) (2) and (3) of this section when not actively in use. An opening sufficient to allow safe clearance for a mixer shaft is acceptable during those periods when the shaft is in place; and

(5) A polyethylene or nonpermanent cover may be used provided it meets the requirements of (c) (2), (3), and (4) of this section. Such a cover shall not be reused after once being removed.

(d) Each owner or operator of affected coating mix preparation equipment not subject to § 60.712(c) shall control emissions from the coating mix preparation equipment by either:

(1) Installing and using a cover that meets the specifications in paragraphs (c)(1)–(5) of this section and venting VOC emissions from the equipment to a VOC control device; or

(2) Installing and using a cover that meets the specifications in paragraphs (c)(1)–(5) of this section.

(e) In lieu of complying with § 60.712(a) through (d), each owner or operator may use coatings that contain a maximum of 0.20 kg of VOC per liter of coating solids as calculated on a weighted average basis for each nominal 1-month period.

§ 60.713 Compliance provisions.

(a) Applicability of §§ 60.712(b) (1) and (2) (standards for modified or reconstructed coating operations) and determination of control level required in § 60.712(b)(1)(ii)(B).

(1) To establish applicability of § 60.712(b)(1), each owner or operator must demonstrate, prior to modification or reconstruction, that at least 90 percent of the VOC content of the coating applied at the coating applicator is recovered or destroyed. Such demonstration shall be made using the procedures of paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section, as appropriate.

(2) To establish applicability of § 60.712(b)(2), each owner or operator must demonstrate, prior to modification or reconstruction, that a total enclosure is installed around the existing coating operation and that all VOC emissions are venilated to a control device that is at least 92 percent efficient. Such demonstration shall be made using the procedures of § 60.713(b)(5).

(3) To determine the level of control required in § 60.712(b)(1)(ii)(B), the owner or operator must demonstrate:

(i) That the VOC control device subsequently installed is at least 95 percent efficient. Such demonstration shall be made using Equation (2) specified in paragraph (b)(2)(iv) of this section or Equations (4) and (5) specified in paragraph (b)(3) (iv) and (v) of this section, as applicable, and the test methods and procedures specified in § 60.715(b)–(g); and

(ii) That the overall level of control after the VOC control device is installed is at least as high as the level demonstrated prior to modification or reconstruction pursuant to paragraph (a)(1) of this section. Such demonstrations shall be made using the procedures of paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section, as appropriate. The required overall level of control subsequent to this demonstration shall be the level so demonstrated or 93 percent, whichever is lower.

(b) Compliance demonstrations for § 60.712(a), (b)(1), (b)(2), (b)(3), (c), (d), and (e).

(1) To demonstrate compliance with § 60.712(a), (b)(1), or (b)(3) (standards for coating operations) when emissions from only the affected coating operations are controlled by a dedicated solvent recovery device, each owner or operator of the affected coating operation shall perform a liquid-liquid VOC material balance over each and every nominal 1-month period. When demonstrating compliance by this procedure, § 60.8(f) of the General Provisions does not apply. The amount of liquid VOC applied and recovered shall be determined as discussed in paragraph (b)(1)(iii) of this section. The overall VOC emission reduction (R) is calculated using the following equation:

$$R = \frac{M_r}{\sum_{i=1}^{n} [W_{oi} M_{ci} - RS_i]} \times 100$$

(Equation 1)

(i) The value of RS_i is zero unless the owner or operator submits the following information to the Administrator for approval of a measured value of RS_i that is greater than zero:

(A) Measurement techniques; and

(B) Documentation that the measured value of RS_i exceeds zero.

(ii) The measurement techniques of paragraph (b)(1)(i)(A) of this section shall be submitted to the Administrator for approval with the notification of anticipated startup required under § 60.7(a)(2) of the General Provisions.

(iii) Each owner or operator demonstrating compliance by the test method described in paragraph (b)(1) of this section shall:

(A) Measure the amount of coating applied at the coating applicator;

(B) Determine the VOC content of all coatings applied using the test method specified in § 60.715(a);

(C) Install, calibrate, maintain, and operate, according to the manufacturer's specifications, a device that indicates the cumulative amount of VOC recovered by the solvent recovery device over each nominal 1-month period. The device shall be certified by the manufacturer to be accurate to within −2.0 percent;

(D) Measure the amount of VOC recovered; and

(E) Calculate the overall VOC emission reduction (R) for each and every nominal 1-month period using Equation 1.

(iv) For facilities subject to § 60.712 (a) or (b)(3), compliance is demonstrated if the value of R is equal to or greater than 93 percent.

(v) Subject to the provisions of (b)(1)(vi) of this section, for facilities subject to § 60.712(b)(1), compliance is demonstrated if the value of R is equal to or greater than the percent reduction demonstrated pursuant to § 60.713(a)(1) prior to modification or reconstruction or 93 percent whichever is lower.

(vi) For facilities subject to § 60.712(b)(1)(ii), compliance is demonstrated if the value of E (control device efficiency) is greater than or equal to 0.95 and if the value of R is equal to or greater than the percent reduction demonstrated pursuant to § 60.713(a)(3) or 93 percent, whichever is lower.

(2) To demonstrate compliance with § 60.712 (a), (b)(1), or (b)(3) (standards for coating operations) when the emissions from only an affected coating operation are controlled by a dedicated incinerator or when a common emission control device (other than a fixed-bed carbon adsorption system with individual exhaust stacks for each adsorber vessel) is used to control emissions from an affected coating operation as well as from other sources of VOC, each owner or operator of an affected coating operation shall perform a gaseous emission test using the following procedures:

(i) Construct the overall VOC emission reduction system so that all volumetric flow rates and total VOC emissions can be accurately determined by the applicable test methods and procedures specified in § 60.715 (b) through (g);

(ii) Determine capture efficiency from the coating operation by capturing, venting, and measuring all VOC emissions from the operation. During a performance test, the owner or operator of an affected coating operation located in an area with other sources of VOC shall isolate the coating operation emissions from all other sources of VOC by one of the following methods:

(A) Build a temporary enclosure (see § 60.711(a)(16)) around the affected coating operation; or

(B) Shut down all other sources of VOC and continue to exhaust fugitive emissions from the affected coating operation through any building ventilation system and other room exhausts such as drying ovens. All ventilation air must be vented through stacks suitable for testing;

(iii) Operate the emission control device with all emission sources connected and operating;

(iv) Determine the efficiency (E) of the control device using the following equation:

$$E = \frac{\sum_{i=1}^{n} Q_{bi}C_{bi} - \sum_{j=1}^{p} Q_{aj}C_{aj}}{\sum_{i=1}^{n} Q_{bi}C_{bi}}$$

(Equation 2)

(v) Determine the efficiency (F) of the VOC capture system using the following equation:

$$F = \frac{\sum_{i=1}^{n} Q_{di}C_{di}}{\sum_{i=1}^{n} Q_{di}C_{di} + \sum_{k=1}^{p} Q_{fk}C_{fk}}$$

(Equation 3)

(vi) For each affected coating operation subject to § 60.712 (a) or (b)(3), compliance is demonstrated if the product of (E)×(F) is equal to or greater than 0.93.

(vii) For each affected coating operation subject to § 60.712(b)(1)(i), compliance is demonstrated if the product of (E)×(F) is equal to or greater than the fractional reduction demonstrated pursuant to § 60.713(a)(1) prior to modification or reconstruction or 0.93, whichever is lower.

(viii) For each affected coating operation subject to § 60.712(b)(1)(ii), compliance is demonstrated if the value of E is greater than or equal to 0.95 and if the product of (E)×(F) is equal to or greater than the fractional reduction demonstrated pursuant to § 60.713(a)(3) or 0.93, whichever is lower.

(3) To demonstrate compliance with § 60.712 (a), (b)(1), or (b)(3) (standards for coating operations) when a fixed-bed carbon adsorption system with individual exhaust stacks for each adsorber vessel is used to control emissions from an affected coating operation as well as from other sources of VOC, each owner or operator of an affected coating operation shall perform a gaseous emission test using the following procedures:

(i) Construct the overall VOC emission reduction system so that each volumetric flow rate and the total VOC emissions can be accurately determined by the applicable test methods and procedures specified in § 60.715 (b) through (g);

(ii) Assure that all VOC emissions from the coating operation are segregated from other VOC sources and that the emissions can be captured for measurement, as described in § 60.713(b)(2)(ii) (A) and (B);

(iii) Operate the emission control device with all emission sources connected and operating;

(iv) Determine the efficiency (H_v) of each individual adsorber vessel (v) using the following equation:

$$H_v = \frac{Q_{gv}C_{gv} - Q_{hv}C_{hv}}{Q_{gv}C_{gv}}$$

(Equation 4)

(v) Determine the efficiency of the carbon adsorption system (H_{sys}) by computing the average efficiency of the adsorber vessels as weighted by the volumetric flow rate (Q_{hv}) of each individual adsorber vessel (v) using the following equation:

$$H_{sys} = \frac{\sum_{v=1}^{q} H_v Q_{hv}}{\sum_{v=1}^{q} Q_{hv}}$$

(Equation 5)

(vi) Determine the efficiency (F) of the VOC capture system using Equation (3).

(vii) For the affected coating operation subject to § 60.712 (a) or (b)(3), compliance is demonstrated if the product of $(H_{sys}) \times (F)$ is equal to or greater than 0.93.

(viii) For the affected coating operation subject to § 60.712(b)(1)(i), compliance is demonstrated if the product of $(H_{sys}) \times (F)$ is equal to or greater than the fractional reduction demonstrated pursuant to § 60.713(a)(1) prior to modification or reconstruction or 0.93, whichever is lower.

(ix) For each affected coating operation subject to § 60.712(b)(1)(ii), compliance is demonstrated if the value of H_{sys} is greater than or equal to 0.95 and if the product of $(H_{sys}) \times (F)$ is equal to or greater than the fractional reduction demonstrated pursuant to § 60.713(a)(3) or 0.93, whichever is lower.

(4) To demonstrate compliance with § 60.712 (a), (b)(1), or (b)(3) (standards for coating operations) when the VOC emissions from more than one affected coating operation are collected by a common capture system and are vented through a common duct to a control device that is also controlling emissions from nonaffected sources and the emissions from the nonaffected sources are vented separately from the affected coating operations, the owner or operator may:

(i) Consider the combined affected coating operations as a single emission source; and

(ii) Conduct a compliance test on this single source by the methods described in § 60.713(b) (2) or (3), as applicable.

(5) An alternative method of demonstrating compliance with § 60.712 (a) or (b)(3) (standards for coating operations) and the sole method of demonstrating compliance with § 60.712(b)(2) (standards for modified or reconstructed coating operations) is the installation of a total enclosure around the coating operation and the ventilation of all VOC emissions from the total enclosure to a control device with the efficiency specified in paragraph (b)(5)(iii) (A) or (B) of this section, as applicable. If this method is selected, the compliance test methods described in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section are not required. Instead, each owner or operator of an affected coating operation shall:

(i) Demonstrate that a total enclosure is installed. An enclosure that meets the requirements in paragraphs (b)(5)(i) (A) through (D) of this section shall be assumed to be a total enclosure. The owner or operator of an enclosed coating operation that does not meet the requirements may apply to the Administrator for approval of the enclosure as a total enclosure on a case-by-case basis. The enclosure shall be considered a total enclosure if it is demonstrated to the satisfaction of the Administrator that all VOC emissions from the affected coating operation are contained and vented to the control device. The requirements for automatic approval are as follows:

(A) Total area of all natural draft openings shall not exceed 5 percent of the total surface area of the total enclosure's walls, floor, and ceiling;

(B) All sources of emissions within the enclosure shall be a minimum of four equivalent diameters away from each natural draft opening;

(C) Average inward face velocity across all natural draft openings (FV) shall be a minimum of 3,600 meters per hour as determined by the following procedures:

(*1*) Construct all forced makeup air ducts and all exhaust ducts so that the volumetric flow rate in each can be accurately determined by the test methods and procedures specified in § 60.715 (c) and (d). Volumetric flow rates shall be calculated without the adjustment normally made for moisture content; and

(*2*) Determine FV by the following equation:

$$FV = \frac{\sum_{j=1}^{n} Q_{out\ j} - \sum_{i=1}^{p} Q_{in\ i}}{\sum_{k=1}^{q} A_k}$$

(Equation 6)

(D) The air passing through all natural draft openings shall flow into the enclosure continuously. If FV is less than or equal to 9,000 meters per hour, the continuous inward airflow shall be verified by continuous observation using smoke tubes, streamers, tracer gases, or other means approved by the Administrator while the procedures specified above in paragraph (b)(5)(i)(C) of this section are carried out. If FV is greater than 9,000 meters per hour, the direction of airflow through the natural draft openings shall be presumed to be inward at all times without verification.

(ii) Determine the control device efficiency using Equation (2) or Equations (4) and (5), as applicable, and the test methods and procedures specified in § 60.715 (b) through (g).

(iii) Compliance is demonstrated if the installation of a total enclosure is demonstrated and the value of E determined from Equation (2) (or the value of H_{sys} determined from Equations (4) and (5), as applicable) is equal to or greater than the required efficiency as specified below:

(A) For coating operations subject to the standards of § 60.712(a), (b)(2)(ii), and (b)(3), 0.95 (95 percent); or

(B) For coating operations subject to the standards of § 60.712(b)(2)(i), the value of E determined from Equation (2) (or the value of H_{sys} determined from Equations (4) and (5), as applicable) pursuant to § 60.713(a)(2) prior to modification or reconstruction or 0.95 (95 percent), whichever is lower.

(6) To demonstrate compliance with § 60.712(c) (standard for new mix equipment with concurrent construction of a control device), each owner or operator of affected coating mix preparation equipment shall demonstrate upon inspection that:

(i) Covers satisfying the requirements of § 60.712(c) (1)–(5) have been installed and are being used properly;

(ii) Procedures detailing the proper use of covers, as specified in § 60.712(c)(1), have been posted in all areas where affected coating mix preparation equipment is used;

(iii) The coating mix preparation equipment is vented to a control device; and

(iv) The control device efficiency (E or H_{sys}, as applicable) determined using Equation (2) or Equations (4) and (5), respectively, and the test methods and procedures specified in § 60.715 (b)–(g) is equal to or greater than 0.95.

(7) To demonstrate compliance with § 60.712(d)(1) (standard for mix equipment), each owner or operator of affected coating mix preparation equipment shall demonstrate upon inspection that:

(i) Covers satisfying the requirements of § 60.712(c)(1)–(5) have been installed and are being used properly;

(ii) Procedures detailing the proper use of covers, as specified in § 60.712(c)(1), have been posted in all areas where affected coating mix preparation equipment is used; and

(iii) The coating mix preparation equipment is vented to a control device.

(8) To demonstrate compliance with § 60.712(d)(2) (standard for mix equipment), each owner or operator of affected coating mix preparation equipment shall demonstrate upon inspection that both:

(i) Covers satisfying the requirements of § 60.712(c)(1)–(5) have been installed and are being used properly; and

(ii) Procedures detailing the proper use of covers, as specified in § 60.712(c)(1), have been posted in all areas where affected coating mix preparation equipment is used.

(9) To determine compliance with § 60.712(e) (high-solids coatings alternative standard), each owner or

operator of an affected facility shall determine the weighted average mass of VOC contained in the coating per volume of coating solids applied for each and every nominal 1-month period according to the following procedures:

(i) Determine the weight fraction of VOC in each coating applied using Method 24 as specified in § 60.715(a);

(ii) Determine the volume of coating solids in each coating applied from the facility record; and

(iii) Compute the weighted average by the following equation:

$$G = \frac{\sum_{i=1}^{n} W_{oi} M_{ci}}{\sum_{i=1}^{n} L_{si} V_{ci}}$$

(Equation 7)

(iv) For each affected facility where the value of G is less than or equal to 0.20 kilogram of VOC per liter of coating solids applied, the facility is in compliance.

(c) Startups and shutdowns are normal operation for this source category. Emissions from these operations are to be included when determining if the standards for coating operations specified in § 60.712 (a) and (b) are being attained.

(d) If a control device other than a carbon adsorber, condenser, or incinerator is used to control emissions from an affected facility, the necessary operating specifications for that device must be obtained from the Administrator. An example of such a device is a flare.

§ 60.714 Installation of monitoring devices and recordkeeping.

All monitoring devices required under the provisions of this section shall be installed and calibrated, according to the manufacturer's specifications, prior to the initial performance tests in locations such that representative values of the monitored parameters will be obtained. The parameters to be monitored shall be continuously measured and recorded during all performance tests.

(a) Each owner or operator of an affected coating operation that utilizes less solvent annually than the applicable cutoff provided in § 60.710(b) and that is not subject to § 60.712 (standards for coating operations) shall both:

(1) Make semiannual estimates of the projected annual amount of solvent to be utilized for the manufacture of magnetic tape at the affected facility in that calendar year and maintain records of these estimates; and

(2) Maintain records of actual solvent use.

(b) Each owner or operator of an affected coating operation demonstrating compliance by the test method described in § 60.713(b)(1) (liquid material balance) shall maintain records of all the following for each and every nominal 1-month period:

(1) Amount of coating applied at the applicator;

(2) Results of the reference test method specified in § 60.715(a) for determining the VOC content of all coatings applied;

(3) Amount VOC recovered; and

(4) Calculation of the percent VOC recovered.

(c) Each owner or operator of an affected coating operation or affected coating mix preparation equipment controlled by a carbon adsorption system and demonstrating compliance by the procedures described in § 60.713(b) (2), (3), (4), (5), or (6) (which include control device efficiency determinations) shall carry out the monitoring and recordkeeping provisions of paragraph (c) (1) or (2) of this section, as appropriate.

(1) For carbon adsorption systems with a common exhaust stack for all the individual adsorber vessels, install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the concentration level of organic compounds in either the control device outlet gas stream or in both the control device inlet and outlet gas streams. The outlet gas stream would be monitored if the percent increase in the concentration level of organic compounds is used as the basis for reporting, as described in § 60.717(d)(3). The inlet and outlet gas streams would be monitored if the percent control device efficiency is used as the basis for reporting, as described in § 60.717(d)(4).

(2) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the concentration level of organic compounds in the outlet gas stream for a minimum of one complete adsorption cycle per day for each adsorber vessel. The owner or operator may also monitor and record the concentration level of organic compounds in the common carbon adsorption system inlet gas stream or in each individual carbon adsorber vessel inlet stream. The outlet gas streams alone would be monitored if the percent increase in the concentration level of organic compounds is used as the basis for reporting, as described in § 60.717(d)(3). In this case, the owner or operator shall compute daily a 3-day rolling average concentration level of organics in the outlet gas stream from each individual adsorber vessel. The inlet and outlet gas streams would be monitored if the percent control device efficiency is used as the basis for reporting, as described in § 60.717(d)(4). In this case, the owner or operator shall compute daily a 3-day rolling average efficiency for each individual adsorber vessel.

(d) Each owner or operator of an affected coating operation controlled by a condensation system and demonstrating compliance by the procedures described in § 60.713(b) (2), (4), or (5) (which include control device efficiency determinations) shall install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the temperature of the condenser exhaust stream.

(e) Each owner or operator of an affected coating operation or affected coating mix preparation equipment controlled by a thermal incinerator and demonstrating compliance by the procedures described in § 60.713(b) (2), (4), (5), or (6) (which include control device efficiency determinations) shall install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the combustion temperature of the incinerator. The monitoring device shall have an accuracy within ±1 percent of the temperature being measured in Celsius degrees.

(f) Each owner or operator of an affected coating operation or affected coating mix preparation equipment controlled by a catalytic incinerator and demonstrating compliance by the procedures described in § 60.713(b) (2), (4), (5), or (6) (which include control device efficiency determinations) shall install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the gas temperature both upstream and downstream of the catalyst bed. The monitoring device shall have an accuracy within ±1 percent of the temperature being measured in Celsius degrees.

(g) Each owner or operator of an affected coating operation demonstrating compliance pursuant to § 60.713(b) (2), (3), or (4) (which include VOC capture system efficiency determinations) shall submit a monitoring plan for the VOC capture system to the Administrator for approval along with the notification of

anticipated startup required under § 60.7(a)(2) of the General Provisions. This plan shall identify the parameter to be monitored as an indicator of VOC capture system performance (e.g., the amperage to the exhaust fans or duct flow rates) and the method for monitoring the chosen parameter. The owner or operator shall install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the value of the chosen parameter.

(h) Each owner or operator of an affected coating operation who uses the equipment alternative described in § 60.713(b)(5) to demonstrate compliance shall follow the procedures described in paragraph (g) of this section to establish a monitoring plan for the total enclosure.

(i) Each owner or operator of an affected coating operation shall record time periods of coating operations when an emission control device is not in use.

(j) Each owner or operator of an affected coating operation or affected coating mix preparation equipment complying with § 60.712(e) shall maintain records of the monthly weighted average mass of VOC contained in the coating per volume of coating solids applied for each coating, as described in § 60.713(b)(9) (i) through (iv).

(k) Records of the measurements and calculations required in § 60.713 and § 60.714 must be retained for at least 2 years following the date of the measurements and calculations.

[Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)]

(Approved by the Office of Management and Budget under Control No. 2060-0171.)

§ 60.715 Test methods and procedures.

Methods in Appendix A of this part, except as provided under § 60.8(b), shall be used to determine compliance as follows:

(a) Method 24 is used to determine the VOC content in coatings. If it is demonstrated to the satisfaction of the Administrator that plant coating formulation data are equivalent to Method 24 results, formulation data may be used. In the event of any inconsistency between a Method 24 test and a facility's formulation data, the Method 24 test will govern. For Method 24, the coating sample must be a 1-liter sample taken into a 1-liter container at a location and time such that the sample will be representative of the coating applied to the base film (i.e., the sample shall include any dilution solvent or other VOC added during the manufacturing process). The container must be tightly sealed immediately after the sample is taken. Any solvent or other VOC added after the sample is taken must be measured and accounted for in the calculations that use Method 24 results.

(b) Method 18, 25, or 25A, as appropriate to the conditions at the site, is used to determine VOC concentration. The owner or operator shall submit notice of the intended test method to the Administrator for approval along with the notification of the performance test required under § 60.8(d) of the General Provisions. Method selection shall be based on consideration of the diversity of organic species present and their total concentration and on consideration of the potential presence of interfering gases. Except as indicated in paragraphs (b) (1) and (2) of this section, the test shall consist of three separate runs, each lasting a minimum of 30 minutes.

(1) When the method is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with a common exhaust stack for all the individual adsorber vessels pursuant to § 60.713(b) (2), (4), (5), or (6), the test shall consist of three separate runs, each coinciding with one or more complete sequences through the adsorption cycles of all the individual adsorber vessels.

(2) When the method is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with individual exhaust stacks for each adsorber vessel pursuant to § 60.713(b) (3), (4), (5), or (6), each adsorber vessel shall be tested individually. The test for each adsorber vessel shall consist of three separate runs. Each run shall coincide with one or more complete adsorption cycles.

(c) Method 1 or 1A is used for sample and velocity traverses.

(d) Method 2, 2A, 2C, or 2D is used for velocity and velumetric flow rates.

(e) Method 3 is used for gas analysis.

(f) Method 4 is used for stack gas moisture.

(g) Methods 2, 2A, 2C, 2D, 3, and 4 shall be performed, as applicable, at least twice during each test period.

§ 60.716 Permission to use alternative means of emission limitation.

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in emissions of VOC from any emission point subject to § 60.712 (c) or (d) (standards for mix equipment) at least equivalent to that required by § 60.712 (c) or (d), respectively, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means. The notice may condition permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section shall be published only after public notice and an opportunity for a public hearing.

(c) Any person seeking permission under this section shall submit either results from an emission test that documents the collection and measurement of all VOC emissions from a given control device or an engineering evaluation that documents the determination of such emissions.

§ 60.717 Reporting and monitoring requirements.

(a) For all affected coating operations subject to § 60.712 (a), (b)(1), (b)(2), or (b)(3) and all affected coating mix preparation equipment subject to § 60.712(c), the performance test data and results shall be submitted to the Administrator as specified in § 60.8(a) of the General Provisions (40 CFR Part 60 Subpart A). In addition, the average values of the monitored parameters measured at least every 15 minutes and averaged over the period of the performance test shall be submitted with the results of all performance tests.

(b) Each owner or operator of an affected coating operation claiming to utilize less than the applicable volume of solvent specified in § 60.710(b) in the first calendar year of operation shall submit to the Administrator, with the notification of projected startup, a material flow chart indicating projected solvent use. The owner or operator shall also submit actual solvent use records at the end of the initial calendar year.

(c) Each owner or operator of an affected coating operation initially utilizing less than the applicable volume of solvent specified in § 60.710(b) per calendar year shall:

(1) Report the first calendar year in which actual annual solvent use exceeds the applicable volume; and

(2) Report the first semiannual estimate in which annual solvent use would exceed the applicable volume.

(d) Each owner or operator of an affected coating operation, or affected coating mix preparation equipment subject to § 60.712(c), shall submit quarterly reports to the Administrator documenting the following:

(1) The 1-month amount of VOC contained in the coating, the VOC recovered, and the percent emission reduction for months of noncompliance for any affected coating operation demonstrating compliance by the performance test method described in § 60.713(b)(1) (liquid material balance);

(2) The VOC contained in the coatings for the manufacture of magnetic tape for any 1-month period during which the

average solvent content of any coating exceeded 0.20 kilogram per liter of coating solids for those affected facilities complying with § 60.712(e) (high-solids coatings alternative standard);

(3) For those affected facilities monitoring only the carbon adsorption system outlet concentration levels of organic compounds, the periods (during actual coating operations) specified in paragraph (d)(3) (i) or (ii) of this section, as applicable.

(i) For carbon adsorption systems with a common exhaust stack for all the individual adsorber vessels, all periods of three consecutive adsorption cycles of all the individual adsorber vessels during which the average value of the concentration level of organic compounds in the common outlet gas stream is more than 20 percent greater than the average value measured during the most recent performance test that demonstrated compliance.

(ii) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, all 3-day rolling averages for each adsorber vessel when the concentration level of organic compounds in the individual outlet gas stream is more than 20 percent greater than the average value for that adsorber vessel measured during the most recent performance test that demonstrated compliance.

(4) For those affected facilities monitoring both the carbon adsorption system inlet and outlet concentration levels of organic compounds, the periods (during actual coating operations), specified in (d)(4) (i) or (ii) of this section, as applicable.

(i) For carbon adsorption systems with a common exhaust stack for all the individual adsorber vessels, all periods of three consecutive adsorption cycles of all the individual adsorber vessels during which the average carbon adsorption system efficiency falls below the applicable level as follows:

(A) For those affected facilities demonstrating compliance by the performance test method described in § 60.713(b) (2) or (4), the value of E determined using Equation (2) during the most recent performance test that demonstrated compliance.

(B) For those affected facilities demonstrating compliance pursuant to § 60.713(b)(5)(iii)(A) or § 60.713(b)(6), 0.95 (95 percent).

(C) For those affected facilities demonstrating compliance pursuant to § 60.713(b)(5)(iii)(B), the required value of E determined using Equation (2) pursuant to § 60.713(a)(2) prior to modification or reconstruction or 0.95 (95 percent), whichever is lower.

(ii) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, all 3-day rolling averages for each adsorber vessel when the efficiency falls below the applicable level as follows:

(A) For those affected facilities demonstrating compliance by the performance test method described in § 60.713(b) (3) or (4), the value of H_v determined using Equation (4) during the most recent performance test that demonstrated compliance.

(B) For those affected facilities demonstrating compliance pursuant to § 60.713(b)(5)(iii)(A) or § 60.713(b)(6), 0.95 (95 percent).

(C) For those affected facilities demonstrating compliance pursuant to § 60.713(b)(5)(iii)(B), the value of H_v determined using Equation 4 pursuant to § 60.713(a)(2) prior to modification or reconstruction or 0.95 (95 percent), whichever is lower.

(5) All 3-hour periods (during actual coating operations) during which the average exhaust temperature is 5 or more Celsius degrees above the average temperature measured during the most recent performance test that demonstrated compliance for those affected facilities monitoring condenser exhaust gas temperature;

(6) All 3-hour periods (during actual coating operations) during which the average combustion temperature is more than 28 Celsius degrees below the average combustion temperature during the most recent performance test that demonstrated compliance for those affected facilities monitoring thermal incinerator combustion gas temperature;

(7) All 3-hour periods (during actual coating operations) during which the average gas temperature immediately before the catalyst bed is more than 28 Celsius degrees below the average gas temperature during the most recent performance test that demonstrated compliance and all 3-hour periods (during actual coating operations) during which the average gas temperature difference across the catalyst bed is less than 80 percent of the average gas temperature difference during the most recent performance test that demonstrated compliance for those affected facilities monitoring catalytic incinerator catalyst bed temperature; or

(8) All 3-hour periods (during actual coating operations) during which the average total enclosure or VOC capture system monitoring device readings vary by 5 percent or more from the average value measured during the most recent performance test that demonstrated compliance for those affected facilities monitoring a total enclosure pursuant to § 60.714(h) or VOC capture system pursuant to § 60.714(g).

(e) Each owner or operator of an affected coating operation, or affected coating mix preparation equipment subject to § 60.712(c), not required to submit reports under § 60.717(d) because no reportable periods have occurred shall submit semiannual reports so affirming.

(f) Each owner or operator of affected coating mix preparation equipment that is constructed at a time when no affected coating operation being constructed shall:

(1) Be exempt from the reporting requirements specified in § 670.7(a) (1), (2), and (4); and

(2) Submit the notification of actual startup specified in § 60.7(a)(3).

(g) The owner or operator of affected coating mix preparation equipment that is constructed at the same time as an affected coating operation shall include the affected coating mix preparation equipment in all the reporting requirements for the affected coating operation specified in § 60.7(a) (1) through (4).

(h) The reports required under paragraphs (b) through (g) of this section shall be postmarked within 30 days of the end of the reporting period.

(i) The requirements of this subsection remain in force until and unless EPA, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In this event, affected sources within the State will be relieved of the obligation to comply with this subsection, provided that they comply with the requirements established by the State.

[Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)]

(Approved by the Office of Management and budget under Control No. 2060–0171.)

§ 60.718 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) 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:

§ 60.711(a)(16)
§ 60.713(a)(4)
§ 60.713(b)(1)(i)
§ 60.713(b)(1)(ii)
§ 60.713(b)(5)(i)
§ 60.713(d)
§ 60.715(a)
§ 60.716

[FR Doc. 88-22483 Filed 9-30-88; 8:45 am]
BILLING CODE 6560-50-M

federal register

Monday
October 3, 1988

Part VII

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Prevention and Intervention for Illegal Drug Use and AIDS Among High Risk Youth; Program Announcement; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Prevention and Intervention for Illegal Drug Use and AIDS Among High Risk Youth; Program Announcement

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to sections 224(a)(2)(5), and 224(b)(1) of the Juevenile Justice and Delinquency Prevention Act, as amended, announces a new OJJDP development initiative to assess, develop, test and disseminate information on prototypical approaches to improve the capability of public and private agencies for providing services to high risk youth involved in illegal drug use, other serious delinquent behavior, exploitation and AIDS.

The purpose of the program is to improve public and private services to high risk youth (under 18) in order to deter involvement in illegal activities and to divert them from initial contact with or continued involvement in the juvenile justice system. This program will focus on runaways, exploited and homeless juveniles who are often involved in illegal drugs and delinquency or who are extremely likely to become involved in these activities unless intervention occurs. It will be designed to develop effective responses to illegal drug use, other serious delinquent activity, sexual exploitation, and the companion problem of AIDS among this population.

This is a developmental effort composed of four incremental stages:

(1) An assessment of relevant information on illegal drug use, other delinquent activity, and AIDS among runaways, exploited and homeless youth and of existing programs or services for these youth;

(2) The development of program prototypes (models) and related policies and procedures to guide community agencies in the development and implementation of effective services to reduce illegal drug use among runaways, exploited and homeless youth who are often involved in illegal drugs and delinquency, or who are extremely likely to become involved in these activities unless intervention occurs.

(3) The development and provision of intensive training, technical assistance and information materials to transfer the protoype programs to selected public and private agency test sites; and

(4) Implementation and testing of the prototype programs.

OJJDP invites public agencies or nonprofit private agencies, or combinations thereof, to submit competitive applications to develop prototypical (model) approaches to developing effective programs to respond to illegal drug use and AIDS among runaway, exploited and homeless youth.

OJJDP has allocated up to $400,000 to conduct the first three stages (as noted above) which are to be completed in twenty-four (24) months. The initial budget period will be for twenty-four (24) months. Upon completion of the training and technical assistance materials a decision will be made regarding support for the fourth stage. The project period is four years. One cooperative agreement will be awarded. Applicants are encouraged to present cost-competitive proposals.

The deadline for receipt of applications is November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Richard Sutton, Research and Program Development Division, (202) 724–5929, or Douglas Dodge, Special Emphasis Division (202) 724–5914, OJJDP, 633 Indiana Avenue NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
II. Program Goals and Objectives
III. Program Strategy
IV. Dollar Amount and Duration
V. Eligibility Requirements
VI. Application Requirements
VII. Procedures and Criteria for Selection
VIII. Deadline for Receipt of Applications
IX. Civil Rights Compliance

I. Introduction and Background

Runaways, exploited and homeless are among the high risk juveniles at greatest risk for becoming both offenders and victims. Crisis intervention programs that serve these youth report that illegal drug use and AIDS is a significant problem among this population. They are also highly vulnerable to being exploited as they seek to exchange sex for money and nurture. Both drug abuse and involvement in exploitive sex with multiple partners are risk factors for contracting AIDS. Therefore youth on the street represent a population that is at extremely high risk for involvement in illegal drugs, as well as for AIDS. Drug abuse can increase risk taking sexual behavior, and it is likely that it lowers resistance to the HIV virus. Many runaway, exploited and homeless youth migrate to urban areas where there are higher rates of sexually transmitted diseases.

To effectively respond to illegal drugs and AIDS among street youth, communities must implement comprehensive prevention and intervention services. Public and private agencies that provide services to runaway, exploited and homeless youth, as well as law enforcement should be involved. Comprehensive services should include four major components:

(1) Outreach services to educate runaway, exploited and homeless youth regarding the dangers of involvement in illegal drugs and "survival sex"; as well as the symptoms of the consequences e.g., addiction and AIDS;

(2) Crisis intervention services to provide immediate responses to runaway, exploited and homeless youth who display symptoms of suffering from the mental, emotional and physical consequences of illegal drugs and sexual exploitation;

(3) Intermediate care to stabilize the youth and assess the need for long term support and services; and

(4) Support systems for youth requiring long term services for drug addiction and AIDS.

The primary purpose of an outreach component should be to educate runaway, exploited and homeless youth regarding the dangers of illegal drug use, sexual exploitation and AIDS, to identify high risk street youth, and to make appropriate referrals to the crisis intervention component.

The purpose of the crisis intervention component would be to provide shelter, respond to the immediate problems or symptoms exhibited by the youth, and do an initial screening to identify the extent of drug addiction and whether the youth is HIV positive or has an active case of AIDS.

The purpose of the intermediate care component would be to stabilize youth identified as being addicted to illegal drugs or who test positive for the AIDS virus, to keep them off the street long enough to provide services to increase self-sufficiency, to continue diagnostic evaluation as necessary and to arrange for long term care of services as appropriate.

The purpose of the long-term component is to provide for treatment and the continuous care of youth who are heavily addicted to drugs and often suffer from mental and related physical problems, or who have AIDS.

Other juvenile justice system agencies should be involved to promote a community-wide approach to prevention and intervention. Police officers, through routine patrol, are often in a position to

identify drug abuse, exploitation and AIDS among street youth. Law enforcement arrest and referral policies and practices regarding illegal drug use and sexual exploitation impact on runaway, exploited and homeless youth. In turn, the availability of community programs to respond to these youth often affects law enforcement policies and procedures.

Juvenile court policies and procedures regarding runaway, juvenile sexual exploitation, and illegal drug use impact on street youth. Supervision programs, particularly aftercare services, can impact on the life style by juveniles who are returning to the community.

II. Program Goals and Objectives

A. Goals

(1) To assist public and private agencies in developing and implementing effective outreach, crisis intervention, intermediate and long-term care programs to reduce the risk for and to respond to the problems of illegal drug use and AIDS among runaway, exploited and homeless youth, who are involved in or who are extremely likely, without intervention, to become involved in illegal drugs and other serious delinquency.

(2) To disseminate prototype program designs for outreach, crisis intervention, intermediate and long-term care to reduce illegal drug use and AIDS among runaway, exploited and homeless youth.

B. Objectives

(1) Assess existing information regarding illegal drug use and AIDS among runaway, exploited and homeless youth, and approaches to outreach, crisis intervention, intermediate services and long term programming for these high risk youth, develop criteria for identifying promising approaches, and review and describe operational promising programs;

(2) Develop prototypes based on research and the assessment of selected operational programs;

(3) Develop a dissemination strategy, including training and technical assistance materials, to transfer the prototypes to selected sites; and

(4) Test program prototypes: (Applicants are advised that this stage of the program development initiative will not be funded during the initial budget period).

III. Program Strategy

OJJDP's planning and program development activities are guided by a framework that specifies four sequential phases of development: Research, Development, Demonstration and Dissemination. This framework guides the decision-making process regarding the funding of future stages of the program.

This program is a developmental initiative. The purpose of the development initiative is to develop prototype/models and to determine their effectiveness through a controlled testing process. The program will be conducted in four discrete incremental stages. The four stages include: (1) An assessment of the information on illegal drug use and AIDS among runaway, exploited and homeless youth; (2) the development of prototypes, and implementation and operation of prototypical programs; (3) the development of a training and technical assistance package in order to provide intensive training to test sites that are implementing the prototype; and, (4) testing of the prototypes. During the initial 24 month budget period, it is expected that stages I, II, and III will be completed.

All technical and subject matter portions of the program will be guided by recommendations of an advisory committee established specifically for the program. The advisory committee will provide comments and recommendations regarding the strategies and activities for this program. It may be necessary to change or supplement advisory committee members for different stages of the program: however, the objective will be to select technical and subject matter experts capable of addressing issues related to each of the program stages. The advisory committee members should have combined expertise in research and evaluation on high risk youth, training and technical assistance development and delivery, and knowledge of the programs for runaway, exploited and homeless youth. Each stage of the incremental program development process detailed below is designed to result in a complete and publishable product (e.g. final assessment report), and a dissemination strategy to inform the field of the development of the program and the results and products of each stage. This award is providing funds for stages I and II and III. A decision is made at the completion of each stage, based on availability of funds, and the quality and utility of the products, whether to invest additional funds to proceed to the next stage or terminate the program.

A. Stage I—Assessment

The first stage of the program consists of an assessment that will include a review of the literature and an operational program. The literature review will be designed to identify significant issues and problems involved in developing programs to address the problems of illegal drug use and AIDS among runaway, exploited and homeless youth. The purpose of the literature review is to identify the most definitive theoretical and empirical research findings in order to apply them to the review of existing programs, and the development of prototypical model(s).

The recipient will apply the results of the literature review to the development of criteria for identifying promising approaches to reduce illegal drug use and AIDS among runaway, exploited and homeless youth, and use the criteria to select programs for review and documentation. Information to be collected and assessed should include, at a minimum, the historical development of the programs: Conceptual framework; theoretical assumptions; definition of the target populations and subsequent system services for the families; identification of services and treatment modalities; number and type of families served; program costs per unit of service and per client; evaluation findings, if applicable; sources of funding; staffing requirements; and program approach to management and administration.

The assessment should provide the basis for refining the goals and objectives of the development program. Specifically, it should identify the key questions that need to be answered regarding the feasibility and effectiveness of the program. Therefore, based on the literature review and the results of the program assessment, the recipient will recommend specific programs or components of programs to be used as a basis for program prototype development.

1. Activities

The major activities of this stage are:

- Establishment of a program advisory committee;
- Development of the assessment plan;
- Review of the literature;
- Development of criteria for identifying promising programs;
- Identification and description of operational promising programs;
- Development of preliminary testing design guidelines;
- Preparation of the assessment report; and
- Development and implementation of a dissemination strategy.

2. Products

The products to be completed during this stage are:

- Assessment Plan—specifying in detail, the approach and activities to be undertaken for each step or the assessment stage;
- Draft and final report on the results of the assessment that includes:

—Literature review;
—Criteria for identifying promising programs;
—Description of operational promising programs and approaches;
—Recommendations for refining the goals and objectives of the program;
—Recommendations for developing prototypical/model approaches; and
—Preliminary testing design guidelines.

- Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

B. Stage II—Prototype Development

Upon successful completion of stage I, and with the approval of OJJDP, the recipient will develop prototype designs for the development, implementation, and operation of programs for the prevention and intervention of illegal drug use and AIDS among high risk youth. The prototype designs will be accompanied by detailed policy and procedure manuals to be developed by the recipient. The activities and products of this stage will be based on the information generated by the assessment. Appropriate technical and subject matter expertise will be utilized to design the prototypes that will be based, in part, on the operational programs described in the preceding stage.

The prototype design and related policies and procedures will provide guidance regarding identification of the appropriate target group; relationship of the program to other public and private youth-serving agencies; funding program organization and management; the philosophy and content of the intervention; resource development program monitoring; and evaluation of program effectiveness. The prototype designs and accompanying policies and procedures manuals will be used as the basis for the development of a training and technical assistance package. The information will become part of the dissemination package to be disseminated to appropriate state and local agencies, depending on the nature and auspices of each prototype.

1. Activities

The major activities of this stage are:

- Preparation of a plan for developing the prototypes and related policies and procedures;
- Development of the prototypes and related policies and procedures;
- Participation and review by the program advisory committee; and
- Development and implementation of a dissemination strategy.

2. Products

The products to be completed during this stage are:

- Plan for prototype development specifying, in detail, the approach and activities to be undertaken for each step of this stage, and the projected costs on a monthly basis;
- Draft and final prototype design(s) and related policies and procedures manual(s); and
- Dissemination strategy to inform the field of the development of the program, products and results of this stage.

C. Stage III—Training and Technical Assistance

Upon successful completion of stage II, and with the approval of OJJDP, the recipient will transfer the prototype design(s), including policies and procedures, into a training and technical assistance package. A comprehensive training manual must be developed to encourage and facilitate implementation of the prototypes.

The training manual must outline the major issues that need to be addressed in developing programs for prevention and intervention for illegal drug use and AIDS among high risk youth and detail program prototypes. The training manual should be the focal point of the entire training and technical assistance package. The primary audience will be policy makers and practitioners involved in resource allocation and program development related to prevention and intervention programs for high risk youth. The manual must be designed for a formal training setting and for independent use in jurisdictions that do not participate in formal training sessions. Therefore, the manual should include a complete description of the prototype and incorporate related policies and procedures. The manual should contain instructions and supplementary materials for trainers to facilitate presentation, and ensure understanding and successful adaption and implementation of the prototypes.

1. Activities

The major activities of this stage are:

- Preparation of a plan for developing the training and technical assistance package;
- Development of the training and technical assistance materials;
- Recruitment and preparation of the training and technical assistance personnel;
- Testing of the training curriculum manual;
- Participation and review by the advisory committee; and
- Development and implementation of a dissemination strategy that may include workshops or seminars for organizations that provide services to runaway, exploited and homeless youth.

2. Products

The products to be completed during this stage are:

- Plan for the development of the training and technical assistance package;
- Identification of training and technical assistance personnel;
- Draft and final training and technical assistance package, including the training curriculum manual and information materials; and
- Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

D. Stage IV—Prototype Implementation and Testing

While a decision to test the prototypes will be made during or following completion of the prototype development stage, the applicant is expected to explain the methods and approaches that would be employed to implement this stage.

This stage of the program consists of a test, in selected jurisdictions, of the prototypes developed in stage II. The recipient will be required to assist the OJJDP in developing a solicitation to make awards to test sites. It will also be required to provide intensive training and technical assistance to help the test sites implement the prototypes on an experimental basis. Finally, the grantee will be expected to work cooperatively with an independent evaluator to ensure the integrity of the data collection and feedback activities.

The funds for this stage will be provided through a non-competitive continuation award.

1. Activities

The major activities of this stage are:

- Develop recommendations for a program announcement to select test sites;
- Assist OJJDP in review and selection of test sites;
- Provide intensive training and technical assistance to test sites

regarding the implementation of prototypes on an experimental basis;

- Develop procedures for working cooperatively with the program evaluator, particularly in the areas of data collection and feedback, and
- Develop and implement a dissemination strategy.

2. Products

The major products for this stage are:

- Recommendations for the program announcement for test sites;
- Plan for providing training and technical assistance to test sites; and
- Dissemination strategy to inform the field of the development of the program and the products and results of this stage.

IV. Dollar Amount and Duration

Up to $400,000 has been allocated for the initial award. One cooperative agreement will be awarded competitively, with an initial budget period of twenty-four (24) months. This development program will consist of four stages (assessment; prototype development; policies and procedures, training, technical assistance; and testing). The initial award will provide support for stages I and II and III. One or more noncompeting continuation awards will be considered to complete a four year project period.

The noncompetitive continuation awards for the additional budget periods may be withheld for justifiable reasons. They include: (1) The results of stage I, II, and III do not justify further program activity; (2) the recipient is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the recipient has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a recipient's management practices have failed to provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason that would indicate continued funding would not be in the best interest of the Government.

A separate competition will be held to select an organization to perform independent evaluation of the selected prototypes/models. The organization selected for this award will be ineligible to compete for the evaluation.

V. Eligibility Requirements

Applications are invited from public agencies and nonprofit private organizations. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. Applicants and co-applicants must demonstrate that they have prior experience in the design, conduct and implementation of research and development programs; demonstrated knowledge of issues associated with runaway children; prior experience in the development and delivery of training or technical assistance; and research and evaluation of the juvenile justice system.

The applicant must also demonstrate that they have the management and financial capability to effectively implement a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

VI. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget, and budget narrative. All applications must include the information outlined in this section of the solicitation (Section VI) in Part IV, Program Narrative of the application (SF–424). The program narrative of the application should not exceed 7 double-spaced pages in length.

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant. Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

The following information must be included in the application:

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of the elgibility criteria established in Section V of this solicitation. Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in Section V above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to append one example of prior work products of a similar nature to their application.

(In addition to the assurances provided in Part V, Assurances [SF–424]). Applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures that assure Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received Federal funds will be asked to submit a copy of the Office of Justice Assistance, Research and Statistics (OJP) Accounting System and Financial Capability Questionnaire (OJP Form 7120/1). Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applications may be requested to submit this form. All questions are to be answered regardless of instructions (Section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Goals and Objectives

A succinct statement of your understanding of the goals and objectives of the program should be included. The application should include a problem statement and a discussion of the potential contribution of this program to the field.

C. Program Strategy

Applicants should describe the proposed approach for achieving the goals and objectives of the development program. A detailed discussion of how each of the initial three stages of the program will be accomplished should be included. Stage four should be outlined.

D. Program Implementation Plan

Applicants should prepare a plan that outlines the major activities involved in implementing the program, describe how they will allocate available resources to implement the program, and how the program will be managed.

The plan must include an annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components, and a list of key personnel responsible for managing and implementing the two major elements of the program. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. Applicants should provide recommendations for program advisory committee members. This documentation and individual resumes may be submitted as appendices to the application.

E. Time-Task Plan

Applicants must develop a time-task plan for the 24-month project period, clearly identifyng major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the tasks and products identified in Section III and indicate the anticipated cost schedule per month for the entire project period.

F. Products

Applicants must consisely describe the interim and final products of each state of the program, and must address the purpose, audience, and usefulness to the field of each product.

G. Program Budget

Applicants shall provide a 24-month budget with a detailed justification for all costs, including the basis for computation of these costs. Applicants should include a budget estimate to complete the balance of the program. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. The budget should include funds for a three-person Program Advisory Committee to meet three times during the 24-month budget period.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the program application requirements, organizational capability, the goals, objectives and program strategy described in the RFP, and thoroughness and innovativeness in responding to strategic issues in project implementation. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985, at 50 FR 31366–31367. The selection criteria and their point values (weights) are as follows:

A. Organizational Capability (20 Points)

1. The extent and quality of organizational experience in the development, delivery and coordination of research programs that have been national in scope. (10 points)

2. Adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds. (10 points)

B. Soundness of the Proposed Strategy (30 Points)

Appropriateness and technical adequacy of the approach to the activities and products of each stage of the program for meeting the goals and objectives; and potential utility of proposed products.

C. Qualifications of Project Staff (20 Points)

1. The qualifications of staff identified to manage and implement the program including staff to be hired through contracts. (10 points)

2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (10 points)

D. Clarity and Appropriateness of the Program Implementation Plan (15 Points)

Adequacy and appropriateness of the activities, and the project management structure; and the feasibility of the time-task plan.

E. Budget (15 points)

Completeness, reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished.

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be made by the OJJDP Administrator.

VIII. Deadline for Receipt of Applications

Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request.

Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on November 14, 1988. Those applications sent by mail should be addressed to: NIJJDP/OJJDP, U.S. Department of Justice, 633 Indiana Avenue NW., Washington, DC 20531. Hand delivered applications must be taken to the NIJJDP, Room 784, 633 Indiana Avenue, NW., Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

The NIJJDP/OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 43, Subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in benefits of, or denied or prohibited from obtaining employment in connection with, any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary

financial assistance to any other recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any award.

Date: September 27, 1988.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88-22698 Filed 9-30-88; 8:45 am]

BILLING CODE 4410-18-M

federal register

Monday
October 3, 1988

Part VIII

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Grants and Cooperative Agreements; Serious Habitual Offender Comprehensive Action Program (SHOCAP); Notice

DEPARTMENT OF JUSTICE

Grants and Cooperative Agreements; Serious Habitual Offender Comprehensive Action Program (SHOCAP)

AGENCY: Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office of Justice Programs, Department of Justice.

ACTION: Notice of Issuance of a solicitation for a cooperative agreement to develop Phase II of the Serious Habitual Offender Comprehensive Action Program (SHOCAP), an OJJDP national program initiative. SHOCAP has been a national training, technical assistance and replication program initiative since August of 1986. The program is designed to increase the capacity of the juvenile justice system to deal more appropriately with the serious juvenile offender. The cooperative agreement competition solicits proposals for a Phase II to continue the development and replication of this program through a Cooperative Agreement.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to section 224 (a) (5) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, is mandated to develop and implement special emphasis prevention and treatment programs relating to juveniles who commit serious crimes. In furtherance of this mandate OJJDP has provided fiscal support to develop and implement Phase I of SHOCAP. SHOCAP is a program that provides comprehensive training and technical assistance to law enforcement, prosecutors, courts, corrections, schools and social service agencies to enable these agencies and the juvenile justice system to give additional, focused attention on juveniles who repeatedly commit serious crimes.

This cooperative agreement is to fund Phase II of SHOCAP to expand upon a successful ongoing national initiative through a Cooperative Agreement.

FOR FURTHER INFORMATION CONTACT: Robert O. Heck, Program Manager, Special Emphasis Division, OJJDP, (202/724–5914), 633 Indiana Avenue, NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
II. Program Objectives
III. Program Strategy
IV. Dollar Amount and Duration
V. Eligibility Requirements
VI. Application Requirements
VII. Criteria for Applicant Selection
VIII. Submission Requirements
IX. Civil Rights Compliance

I. Introduction and Background

In the later part of 1982 the Office of Juvenile Justice and Delinquency Prevention (OJJDP) embarked upon an ambitious effort to assist jurisdictions to identify and appropriately respond to the serious juvenile offender. Two demonstration programs were established: the Serious Habitual Offender/Drug Involved (SHO/DI), located within the law enforcement community; and, the Habitual Serious and Violent Juvenile Offender (HSVJOP) program, located within the prosecutor's office. The Serious Habitual Offender Comprehensive Action Program (SHOCAP) design and concept is the result of the experiences gained from the testing of both programs over a period of three years. The testing has resulted in the combining of the various strengths of both programs; and a decision to replicate the resulting program in as many as 20 jurisdictions throughout the United States. This contemplated cooperative agreement action is to carry on the supportive training and technical assistance efforts under Phase II of the SHOCAP program. Jurisdictions that are involved in the SHOCAP program do not receive grants supporting their implementation and replication effort. In lieu of grants, participating jurisdictions receive training and technical assistance support assigned and scheduled by OJJDP.

SHOCAP can increase the quality and relevance of information provided authorities in the juvenile and criminal justice system to enable them to make more informed decisions on how best to deal with the small percentage of juveniles who are serious habitual offenders. SHOCAP is a comprehensive and cooperative information and case management process for police, prosecutors, schools, probation, corrections, and social service and community after-care services. SHOCAP enables the juvenile and criminal justice system to focus additional attention upon juveniles who repeatedly commit serious crimes, and are a demonstrated threat to public safety, with particular attention given to providing relevant and complete case information to result in more informed sentencing dispositions.

The juvenile justice system has attempted to come to grips with a most pressing and vexing problem—the problem of the habitual serious juvenile offender. To deal more effectively with this population, many communities have shown a keen interest in a program aimed at improving the SYSTEM response to the serious habitual offender. The Serious Habitual Offender Comprehensive Action Program (SHOCAP), is a nationwide effort spearheaded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to assist local jurisdictions in dealing with the problem of the serious habitual juvenile offender, a problem that plagues communities throughout the nation.

Major research studies have continually indicated that less than 7 percent of the juvenile population accounted for nearly two-thirds of all the violent crimes committed by juveniles of their birth groups. In addition, research and experience continue to find that the crimes charged to these juveniles represent but 10 percent of their criminal activity.

Studies of career criminals have determined that patterns of criminal behavior are established by the age of 15. Many young people will get into trouble as a symptom of adolescent development. Most will overcome delinquent tendencies with maturity, but some will continue delinquent behavior into adulthood. The nature of the juvenile justice system makes it functional or appropriate for the bulk of juvenile offenders. However, history tells us it has failed when it comes to the control of the active, serious juvenile criminal.

Juvenile offenders have often fallen through the cracks of the juvenile justice system. The system, up to now, has suffered from the lack of shared information and knowledge that is relevant to the juvenile's criminal actions. Thus, the true extent of a youth's criminal activity might never have been known, and decisions have been based upon isolated incidents rather than all of the available data. Therefore, many of the decisions were not always in the best interest of the juvenile, and more importantly, not in the best interest of the public. Juvenile justice system agencies were often unable to respond because of inconsistency in the information available for sentencing and dispositions. Because of the lack of sufficient information sharing and coordination, serious habitual offenders (SHO's) who happen to be juveniles are virtually untouchable, repeatedly victimizing the community.

II. Program Objectives

1. Coordinate the delivery of training and technical assistance to 20/30 jurisdictions in the process of implementing the Serious Habitual Comprehensive Action Program (SHOCAP);

2. Deliver and monitor ongoing training and technical assistance that has been initiated in 20 jurisdictions;

3. Edit, revise and/or create training and technical assistance manuals as the needs develop;

4. Develop and provide supportive training and technical assistance to program jurisdictions to stimulate statewide SHOCAP programs;

5. Continue site assessments for replication jurisdictions being added to the program by OJJDP;

6. Develop and provide for selective topical training programs at designated training host centers;

7. Continue identifying and training potential instructors/consultants for program participants;

8. Develop and provide service support for regional, topical training workshops at training host centers for national program participants;

9. Provide site assessments for new jurisdictions as proposed by OJJDP;

10. Provide a monitoring system for documenting and providing site program development assistance;

11. Develop promotional program strategies for enlisting potential program participants;

12. Complete the development of the SHOCAP corrections program.

III. Program Strategy

The cooperative agreement is to assure the necessary continuation of training, technical assistance and other related program replication support services being provided to an existent program activity. The successful applicant will be required to demonstrate the experience and ability to provide professional program continuity for a nationwide program; the ability to establish the rapport necessary to provide knowledgeable program continuation assistance; and, to provide the necessary program technology transfer.

OJJDP SHOCAP program development activities will require the successful applicant to provide, and arrange for all necessary personnel, facilities, equipment, materials and services required for the successful replication of the SHOCAP process. These activities will require, at a minimum, the applicant to:

1. Identify the major issues and problems associated with juvenile crime nationally and locally.

2. Identify local crime statistics and the sources of this information.

3. Identify and explain the major components of SHOCAP.

4. Discuss in an interagency forum the issues regarding the local implementation of SHOCAP.

5. Develop multi-agency problem solving skills for their participating jurisdictions.

6. Assist participating agencies to implement SHOCAP through processes and procedures designed to fit the need and concerns of the local jurisdictions.

7. Provide support (training and technical assistance) to assist communities in developing and utilizing a self-assessment process for program development purposes.

8. Provide continued support (training and technical assistance) in replicating SHOCAP.

9. Provide for system performance technical assistance and training support so that:

(a) Law Enforcement agencies can institute basic organizational development procedures and improvements to calls for service management, case assignment, and patrol and investigative procedures dealing with juvenile crime; (b) Schools will be assisted in establishing legally acceptable code of conduct rules and set disciplinary procedures; (c) Social service agencies, in partnership with probation and parole agencies, will provide family and mental health services, especially focused towards serious habitual juvenile offender families; (d) Juvenile Intake will hold designated habitual juvenile offenders, and will notify the prosecutor, and prepare records for the detention hearing; (e) pretrial detention can be secured for serious habitual juvenile offenders; (f) A prosecutor will be responsible for screening, detention, hearing, arraignment, discovery, adjudication and dispositional hearings; (g) The Court can authorize the sharing of relevant information; (h) Probation services can institute case management and adopt community wide control concepts that will provide mandatory sanctions for each infraction of probation rules; (i) State corrections facilities will be responsible for the secure housing and rehabilitation and re-entry process for adjudicated serious habitual juvenile offenders who are sentenced to either a definite or indefinite period of incarceration and/or treatment; (j) Parole/Aftercare agencies will help reintegration of the youth; and, working with a SHOCAP multi-agency team, will develop an individualized family and community reintegration plan, including intensive supervision, case management and gradually less secure alternative placements.

10. Development of an inter-agency program planning agreement.

11. Provide methods, strategies, training and technical assistance to each SHOCAP participating jurisdictions to:

(a) Identify serious offender information sources; (b) Draft criteria to identify the serious habitual offender; (c) Develop case load information; (d) Document services available for handling juvenile serious habitual offenders; (e) Develop relevant and quality information on the juvenile serious habitual offender; (f) Review for possible legal, policy, procedural, practices of barriers to information generation and sharing; (g) Develop crime analysis operational capabilities to service the program; (h) Develop crime analysis unit enhancements for case management role; (i) Provide technical review of system case load capability; (j) Develop pre-training implementation plan; (l) Develop agency level program communication on program planning and development; (m) Conduct training needs for current staff; (n) Establish procedures for identifying SHO's and monitoring their actions; (o) Establish instant status check on SHO's through communication and dispatch; (p) Provide program component agencies with SHO list on regular basis; (q) Develop multi-agency unified case file; (r) Determine appropriate agency services available for SHO's; (s) Adopt inter-agency agreements on SHO processing; (t) Assess range and type of services available for SHO's; (u) Establish placement priorities for SHO's; (v) Identify unmet requirements for services needed for SHO's.

IV. Dollar Amount and Duration

The program period for this SHOCAP Cooperative agreement is for two phases over three (3) years. Up to $1,400,000 has been allocated for the initial award. One cooperative agreement will be awarded competitively, and the initial budget period will be for 18 months. It is anticipated that this demonstration program will entail three (3) years and two phases of program activities (i.e. three year project period). Supplemental funds will be allocated for an additional 18 month budget period. Funding for the noncompeting continuation award, i.e. the second budget period within the approved three year project period, may be withheld for justifiable reasons. They include: (1) The results do not justify further program activity; (2) the recipient is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the recipient has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a recipient's management practices have failed to

provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason which would indicate that continued funding would not be in the best interest of the Government.

V. Eligibility

Applicants are invited from public agencies and not-for-profit private organizations. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and co-applicants are designated as such. The applicant must demonstrate fully the required experience to deliver superior support services as required in Section VI, A. Applicants must, in addition to program knowledge and support experience demonstrate programmatic and fiscal management capabilities.

VI. Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424), including a program narrative, a detailed budget, and a budget narrative. All applications must include the following information outlined in Section VI of this solicitation in Part IV, Program Narrative of the application. The Program Narrative should not exceed 70 double-spaced pages in length.

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their relationships in the development of products or provider of certain services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of co-applicant submissions, one co-applicant must be designated as the principal applicant and payee to receive and disperse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants.

Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of the joint and several responsibility with the other co-applicants.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

The information must be included in the application:

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for this cooperative agreement and have substantial organizational experience that can be applied to provide continuation replication support to the SHOCAP program. The criteria used in Section VII of this solicitation is based upon the responsiveness of applicant to the program information and descriptions found in this solicitation, especially Sections I, II, III, V, and VI.

1. *Organizational Experience.*— Applicants must demonstrate that they have the requisite knowledge of and experience with training and technical assistance on the organizational and development processes essential to the effective administration of juvenile, criminal justice and social service agencies such as, law enforcement, courts, probation, corrections, family service and schools. In addition, applicants must demonstrate knowledge and experience with providing technical assistance and training with regard to serious juvenile offenders.

Applicants should demonstrate their organizational capability and experience by providing information responsive to the following:

a. A complete but concise description of the current program activities of the applicant agency that demonstrate the requisite knowledge-base and experience with regard to organizational and development issues for the juvenile justice system and knowledge of and experience with serious juvenile offenders.

b. A discussion of training and technical assistance activities related to multiagency organizational development for the juvenile justice system, coordination of interagency efforts, and serious juvenile crime.

c. A discussion of the applicant's experience in facilitating a nominal group process to refine, modify and develop multi-agency consensus on issues related to the juvenile justice system.

Applicants are invited to append to their applications examples of prior work that would be directly connected to the requirements set forth above, i.e., the jurisdiction and job descriptions that would be responsive to the application and organizational requirements of this solicitation.

2. *Financial Capability.* Applicant must demonstrate that their organization can establish the fiscal controls and accounting procedures that will assure that the Federal funds made available under this agreement will be disbursed and accounted for properly. Applicants who have previously received federal funds will be asked to submit a copy of the Office of Justice Programs (OJP) Accounting System and Financial Capability Questionnaire (OJP Form 7120/1). Copies of these forms will be made available in the application kit and will be prepared and submitted along with the application. Other cooperative agreement applicants may be requested to submit this form. All questions are to be answered regardless of instructions (Section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Objectives

A statement of your understanding of the objectives and tasks associated with the program should be included. The application should include a problem statement and a discussion of the potential contribution of this program to the field.

C. Program Strategy

Applicants should describe the proposed approach for achieving the objectives of the program (Section II); and for achieving the requirements of the program strategy Section. (Section III).

D. Program Implementation Plan

Applicant should prepare a plan that outlines the major activities involved in implementing the program; how resources will be applied; and how the program will be managed. The plan should include an organizational chart depicting the roles and responsibilities of key personnel and organizational functional components. Applicant must provide detailed position descriptions, qualifications, and how and why these persons were picked for the position. Part time and practitioner professionals should also be noted, and their qualifications and experience that would directly bear upon their needs to service the SHOCAP program.

E. Time and Task Plan

Applicant should develop two—18 months task/time plans indicating proposed major milestone activities and the estimated cumulative costs.

F. Products

Applicant should describe program products that will be developed to service the program; and describe who they will be prepared for and for what purpose(s).

G. Program Budget

Applicant shall provide two 18 month budgets. Co-applicant associated costs must be detailed separately and accounted for in as much detail as principal applicant.

VII. Criteria for Applicant Selection

All applicants will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their ability to demonstrate requisite experience to continue the development of the successful SHOCAP specialized technical assistance, training and technology transfer program. Organizational capability, technical/professional soundness of the approach to program development and replication; system management involvement and operational experience relevancy will be important general considerations upon which the application will be judged. Applications will be evaluated by a peer review panel according to OJJDP Competition and Peer Review Policy, 28 CFR Part 34 Subpart B, published August 2, 1985 at 50 FR 31366–31367. The selection criteria and their point values (weights) are as follows:

1. Applicant demonstrated organizational experience, and program management capabilities in the areas described and defined throughout this solicitation (especially Sections II, III, V, VI); experience in working with various state and municipal juvenile justice and criminal justice and non-criminal justice agencies; providing technical assistance in program development and implementation to programs relating to juvenile justice similar to SHOCAP; experience in program technical assistance in organizational and development processes essential to specifying juvenile or criminal justice administration and with serious juvenile crime issues; applicant's staff and consultant experience that is relevant to SHOCAP; and applicants previously prepared technical assistance training materials that are relevant to SHOCAP program development needs. (50 points)

2. Applicant's demonstrated understanding and approach to the program objectives and strategies for program implementation. (35 points)

3. Applicant's key staff and consultant relevant experience and qualifications. (10 points)

4. The extent to which the applicant has provided a sound and fully justified budget that is cost effective. (5 points)

VIII. Submission Requirements

All applicants responding to this solicitation are subject to the following submission requirements.

1. Organizations that plan to respond to this announcement are requested to submit a written notification of their intent to apply to OJJDP by October 28, 1988. Such notification should specify; the name of the organization; co-applicants and contact person. This notification submission is optional and will be used only to estimate that application review workload.

2. Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for application (SF 424) will be provided upon request. Applications must be delivered to OJJDP by 5:00 p.m. on November 14, 1988. Those applications sent by mail should be addressed to OJJDP, U.S. Department of Justice, 633 Indiana Avenue NW., Washington, DC 20531. Hand delivered applications should be delivered to the 633 Indiana Avenue address between business hours or 8:00 and 5:00 p.m. except Saturday, Sundays or Federal holidays.

3. OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not there submission will be recommended for funding. It is anticipated that the grant will be awarded as early as January 1, 1989.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendment of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88–22686 Filed 9–30–88; 8:45 am]

BILLING CODE 4410–18–M

Reader Aids

Federal Register

Vol. 53, No. 191

Monday, October 3, 1988

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FEDERAL REGISTER PAGES AND DATES, OCTOBER

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Last List: September 30, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2342/Pub. L. 100-448

Coast Guard Authorization Act of 1988. (Sept. 28, 1988; 102 Stat. 1836; 15 pages) Price: $1.00

H.R. 5090/Pub. L. 100-449

United States-Canada Free-Trade Agreement Implementation Act of 1988. (Sept. 28, 1988; 102 Stat. 1851; 48 pages) Price: $1.50

S.J. Res. 322/Pub. L. 100-450

To designate the week of September 23-30, 1988, as "National American Indian Heritage Week." (Sept. 28, 1988; 102 Stat. 1899; 1 page) Price: $1.00

S.J. Res. 336/Pub. L. 100-451

Designating October 16, 1988, as "World Food Day." (Sept. 28, 1988; 102 Stat. 1900; 2 pages) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1987 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1988
4	14.00	Jan. 1, 1988
5 Parts:		
1-699	14.00	Jan. 1, 1988
700-1199	15.00	Jan. 1, 1988
1200-End, 6 (6 Reserved)	11.00	Jan. 1, 1988
7 Parts:		
0-26	15.00	Jan. 1, 1988
27-45	11.00	Jan. 1, 1988
46-51	16.00	Jan. 1, 1988
52	23.00	Jan. 1, 1988
53-209	18.00	Jan. 1, 1988
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900-999	26.00	Jan. 1, 1988
1000-1059	15.00	Jan. 1, 1988
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1120-1199	11.00	Jan. 1, 1988
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1900-1939	11.00	Jan. 1, 1988
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2000-End	6.50	Jan. 1, 1988
8	11.00	Jan. 1, 1988
9 Parts:		
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10 Parts:		
0-50	18.00	Jan. 1, 1988
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11	10.00	July 1, 1988
12 Parts:		
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200-219	10.00	Jan. 1, 1988
220-299	14.00	Jan. 1, 1988
300-499	13.00	Jan. 1, 1988
500-599	18.00	Jan. 1, 1988
600-End	12.00	Jan. 1, 1988
13	20.00	Jan. 1, 1988
14 Parts:		
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140-199	9.50	Jan. 1, 1988
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17 Parts:		
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240-End	21.00	Apr. 1, 1988
18 Parts:		
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150-279	12.00	Apr. 1, 1988
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400-End	9.00	Apr. 1, 1988
19 Parts:		
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20 Parts:		
1-399	12.00	Apr. 1, 1988
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22 Parts:		
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300-End	13.00	Apr. 1, 1988
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24 Parts:		
0-199	15.00	Apr. 1, 1988
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26 Parts:		
§§ 1.0-1-1.60	13.00	Apr. 1, 1988
§§ 1.61-1.169	23.00	Apr. 1, 1988
§§ 1.170-1.300	17.00	Apr. 1, 1988
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600-End	6.00	Apr. 1, 1988
27 Parts:		
1-199	23.00	Apr. 1, 1988
200-End	13.00	Apr. 1, 1988
28	23.00	July 1, 1987

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29 Parts:		
*0–99	17.00	July 1, 1988
100–499	6.50	July 1, 1988
500–899	24.00	July 1, 1987
*900–1899	11.00	July 1, 1988
1900–1910	28.00	July 1, 1987
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41 Chapters:		
1, 1–1 to 1–10	13.00	[6] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
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42 Parts:		
1–60	15.00	Oct. 1, 1987
61–399	5.50	Oct. 1, 1987
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43 Parts:		
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1000–3999	24.00	Oct. 1, 1987
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45 Parts:		
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200–499	9.00	Oct. 1, 1987
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46 Parts:		
1–40	13.00	Oct. 1, 1987
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CFR Index and Findings Aids	28.00	Jan. 1, 1988
Complete 1988 CFR set	595.00	1988
Microfiche CFR Edition:		
Complete set (one-time mailing)	125.00	1984
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Subscription (mailed as issued)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Individual copies	3.75	1988

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

CFR ISSUANCES 1988
January—July 1988 Editions and Projected October, 1988 Editions

This list sets out the CFR issuances for the January—July 1988 editions and projects the publication plans for the **October, 1988** quarter. A projected schedule that will include the **January, 1989** quarter will appear in the first **Federal Register** issue of January.

For pricing information on available 1987—1988 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1—16—January 1
Titles 17—27—April 1
Titles 28—41—July 1
Titles 42—50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1988:

Title

CFR Index

1—2

3 (Compilation)

4

5 Parts:
1—699
700—1199
1200—End

6 [Reserved]

7 Parts:
0—26
27—45
46—51
52
53—209
210—299
300—399
400—699
700—899
900—999
1000—1059
1060—1119
1120—1199
1200—1499
1500—1899
1900—1939
1940—1949
1950—1999
2000—End

8

9 Parts:
1—199
200—End

10 Parts:
0—50
51—199
200—399 (Cover only)
400—499
500—End

11

12 Parts:
1—199
200—219
220—299
300—499
500—599
600—End

13

14 Parts:
1—59
60—139
140—199
200—1199
1200—End

15 Parts:
0—299
300—399
400—End

16 Parts:
0—149
150—999
1000—End

Titles revised as of April 1, 1988:

Title

17 Parts:
1—199
200—239
240—End

18 Parts:
1—149
150—279
280—399
400—End

19 Parts:
1—199
200—End

20 Parts:
1—399
400—499
500—End

21 Parts:
1—99
100—169
170—199
200—299
300—499
500—599
600—799
800—1299
1300—End

22 Parts:
1—299
300—End

23

24 Parts:
0—199
200—499
500—699
700—1699
1700—End

25

26 Parts:
1 (§§ 1.0-1—1.60)
1 (§§ 1.61—1.169)
1 (§§ 1.170—1.300)
1 (§§ 1.301—1.400)
1 (§§ 1.401—1.500)
1 (§§ 1.501—1.640)
1 (§§ 1.641—1.850)
1 (§§ 1.851—1.1000)
1 (§§ 1.1001—1.1400)
1 (§§ 1.1401—End)
2—29
30—39
40—49
50—299
300—499
500—599 (Cover only)
600—End

27 Parts:
1—199
200—End

Titles revised as of July 1, 1988:

Title

28*

29 Parts:
0—99
100—499
500—899*
900—1899
1900—1910*
1911—1925
1926*
1927—End*

30 Parts:
1—199
200—699*
700—End*

31 Parts:
0—199*
200—End*

32 Parts:
1—189*
190—399*
400—629*
630—699 (Cover only)
700—799
800—End*

33 Parts:
1—199*
200—End*

34 Parts:
1—299*
300—399*
400—End*

35*

36 Parts:
1—199*
200—End

37

38 Parts:
0—17*
18—End*

39

40 Parts:
1—51*
52*
53—60*
61—80
81—99*
100—149*
150—189*
190—299*
300—399*
400—424*
425—699*
700—End*

41 Parts:
Chs. 1—100
Ch. 101*
Chs. 102—200
Ch. 201—End*

Projected October 1, 1988 editions:

Title

42 Parts:
1—60
61—399
400—429
430—End

43 Parts:
1—999
1000—3999
4000—End

44

45 Parts:
1—199
200—499
500—1199
1200—End

46 Parts:
1—40
41—69
70—89
90—139
140—155
156—165
166—199
200—499
500—End

47 Parts:
0—19
20—39
40—69
70—79
80—End

48 Parts:
Ch. 1 (1—51)
Ch. 1 (52—99)
Ch. 2 (201—251)
Ch. 2 (252—299)
Chs. 3—6
Chs. 7—14
Ch. 15—End

49 Parts:
1—99
100—177
178—199
200—399
400—999
1000—1199
1200—End

50 Parts:
1—199
200—599
600—End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1988

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
October 3	October 18	November 2	November 17	December 2	January 3
October 4	October 19	November 3	November 18	December 5	January 3
October 5	October 20	November 4	November 21	December 5	January 3
October 6	October 21	November 7	November 21	December 5	January 4
October 7	October 24	November 7	November 21	December 6	January 5
October 11	October 26	November 10	November 25	December 12	January 9
October 12	October 27	November 14	November 28	December 12	January 10
October 13	October 28	November 14	November 28	December 12	January 11
October 14	October 31	November 14	November 28	December 13	January 12
October 17	November 1	November 16	December 1	December 16	January 17
October 18	November 2	November 17	December 2	December 19	January 17
October 19	November 3	November 18	December 5	December 19	January 17
October 20	November 4	November 21	December 5	December 19	January 18
October 21	November 7	November 21	December 5	December 20	January 19
October 24	November 8	November 23	December 8	December 23	January 23
October 25	November 9	November 25	December 9	December 27	January 23
October 26	November 10	November 25	December 12	December 27	January 24
October 27	November 14	November 28	December 12	December 27	January 25
October 28	November 14	November 28	December 12	December 27	January 26
October 31	November 15	November 30	December 15	December 30	January 30