10-26-88
Vol. 53 No. 207
Pages 43185-43412

federal register

Wednesday
October 26, 1988

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

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

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

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

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

How To Cite This Publication: Use the volume number and the page number. Example: 53 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

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

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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

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

WASHINGTON, DC

WHEN: November 4; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

Contents

Federal Register
Vol. 53, No. 207
Wednesday, October 26, 1988

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
5887 43185

7 CFR
906 43319
Proposed Rules:
68 43213
906 43319

8 CFR
274 43187
Proposed Rules:
214 43217

14 CFR
91 43320

16 CFR
Proposed Rules:
240 43233

18 CFR
271 43192

19 CFR
4 43197
178 43197

21 CFR
173 43319

29 CFR
801 43320

30 CFR
218 43200
785 43320
823 43320

32 CFR
351b 43201
351c 43201

39 CFR
111 43201

40 CFR
180 43202
280 43322
281 43322
Proposed Rules:
148 43400

42 CFR
Proposed Rules:
435 43320
436 43320

47 CFR
73 (6 documents) 43202–43204
Proposed Rules:
73 (3 documents) 43245, 43246

48 CFR
4 43386
5 43386
8 43386
9 43386
13 43386
14 43386
15 43386
19 43386
25 43386
28 43386
33 43386
36 43386
37 43386
45 43386
52 43386
53 43386
204 43205
301 43205
302 43205
304 43205
305 43205
306 43205
307 43205
315 43205
317 43205
319 43205
332 43205
339 43205
342 43205
352 43205
807 43209
857 43209

49 CFR
Proposed Rules:
1152 43246

50 CFR
625 43319

Federal Register
Vol. 53, No. 207
Wednesday, October 26, 1988

Presidential Documents

Title 3—

The President

Proclamation 5887 of October 22, 1988

Suspension of Entry as Nonimmigrants of Officers and Employees of the Nicaraguan Government

By the President of the United States of America

A Proclamation

In light of the current state of relations between the United States and Nicaragua, including the July 11, 1988, unjustified expulsion from Nicaragua of the United States Ambassador and seven other United States diplomats for pursuing legitimate diplomatic activities, the Nicaraguan government's refusal to allow the entry of United States diplomats to ensure the continued functioning of the U.S. embassy, and long-standing Nicaraguan government suppression of free expression and press and support of subversive activities throughout Central America, I have determined that it is in the interests of the United States to impose certain restrictions on entry into the United States of officers and employees of the Government of Nicaragua and the Sandinista National Liberation Front (hereinafter, the "FSLN").

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the power vested in me by the Constitution and laws of the United States of America, including section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), having found the unrestricted nonimmigrant entry of officers and employees of the Nicaraguan government and the FSLN, except as provided for in Sec. 2 of this Proclamation, to be detrimental to the interests of the United States, do hereby proclaim that:

Section 1. Entry of the following classes of Nicaraguan nationals as nonimmigrants is hereby suspended: (a) officers and employees of the Government of Nicaragua or FSLN holding diplomatic or official passports; and (b) individuals who, notwithstanding the type of passport that they hold, are considered by the Secretary of State or his designee to be officers or employees of the Government of Nicaragua or the FSLN.

Sec. 2. The suspension of entry as nonimmigrants set forth in Section 1 shall not apply to officers or employees of the Government of Nicaragua or the FSLN: (a) who are representatives to, or officers or employees of, organizations designated under the International Organizations Immunities Act (22 U.S.C. section 288) and members of their immediate families residing with them; or (b) in such other cases or categories of cases as may be designated from time to time by the Secretary of State or his designee.

Sec. 3. This Proclamation is effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of October, 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. 88-24947
Filed 10-25-88; 12:11 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 207
Wednesday, October 26, 1988

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 274

[INS Number: 1061-88]

Revision of Regulations Regarding the Seizure and Forfeiture of Conveyances

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule revises the current regulations regarding conveyance seizures and forfeitures by the Immigration and Naturalization Service. It clarifies and amends the regulations to reflect changes in the authorizing statute, section 274(b) of the Immigration and Nationality Act (8 U.S.C. 1324(b)), and applicable provisions of regulations of the Department of Justice in 28 CFR Part 9. The effect of these revisions is to establish more uniformity in handling seizures and forfeitures of property within the Department of Justice.

DATE: This final rule is effective October 26, 1988, but shall apply only to seizures of conveyances occurring on or after the effective date.

FOR FURTHER INFORMATION CONTACT: David R. Yost, Assets Forfeiture Manager, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone (202) 633-2554.

SUPPLEMENTARY INFORMATION: The revisions in this final rule consist of many technical and grammatical changes to the current regulations to improve the organization and consistency of language as well as some substantive changes to conform with applicable statutory and regulatory changes. The following is a brief summarization of the significant changes.

In § 274.1 some additional terms are defined to clarify the meaning of the pertinent terms utilized throughout Part 274 which have caused or could cause misinterpretations. Most of the definitions have been clarified as a result of the experience gained from applying the regulations during the past five years.

Section 274.2 has been revised to provide authorization for any immigration officer to carry out the provisions of section 274(b) of the Immigration and Nationality Act (Act).

Section 274.5 has been revised to be consistent with section 274(b) by deleting the provision that the conveyance of an "innocent owner" is not subject to forfeiture. Concurrently, previous § 274.14, now § 274.15, regarding remission of forfeiture has been amended to permit owners to petition for remission of forfeiture. Additionally, § 274.5 has been revised to facilitate expeditious return of conveyances not subject to forfeiture or for which pursuing forfeiture is not in the best interest of justice without adversely impacting upon the enforcement of section 274(b) of the Act. Similarly, in regard to seeking relief from forfeiture a petition under the revised regulations (§§ 274.13-274.17) can be considered for either remission or mitigation of forfeiture.

Section 274.7 and paragraph 274.1(a) have been revised to establish more uniformity within the Department of Justice regarding the appraisal of seized property.

Sections 274.8 and 274.9 have been revised to provide for more information to the owner and any known lienholders of a seized conveyance about the seizure and procedures for processing a seized conveyance. The revisions, also, provide for more information in the published advertisement of the seizure.

Sections 274.10 and 274.12 have been revised to clarify the procedures for filing a claim and a bond to obtain commencement of judicial forfeiture proceedings for a seized conveyance.

Sections 274.14-274.17 have been reorganized and renumbered to provide procedural information on filing of petitions for relief from forfeiture in two sequential sections. These sections have, also, been revised to facilitate the processing of such petitions without adversely impacting upon enforcement.

Section 274.18 has been expanded to provide further specific guidance on remission of forfeiture in straw purchaser, leasehold, community property, and subrogee situations.

Section 274.19 has been expanded significantly to provide guidance on the handling of and the issuance of determinations on petitions for relief from forfeiture and to provide a procedure for reconsideration of a determination denying relief from forfeiture.

Section 274.21 has been deleted.

This final rule is not a rule within the meaning of either Executive Order 12291, Section 1(a), or the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule is interpretative and states agency policy, practice, and procedure for which notice of proposed rule making is not required under 5 U.S.C. 553(b). This rule contains information collection requirements which are exempt from The Paperwork Reduction Act requirements pursuant to the provisions of 5 CFR 1320.3(c).

List of Subjects in 8 CFR Part 274

Administrative practice and procedure, Seizures and forfeitures, Conveyances.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended by revising Part 274 to read as follows:

PART 274—SEIZURE AND FORFEITURE OF CONVEYANCES

Sec.

Sec.

Authority: 8 U.S.C. 1103, 1324(b).

§ 274.1 Definitions.

The following definitions apply to the following terms in this part:

(a) The term "appraised value" means the estimated price at the time and place of seizure, if such or similar property were freely offered for sale.

(b) The term "beneficial owner" means a person who has dominion and control over a conveyance, as well as a property interest therein.

(c) The term "claimant" means any person who asserts a property interest in a seized or forfeited conveyance through a personal interview or by filing a claim and a bond or a petition for relief from forfeiture.

(d) The term "common carrier" means an express carrier, a freight forwarder, a motor common carrier, a rail carrier, a sleeping car carrier, and a water common carrier, as each of those terms is defined in 49 U.S.C. 10102; and an air carrier and a foreign air carrier, as each of those terms is defined in 49 U.S.C. 1301.

(e) The term "consenting party or privy to the illegal act" means that the person knew of the illegal activity. A person shall be presumed to have knowledge of an illegal activity if the facts and circumstances are such that a person would reasonably be expected to know of the illegal activity.

(f) The term "conveyance" means a vessel, vehicle, or aircraft as used in section 274(b) of the Act. A trailer shall be considered a vehicle if it is being towed or readily capable of being towed. An immobilized house trailer which has been placed on permanent foundations, which is not readily mobile, is not a vehicle.

(g) The term "custodian" means the regional commissioner or the U.S. Marshals Service.

(h) The date of an action in conjunction with the term "filed" means the following:

(1) Date of receipt in the office specified in this part for filing, if filing is by personal delivery;

(2) Date of postmark, if filing is by mail to the office specified in this part for filing;

(3) Date five days prior to date of receipt in the office specified in this part for filing, if filing is by mail to the office specified in this part for filing and date of postmark is missing or illegible; or

(4) Date of receipt in the office specified in this part for filing, if filing is by mail to any other office.

(i) The term "lien" means in interest created by a conditional sales contract, mortgage, title retention contract, debt reduced to a judicial judgment upon which there has been an execution or an attachment against a conveyance, or other security interest in a conveyance. A lienholder is the holder of such an interest.

(j) The term "net equity" means the amount of monetary interest of a lienholder in a conveyance. Net equity is to be computed by determining the amount of unpaid principal and unpaid interest as of the date of seizure, and by adding to that amount the unpaid interest calculated from the date of seizure through the last full month prior to the date of the determination granting relief from forfeiture. The rate of interest to be used in this computation will be the annual percentage rate specified in the security agreement which is the basis of the interest of the lienholder. In this computation there shall be no allowances for unearned extended warranty, insurance, or service contract charges incurred after the date of seizure, nor allowances for dealer reserves, attorneys fees, or other similar charges.

(k) The term "owner" means a person who has the right to possess and use a conveyance to the exclusion of other persons. A person who has complied with the state formalities for a title or a registration for a conveyance is not the owner if such person does not have sufficient actual beneficial interest in the conveyance. In the consideration of a petition for relief from forfeiture the mere existence of a community property interest without proof of financial contribution to the purchase of a conveyance will not be deemed a property interest. Ownership is the interest that an owner has in a conveyance.

(l) The term "person" means an individual, partnership, corporation, joint business enterprise, or other entity capable of owning a conveyance.

(m) The term "petitioner" means a person filing a petition for relief from forfeiture of a seized conveyance.

(n) The term "property interest" means ownership, lien, or other legally cognizable interest in or legal entitlement to possession of a conveyance existing on the date of seizure of the conveyance. A person who has complied with the state formalities of a title or a registration for a conveyance may not have sufficient actual beneficial interest or other legally cognizable interest in a conveyance. In the consideration of a petition for relief from forfeiture the mere existence of a community property interest without proof of financial contribution to the purchase of a conveyance will not be deemed a property interest.

(o) The term "record" means an arrest for a related crime followed by a conviction, except that a single arrest and conviction and the expiration of any sentence imposed as a result of the conviction, all of which occurred more than ten years prior to the date a claimant acquired a property interest in the seized or forfeited conveyance, is not considered a record; *provided* that two convictions of related crimes shall always be considered a record regardless of when the convictions occurred; *and provided* that the regional commissioner may consider as constituting a record an arrest for a related crime or series of arrests for related crimes in which the charge or charges were subsequently dismissed for reasons other than acquittal or lack of evidence.

(p) The term "regional commissioner" means the Regional Commissioner of the Service for the region in which a conveyance is seized, or the designee of that Regional Commissioner.

(q) The term "related crime" means any crime similar in nature to or related to the illegal bringing in, harboring, transportation, entry, reentry, or importation of aliens.

(r) The term "reputation" means repute for related crimes with a law enforcement agency or among law enforcement officers or in the community generally, including any pertient neighborhood or other area.

(s) The term "seizure" means the act of taking a conveyance into the custody of the Service for the express purpose of considering forfeiture pursuant to section 274(b) of the Act and this part.

(t) The term "state" means any state or any like political division of any geographical territory defined in section 101(a)(38) of the Act as being part of the United States or any state or any like political division of any geographical territory of any other nation or territory, unless otherwise limited in this part.

(u) The term "sufficient actual beneficial interest" means the interest in a conveyance of a beneficial owner.

(v) The term "violator" means a person whose use of or actions with regard to a conveyance in violation of the law subjected the conveyance to seizure pursuant to section 274(b) of the Act and this part.

§ 274.2 Officers authorized to seize conveyances.

For the purpose of carrying out the provisions of section 274(b) of the Act and this part, any immigration officer is authorized and designated by the Commissioner to seize a conveyance.

§ 274.3 Custody and duties of custodian.

Any conveyance seized pursuant to section 274(b) of the Act and this part shall be stored in a location designated by the custodian. The custodian is to receive and maintain in storage all conveyances seized and all conveyances forfeited pursuant to section 274(b) of the Act and this part. After the custodian is notified that all proceedings, administrative or judicial, have been completed and that all petitions for relief from forfeiture have been finally adjudicated, a conveyance is available for disposition according to law. The custodian is authorized to dispose of any conveyances pursuant to section 274(b) of the Act and any other applicable statutes or regulations relative to disposal; and to perform other duties, not inconsistent with the provisions of the Act, regarding seized and forfeited conveyances and the proceeds of sales thereof, as are imposed on the U.S. Customs Service with respect to seizures under the Customs statutes, including the maintenance of appropriate records concerning the seizure and disposition of conveyances.

§ 274.4 Conveyances subject to seizure; termination of interest.

(a) Any conveyance which an immigration officer has probable cause to believe has been or is being used in the commission of a violation of section 274(a) of the Act is subject to seizure.

(b) Any property interest in a conveyance is automatically terminated as of the date of the seizure, if the conveyance is later declared forfeited. Any provision of any state law which recognizes a continuing property interest or right to reinstatement of a property interest in a conveyance has no effect after the date of the seizure of the conveyance, if the conveyance is later declared forfeited.

(c) The custodian is authorized to execute a document of title to convey ownership of a conveyance declared forfeited pursuant to section 274(b) of the Act and this part.

§ 274.5 Return to owner of seized conveyance not subject to forfeiture; opportunity for personal interview.

(a) The Service shall attempt with due diligence to ascertain the ownership of any conveyance seized pursuant to section 274(b) of the Act and this part, in order to determine whether the conveyance is subject to forfeiture.

(b) The following conveyances are not subject to forfeiture:

(1) A conveyance used by any person as a common carrier, unless it appears that the owner or other person in charge was a consenting party or privy to the illegal use of the conveyance; and

(2) A conveyance established by the owner to have been unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state of the United States as defined in section 101(a)(38) of the Act.

(c) The owner of a seized conveyance shall be informed of the right to request a personal interview with an immigration officer and to present evidence to establish:

(1) That the conveyance was not subject to seizure; or

(2) That the conveyance is not subject to forfeiture; or

(3) That the conveyance was used in an act to which the owner was not privy, or did not consent, and the owner took all reasonable steps to prevent the illegal use of the conveyance.

If it is determined that the owner has established that paragraphs (c)(1) or (c)(2) of this section apply to the seized conveyance, that seized conveyance shall be returned to the owner as provided in paragraph (e) of this section; and if it is determined that the owner has established that paragraph (c)(3) of this section applies to the seized conveyance, that seized conveyance may be returned to the owner as provided in paragraph (d) of this section.

(d) At any time after seizure the regional commissioner may determine that it is in the best interests of justice not to pursue forfeiture of a seized conveyance which is otherwise subject to forfeiture. If such a determination is made, that seized conveyance shall be returned to the owner as provided in paragraph (e) of this section.

(e) The owner of a seized conveyance to be returned pursuant to paragraphs (c) or (d) of this section will be notified of the conditions of obtaining possession and that possession of the seized conveyance must be taken within 20 days of receipt of notice of the availability of the seized conveyance for return. If the owner has not complied with the conditions of obtaining possession and taken possession of the seized conveyance within that 20 day period, that seized conveyance shall be considered voluntarily abandoned to the United States, and the custodian shall dispose of that seized conveyance as provided in § 274.3 of this part. The conditions of obtaining possession of a seized conveyance available for return pursuant to paragraphs (c) and (d) of this section are as follows:

(1) If paragraph (c)(1) of this section applies to the seized conveyance, there shall be no conditions for obtaining possession;

(2) If paragraphs (c)(2), (c)(3), or (d) of this section apply to the seized conveyance, the owner shall pay all costs and expenses of seizure and shall execute an instrument holding the United States, its agents and employees, harmless from all claims which may result from the seizure and return of the seized conveyance.

(f) If a seized conveyance being returned to the owner pursuant to this section is the subject of judicial forfeiture proceedings, the regional commissioner shall notify the United States Attorney that a determination has been made that the seized conveyance is to be returned to the owner and request that the judicial forfeiture proceedings be terminated.

§ 274.6 Proof of property interest.

The burden of proof is on a claimant to establish that the asserted property interest in a seized conveyance existed on the date of seizure of that conveyance by submission of sufficient satisfactory original documentation or certified copies of the original documentation. If the claimant fails to present documentation showing compliance with required state formalities it will be presumed that a property interest in a seized conveyance did not exist on the date of seizure of that conveyance.

§ 274.7 Appraisal.

The regional commissioner shall determine the appraised value of a seized conveyance by consulting accepted reference guides to conveyance values or experts in conveyance values. If there is no market for a conveyance at the place of seizure, the value of the conveyance in the principal market nearest the place of seizure shall be considered.

§ 274.8 Notice to owner and lienholder of seizure.

Whenever a conveyance is seized, a notice must be given to the owner and any known lienholder notifying them of the seizure of the conveyance and its consideration for forfeiture. The notice must be accompanied by copies of this part, section 274 of the Act, and the proposed advertisement, if an advertisement is required pursuant to § 274.9 of this part. The owner shall be

specifically informed of the provisions of §§ 274.5, 274.10, 274.13, 274.14, 274.15, 274.16, and 274.17 of this part.

§ 274.9 Advertisement.

(a) If the appraised value of a seized conveyance does not exceed $100,000, the regional commissioner shall cause an advertisement of the seizure to be published once a week for at least three successive weeks in a newspaper of general circulation in the federal judicial district in which the seizure occurred.

(b) The advertisement must:

(1) Describe the conveyance seized and indicate the identification number, if any;

(2) State the time and place of seizure;

(3) State that the seized conveyance is subject to forfeiture except as provided in § 274.5(b) of this part;

(4) State that the Service is considering forfeiture of the seized conveyance and sale or other disposal, if declared forfeited; and

(5) State that any prospective petitioners for relief from forfeiture should submit their petitions pursuant to §§ 274.13, 274.14, 274.15, 274.16, and 274.17 of this part within 30 days of publication of the advertisement.

§ 274.10 Judicial forfeiture proceedings upon claim and bond.

(a) Any person claiming ownership of a seized conveyance with an appraised value that does not exceed $100,000 may obtain judicial forfeiture proceedings in United States District Court by filing a claim and a bond as follows:

(1) The claim must set forth the basis of the claimed ownership and allege why the conveyance was not subject to seizure;

(2) The claim must be filed in the office specified in the notice and the advertisement as provided in § 274.8 and § 274.9 of this part within 20 days of the date of first publication of the advertisement;

(3) The claim must be accompanied by a bond in the amount of the lesser of $5,000 or ten percent of the appraised value of the seized conveyance, but in no event less than $250, in the form of cash or certified check; and

(4) If the bond is in the form of a check, it must be drawn payable to the Immigration and Naturalization Service.

The bond will be held by the custodian. The costs and expenses of the judicial forefeiture proceedings will be paid from the bond, following completion of the proceedings. Any balance remaining shall be returned to the claimant.

(b) The regional commissioner may waive the bond requirement in the manner provided in § 103.7(c)(1) of this chapter.

(c) The filing of a claim and a bond does not entitle the claimant to possession of the conveyance.

§ 274.11 Administrative forfeiture.

If the appraised value of a seized conveyance does not exceed $100,000, and a claim and a bond are not filed within 20 days of the date of first publication of the advertisement as provided in § 274.9 of this part, the regional commissioner may declare the seized conveyance forfeited. The regional commissioner shall execute the declaration of forfeiture. The custodian shall dispose of the forfeited conveyance as provided in § 274.3 of this part.

§ 274.12 Judicial forfeiture.

If the appraised value of a seized conveyance exceeds $100,000, or a claim and a bond have been filed for a seized conveyance with an appraised value that does not exceed $100,000 as provided in § 274.10(a) of this part, the regional commissioner shall transmit a copy of the advertisement as provided in § 274.9 of this part and a complete statement of the facts and circumstances surrounding the seizure to the United States Attorney for the federal judicial district in which the conveyance was seized for commencement of judicial forfeiture proceedings pursuant to section 274(b) of the Act and this part.

§ 274.13 Petitions for relief from forfeiture; filing.

(a) Any person having a property interest in any seized conveyance may file a petition for relief from forfeiture. A petition must comply with the provisions of this section and §§ 274.14, 274.15, 274.16, and 274.17 of this part and be filed with the regional commissioner if the seized conveyance has not been referred to a United States Attorney pursuant to § 274.12 of this part for the commencement of judicial forfeiture proceedings. If such a referral has occurred, a petition must comply with the provisions of 28 CFR 9.3 and be filed with the United States Attorney.

(b) A petition must be executed and sworn to by the petitioner or by duly authorized counsel for the petitioner upon information and belief.

(c) A petition must include the following:

(1) A complete description of the conveyance, including identification number, if any, and the date and place of seizure;

(2) A complete statement of the property interest in the seized conveyance asserted by the petitioner, which property interest must be established as provided in § 274.6 of this part; and

(3) The facts and circumstances, with satisfactory proof thereof, relied upon by the petitioner to justify relief from forfeiture.

(d) Filing of a petition does not extend the time for filing a claim and a bond.

(e) If a petition is received by or a petition without a determination issued thereon is in the possession of the regional commissioner which asserts a property interest in a seized conveyance which is the subject of a referral to a United States Attorney for commencement of judicial forfeiture proceedings, the regional commissioner shall transmit the petition and a recommendation thereon to the United States Attorney. The regional commissioner shall notify the petitioner of the transmittal. Upon receipt of such a petition, the United States Attorney shall forward a copy of the petition, the recommendation of the regional commissioner, and the recommendation of the United States Attorney to the Director, Asset Forfeiture Office, Criminal Division, Department of Justice.

§ 274.14 Time for filing petitions

(a) Petitions for the reliefs of remission or mitigation of forfeitute should be filed within 30 days of the date of first publication of the advertisement as provided in § 274.9 of this part. After a seized conveyance has been declared forfeited and placed in official use, sold, or otherwise disposed of according to law, petitions for the reliefs of remission or mitigation of forfeiture shall not be accepted.

(b) Petitions for the relief of restoration of proceeds of sale or the appraised value of a seized and forfeited conveyance placed in official use or otherwise disposed of according to law must be filed within 90 days of the sale of the seized and forfeited conveyance or within 90 days that the seized and forfeited conveyance is placed in official use or otherwise disposed of according to law.

§ 274.15 Remission.

(a) The regional commissioner shall not grant remission of forfeiture unless the petitioner establishes:

(1) A property interest in the conveyance;

(2) That at no time did the petitioner have any knowledge or reason to believe that the conveyance was being or would be used in violation of the law,

including satisfying any applicable provisions of § 274.18 of this part;

(3) That the petitioner had no knowldege of the particular violation which subjected the conveyance to seizure and forfeiture;

(4) That the petitioner had no knowledge that the owner nor anyone else using or able to use the conveyance had any record or reputation; had

(5) That the petitioner had taken all reasonable steps to prevent the illegal use of the conveyance.

(b) Remission of forfeiture can only be granted after a seized conveyance has been declared forfeited.

(c) Grant of remission of forfeiture must be conditioned upon:

(1) Payment to the custodian of all costs and expenses of the seizure and forfeiture; or, in the case of a lienholder-petitioner, payment of all costs and expenses of the seizure and forfeiture or the amount by which the appraised value exceeds the net equity of the lienholder-petitioner in the conveyance, whichever is greater;

(2) Execution of an instrument by the petitioner holding the United States, its agents and employees, harmless from all claims which may result from the grant of remission of forfeiture;

(3) Execution of an agreement by the petitioner that no property interest in the conveyance will be transferred to any violator; and

(4) Any other terms or conditions as the regional commissioner determines to be appropriate, including a provision for liquidated damages to guarantee compliance with any of the provisions of the agreement or terms and conditions of the remission of forfeiture.

(d) The following provisions apply only to an owner-petitioner that is granted remission of forfeiture:

(1) Within 20 days after receipt of the determination, that owner-petitioner shall comply with the conditions of remission and take possession of the forfeited conveyance; and

(2) If that owner-petitioner does not comply with the provisions of paragraph (d)(1) of this section, the forfeited conveyance shall be placed in official use, sold, or otherwise disposed of by the custodian as provided in § 274.3 of this part. The proceeds of a sale of the forfeited conveyance shall be applied first to all costs and expenses of the seizure, forfeiture, and sale and any remaining balance shall be paid to that owner-petitioner. If the forfeited conveyance is placed in official use or otherwise disposed of, that owner-petitioner shall be paid an amount equal to the appraised value of the conveyance minus all costs and expenses of the seizure, forfeiture, and disposal.

(e) The following provisions apply only to a lienholder-petitioner that is granted remission of forfeiture:

(1) That lienholder-petitioner shall receive payment of the net equity of that lienholder-petitioner, if the forfeited conveyance is placed in official use or otherwise disposed of according to law; or either possession of the forfeited conveyance, or a monetary amount not to exceed the net equity of that lienholder-petitioner from a sale of the forfeited conveyance;

(2) Within 20 days after receipt of the determination, that lienholder-petitioner shall comply with the conditions of remission and take possession of the forfeited conveyance; and

(3) If that lienholder-petitioner does not comply with the provisions of paragraph (e)(2) of this section, the forfeited conveyance shall be placed in official use, sold, or otherwise disposed of by the custodian as provided in § 274.3 of this part. The proceeds of a sale shall be applied first to all costs and expenses of the seizure, forfeiture, and sale and any remaining balance not exceeding the net equity of that lienholder-petitioner shall be paid to that lienholder-petitioner. If the forfeited conveyance is placed in official use or otherwise disposed of, that lienholder-petitioner shall be paid the net equity of that lienholder-petitioner minus all costs and expenses of the seizure, forfeiture, and disposal.

§ 274.16 Mitigation.

(a) The regional commissioner may grant mitigation of forfeiture of a seized conveyance to a petitioner, including a violator. To be eligible for the relief of mitigation of forfeiture, a petitioner must establish that transfer of ownership of the forfeited conveyance to the petitioner promotes the interests of justice and does not diminish the deterrent effect of section 274(b) of the Act.

(b) A grant of mitigation of forfeiture shall be in the form of a monetary penalty imposed upon the petitioner in addition to any other amounts chargeable as a condition to the grant of the relief of remission of forfeiture. This penalty is considered as an item of cost payable by the petitioner.

(c) Mitigation of forfeiture can only be granted after a seized conveyance has been declared forfeited.

(d) A grant of mitigation of forfeiture must be conditioned upon:

(1) Execution of an instrument by the petitioner holding the United States, its agents and employees, harmless from all claims which may result from the grant of mitigation of forfeiture;

(2) Execution of an agreement that no property interest in the conveyance will be transferred to any violator, or any other violator if the petitioner is a violator; and

(3) Any other terms or conditions as the regional commissioner determines to be appropriate, including a provision for liquidated damages to guarantee compliance with any provisions of the agreement or terms and conditions of the mitigation of forfeiture.

(e) The following provisions apply only to an owner-petitioner that is granted mitigation of forfeiture:

(1) Within 20 days after receipt of the determination, that owner-petitioner shall comply with the conditions of mitigation and take possession of the forfeited conveyance; and

(2) If that owner-petitioner does not comply with the provisions of paragraph (e)(1) of this section, the forfeited conveyance shall be placed in official use, sold, or otherwise disposed of by the custodian under § 274.3 of this part. The proceeds of a sale of the forfeited conveyance shall be applied first to all costs and expenses of the seizure, forfeiture, and sale and any remaining balance shall be paid to that owner-petitioner. If the forfeited conveyance is placed in official use or otherwise disposed of, that owner-petitioner shall be paid an amount equal to the appraised value of the conveyance minus all costs and expenses of the seizure, forfeiture, and disposal.

(f) The following provisions apply only to a lienholder-petitioner that is granted mitigation of forfeiture:

(1) That lienholder-petitioner shall receive payment of the net equity of that lienholder-petitioner, if the forfeited conveyance is retained for official use; or either possession of the forfeited conveyance, or a monetary amount not to exceed the net equity of that lienholder-petitioner from the sale of the forfeited conveyance;

(2) Within 20 days after receipt of the determination, that lienholder-petitioner shall comply with the conditions of mitigation and take possession of the forfeited conveyance; and

(3) If the lienholder-petitioner does not comply with the provisions of paragraph (f)(2) of this section, the forfeited conveyance shall be placed in official use, sold, or otherwise disposed of by the custodian as provided in § 274.3 of this part. The proceeds of a sale shall be applied first to all costs and expenses of the seizure, forfeiture, and sale and any remaining balance not exceeding the net equity of that lienholder-petitioner shall

be paid to that lienholder-petitioner. If the forfeited conveyance is placed in official use or otherwise disposed of, that lienholder-petitioner shall be paid the net equity of that lienholder-petitioner minus all costs and expenses of the seizure, forfeiture, and disposal.

§ 274.17 Restoration of proceeds or appraised value.

(a) The regional commissioner shall not grant restoration of proceeds of sale or the appraised value of a conveyance placed in official use or otherwise disposed of according to law unless the petitioner establishes that the petitioner:

(1) Did not know of the seizure prior to the declaration of forfeiture;

(2) Was in such circumstances as prevented the petitioner from knowing thereof; and

(3) Would otherwise have been granted the relief of remission of forfeiture.

(b) A grant of restoration of proceeds of sale or the appraised value of a conveyance placed in official use or otherwise disposed of according to law must be conditioned upon:

(1) Execution of an instrument by the petitioner holding the United States, its agents and employees, harmless from all claims which may result from the grant of restoration of proceeds of sale or the appraised value of a conveyance placed in official use or otherwise disposed of according to law; and

(2) Any other terms or conditions as the regional commissioner determines to be appropriate.

§ 274.18 Provisions applicable to particular situations.

(a) A straw purchaser is a person who purchases in his own name a conveyance for another person, the real purchaser, who has a record or reputation. A lienholder-petitioner that knows, or has reason to believe, that a purchaser of a conveyance is a straw purchaser, must satisfy the requirements of § 274.15(a) of this part as to both the straw purchaser and the real purchaser to be eligible for a grant of remission of forfeiture. This provision applies where money is borrowed on the security of property held in the name of the straw purchaser for the real purchaser.

(b) A petitioner engaged in the business of leasing conveyances must satisfy the requirements of § 274.15(a) of this part as to all lessees and sublessees or other persons having any interest under a lease of the subject conveyance on the date of seizure of that conveyance to be eligible for a grant of remission of forfeiture.

(c) In the consideration of a petition for relief from forfeiture the mere existence of a community property interest without proof of financial contribution to the purchase of a conveyance will not be deemed to have been a property interest in a seized and forfeited conveyance.

(d) A petitioner that submits a petition for remission of forfeiture as a subrogee must satisfy the requirements of § 274.15(a) of this part as to all prior possessors of the subrogated interest in the seized and forfeited conveyance to be eligible for a grant of remission of forfeiture.

§ 274.19 Determinations on petitions; reconsideration.

(a) Upon consideration of a petition for relief from forfeiture and all of the facts and circumstances surrounding the seizure of a conveyance, the regional commissioner shall issue a written determination. In making that determination the regional commissioner shall presume that the evidence is sufficient to support forfeiture of the conveyance. No hearing shall be held on any petitions for relief from forfeiture under this part.

(b) The regional commissioner may deny relief from forfeiture when there are unusual circumstances regarding a seizure which provide reasonable grounds for concluding that remission or mitigation of the forfeiture would be contrary to the interests of justice and would diminish the deterrent effect of section 274(b) of the Act, even if the petitioner has satisfactorily established compliance with the administrative conditions applicable to and eligibility for relief from forfeiture.

(c) Relief from forfeiture shall not be granted to any petitioner who has a subordinate property interest to another petitioner until the petition of the petitioner with the superior property interest has been finally adjudicated nor until any claim or petition of the owner has been finally adjudicated.

(d) The determination on a petition shall set forth either the conditions upon which relief has been granted and the procedures for obtaining possession of the forfeited conveyance or other relief granted; or the reasons for denial of relief from forfeiture and the procedures for requesting reconsideration. The determination on a petition shall be mailed to the petitioner or duly authorized counsel of the petitioner.

(e) Any request for reconsideration of a denial of relief from forfeiture must be submitted to the regional commissioner within 10 days of receipt of the determination on the petition. Such request for reconsideration can only be based on evidence recently developed or not previously considered.

(f) Only one request for reconsideration of a denial of relief from forfeiture shall be considered.

§ 274.20 Compromise of judicial forfeiture proceedings.

Judicial forfeiture proceedings commenced pursuant to section 274(b) of the Act and this part may be compromised by the United States Attorney only with the concurrence of the Director, Asset Forfeiture Office, Criminal Division, Department of Justice. In evaluating a compromise, the United States Attorney shall consider the probabilities for successfully prosecuting the judicial forfeiture proceedings and the terms of the compromise offer. The United States Attorney shall consult with the regional commissioner before recommending a compromise.

Dated: May 5, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc 88-24702 Filed 10-25-88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM86-7-000]

Transcontinental Gas Pipe Line Corporation (Transco); List of First Sellers With Asserted Contractual Authority to Collect Delivery Allowances; Compression Allowances and Protest Procedures Under the Natural Gas Policy Act

Issued October 20, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Publication lists of first sellers with asserted contractual authority to collect delivery allowances.

SUMMARY: In Order No. 473, 52 FR 21660 (June 9, 1987), the Federal Energy Regulatory Commission amended its regulations to provide parties an opportunity to protest allowances for the delivery of natural gas which were heretofore presumed authorized by "area rate" clauses in gas sales contracts. Order No. 473 amended 18 CFR 271.1104(h) to require all interstate pipelines to provide a listing of those producers that have claimed an entitlement to delivery allowances pursuant to an "area rate" clause. The interstate pipelines were required to

indicate whether they concurred in the producers' claim for delivery allowances.

Transco's listing of its contracts was submitted on July 8, 1988. List I sets forth those contracts which Transco contends do not contain contractual authorization for producers to collect delivery allowances. List II sets forth contracts which Transco agrees do contain contractual authority for producers to collect delivery allowances. List III sets forth contracts containing area rate provisions which authorize payment of delivery allowances. However, Transco states that the "expressly authorized" test for contractual authorization contained in § 271.1104(c)(4)(i) of the Commission's regulations also require that the governing contract provide that the seller agree to provide the specified production-related service. The contracts set forth on List III are contracts which provide for delivery of gas at the wellhead. Therefore, according to Transco, the sellers under those contracts have not agreed to provide delivery service and are not contractually entitled to collect delivery allowances.

DATE: Any protest must be filed by January 24, 1989.

ADDRESS: An original and 14 copies of each protest must be filed with Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–9114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. The full text of this list of first sellers who have asserted contractual authority to collect delivery allowances pursuant to § 271.1104 of the Commission's Regulations is available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Lois D.Cashell,

Secretary.

List I.—Transcontinental Gas Pipeline Corp. (TGPL) Producer Contracts Which Do Not Contain Contractual Authorization for Delivery Allowances Under Federal Energy Regulatory Commission Order No. 94–A

Producer	TGPL contract	
	Number	Date
Anadarko	00066	6/22/83
Elf Aquitaine	00067	6/22/83
Centennial Royalty Co., et al	06109	4/2/57
Tarina Oil Co	06233	7/28/60
Fina Oil & Chemical Co	06390	6/7/71
Texaco, Inc	06921	2/19/80
Texaco, Inc	06959	5/5/80
Ogle Production Corp	61077	2/11/81
Lee Brothers Oil Co., et al	61105	4/1/81
Sun Exploration & Prod. Co	61105	4/1/81
Cities Service Co	61176	8/28/81
Sun Exploration & Prod. Co	61180	9/14/81
Amoco Production Co	61363	8/26/85

LIST II.—TRANSCONTINENTAL GAS PIPELINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94–A

Producer	TGPL Contract	
	Number	Date
Petrofia Delaware	00005	8/9/76
Cities Service O&G	00006	8/9/76
Do	00007	8/10/76
Fina Oil & Gas, Inc	00008	8/9/76
Texaco Prod., Inc	00009	8/10/76
Getty Oil Co	00010	8/10/76
Texaco Prod., Inc	00010	8/10/76
Cities Service O&G	00011	8/16/76
Do	00011	8/16/76
Getty Oil Co	00013	8/19/76
Texaco Prod., Inc	00013	8/19/76
Getty Oil Co	00014	8/25/76
Texaco Prod., Inc	00014	8/25/76
Getty Oil Co	00017	9/3/76
Texaco Prod., Inc	00017	9/3/76
Do	00018	9/3/76
Arco Oil & Gas Co	00019	11/4/76
Sun Expl. & Prod	00020	5/19/77
La Land & Expl. Co	00021	10/7/77
Lloxy Holdings, Inc	00021	10/7/77
American Petr. Co. Tx	00022	3/30/78
Fina O&G Co	00022	3/30/78
Amoco Prod. Co	00023	6/14/78
Arco Oil & Gas Co	00024	6/24/78
Mesa Oper. Ltd. Part	00025	7/17/78
Petro Lewis Corp	00026	5/16/78
Amoco Prod. Co	00027	8/11/78

LIST II.—TRANSCONTINENTAL GAS PIPELINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94–A—Continued

Producer	TGPL Contract	
	Number	Date
Cities Service O&G	00028	8/25/78
Oxy Petr., Inc	00028	8/25/78
Canadian OCC of Calif	00029	8/25/78
Sun Expl. & Prod	00030	10/6/78
Cities Service O&G	00032	11/13/78
Oxy Petr., Inc	00032	11/13/78
Texaco Prod., Inc	00033	2/14/79
Cities Service O&G	00035	4/20/79
La Land & Expl. Co	00037	6/5/79
Lloxy Holdings, Inc	00037	6/5/79
La Land & Expl. Co	00038	6/13/79
Cities Service O&G	00039	5/10/79
Oxy Petr., Inc	00039	5/10/79
Canadian OCC of Calif	00040	5/10/79
Petro Lewis Corp	00041	7/13/79
Amoco Prod. Co	00042	8/10/79
Do	00043	8/10/79
Petro Lewis Corp	00044	7/31/79
Cities Service O&G	00045	8/1/79
Do	00047	8/3/79
Arco Oil & Gas Co	00049	10/24/79
Conoco, Inc	00049	10/24/79
Getty Oil Co	00050	9/1/79
Texaco Prod., Inc	00050	9/1/79
Arco Oil & Gas Co	00052	8/5/80
Denison Mines (US)	00053	11/11/80
Arco Oil & Gas Co	00054	8/17/81
Conoco, Inc	00054	8/17/81
Arco Oil & Gas Co	00055	8/17/81
Wilshire Oil Co. of Tx	00057	2/18/82
Texaco, Inc	00058	5/19/82
Arco Oil & Gas Co	00059	5/14/82
Texaco Prod., Inc	00060	7/6/82
Cities Service O&G	00061	9/29/82
Petro Lewis Corp	00063	12/22/82
La Land & Expl. Co	00063	3/30/83
Lloxy Holdings, Inc	00064	3/30/83
Mobil Oil Expl. & Prod	06032	9/12/47
Marathon Oil Co	06033	4/30/48
Sun Expl. & Prod	06033	4/30/48
Do	06071	9/24/47
Phillips Petr. Co	06090	8/29/56
Union Expl. Part., Ltd	06090	8/29/56
Phillips Petr. Co	06094	11/10/56
SPG Expl. Corp	06100	12/19/56
Arco Oil & Gas Co	06113	5/9/57
Enstar Petr. Co	06117	9/18/57
Fluor O&G Corp	06117	9/18/57
Mosbacher, Robt	06131	8/30/57
Chevron USA, Inc	06141	12/23/57
Enstar Petr. Co	06141	12/23/57
Lyco Acquisition 1983	06141	12/23/57
Moses, Lannie M	06141	12/23/57
Mullins, Betsy M	06141	12/23/57
Odeco O&G Co	06141	12/23/57
Petro Lewis Funds, Inc	06141	12/23/57
Phillips Petr. Co	06141	12/23/57
Tenneco Oil Co	06141	12/23/57
Texas Ranger, Inc	06141	12/23/57
TXP Opr. Co	06141	12/23/57
Union Texas Petr. Corp	06153	1/7/58
Exxon Corp	06155	2/11/58
Do	06156	2/11/58
Union Oil Co. of Calif	06161	12/27/57
Kerr McGee Corp	06172	11/14/58
Amoco Prod. Co	06173	11/14/58
Phillips Oil Co	06174	11/14/58
Orlando-Soi Ptr	06193	3/23/59
Union Texas Petr., Corp	06193	3/23/59

LIST II.—TRANSCONTINENTAL GAS PIPELINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Exxon Corp	06212	10/15/59
Arco Oil & Gas Co	06213	10/15/59
Gulf Oil Corp	06213	10/15/59
Arco Oil & Gas Co	06214	9/5/59
Tarina Oil Co	06233	7/28/60
Union Expl. Part., Ltd	06240	7/21/60
Amoco Prod. Co	06241	7/28/60
BHP Petr. Americas, Inc	06243	7/30/60
CNG Prod. Co	06243	7/30/60
Odeco O&G Co	06243	7/30/60
Shore Oil Corp	06243	7/30/60
TXO Opr. Co	06243	7/30/60
Chevron USA, Inc	06256	4/4/61
Gulf Oil Corp	06256	4/4/61
Mobil Oil Expl. & Prod	06257	4/17/61
Exxon Corp	06260	6/19/61
North Central Oil	06262	9/1/61
Sohio Petr. Co	06262	9/1/61
Amoco Prod. Co	06271	1/16/62
Union Oil Co. of Calif	06271	1/16/62
Amoco Prod. Co	06281	10/21/64
Union Expl. Part., Ltd	06281	10/21/64
Mobil Oil Expl. & Prod	06282	1/26/65
Conoco, Inc	06283	2/1/65
Chevron USA, Inc	06285	1/20/65
Walter O&G Corp	06286	7/7/65
Chevron USA, Inc	06288	8/11/65
Mosbacher, Robt	06288	8/11/65
Cabot Petr. Corp	06295	1/19/67
Case Pomeroy Oil Corp	06295	1/19/67
Felmont Oil Corp	06295	1/19/67
Kerr McGee Corp	06295	1/19/67
Chevron USA, Inc	06297	6/1/67
Sun Expl. & Prod	06304	10/3/67
Amerada Hess Corp	06305	10/3/67
American Prod. Part III	06305	10/3/67
American Prod. Part IV	06305	10/3/67
Ameriplor Corp	06305	10/3/67
Aminoil USA, Inc	06305	10/3/67
La Land & Expl. Co	06305	10/3/67
Phillips Petr. Co	06305	10/3/67
Phillips Petr. Co	06306	8/31/67
Union Oil Co. of Calif	06307	11/09/67
Eugene Shoal Oil Co	06313	2/27/69
Union Expl. Part., Ltd	06313	2/27/69
Eugene Shoal Oil Co	06319	2/27/69
Marathon Oil Co	06319	2/26/69
Union Expl. Part., Ltd	06319	2/27/69
BHP Petr. Americas, Inc	06320	3/28/68
CNG Prod. Co	06320	3/28/68
Energy Reserves Group	06320	3/28/68
Odeco O&G Co	06320	3/28/68
Shore Oil Corp	06320	3/28/68
TXP Opr. Co	06320	3/28/68
Chevron USA, Inc	06321	3/13/68
Amoco Prod. Co	06324	3/3/69
Do	06325	3/3/69
Alliance Oper. Corp	06326	3/3/69
Amoco Prod. Co	06327	3/3/60
Do	06331	11/8/69
Aminoil USA, Inc	06332	10/4/68
Cabot Petr. Corp	06332	10/4/68
Elf Aquitane, Inc	06332	10/4/68
Felmont Oil Corp	06332	10/4/68
Kerr McGee Corp	06332	10/4/68
Murphy Oil Corp	06332	10/4/68
Odeco O&G Co	06332	10/4/68
Phillips Petr. Co	06332	10/4/68
Sun Expl. & Prod	06332	10/4/68

LIST II.—TRANSCONTINENTAL GAS PIPELINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Union Expl. Part., Ltd	06334	12/2/68
Union Oil Co. of Calif	06334	12/2/68
Cabot Petr. Corp	06336	3/14/69
Felmont Oil Corp	06336	3/14/69
Kerr McGee Corp	06336	3/14/69
Sun Expl. & Prod	06336	3/14/69
Cabot Petr. Corp	06337	3/17/69
Case Pomeroy Oil Corp	06337	3/17/69
Felmont Oil Corp	06337	3/17/69
Kerr McGee Corp	06337	3/17/69
Mobil Oil Expl. & Prod	06339	3/31/69
Chevron USA, Inc	06340	4/08/69
Mobil Oil Expl. & Prod	06341	4/15/69
Traillour Oil Co	06345	6/16/69
Amoco Prod. Co	06351	8/22/69
Phillips Petr. Co	06354	11/17/69
Texaco, Inc	06355	12/8/69
Do	06356	12/8/69
Aminoil USA, Inc	06358	12/15/69
Elf Aquitaine, Inc	06358	12/15/69
Murphy Oil Corp	06358	12/15/69
Odeco O&G Co	06358	12/15/69
Pelto Oil Co	06358	12/15/69
Phillips Petr. Co	06358	12/15/69
Sun Expl. & Prod	06358	12/15/69
Do	06360	12/17/69
CNG Prod. Co	06363	12/31/69
Murphy Oil Corp	06363	12/31/69
Odeco O&G Co	06363	12/31/69
Phillips Petr. Co	06371	6/10/70
Texaco Prod., Inc	06373	8/7/70
Do	06375	9/1/70
Sun Expl. & Prod	06376	9/1/70
Cities Service O&G	06377	9/2/70
Kamlok, Inc	06381	11/25/70
Cities Service O&G	06388	5/17/71
Texaco Prod. O&G	06392	7/12/71
Knob Hill O&G Corp	06393	8/02/71
TXP Opr. Co	06393	8/2/71
Enstar Petr. Co	06394	8/2/71
104 Cameron Corp	06394	8/2/71
Chevron USA, Inc	06395	7/29/71
Arco Oil & Gas Co	06399	9/1/71
C&K Petr., Inc	06410	4/20/72
Enstar Petr. Co	06410	4/20/72
Been, John A	06434	1/15/73
Convest Energy Corp	06434	1/15/73
Crutcher, Albert B. Jr	06434	1/15/73
Dorchester Expl., Inc	06434	1/15/73
Enstar Petr. Co	06434	1/15/73
Furth Oil Co	06434	1/15/73
Houstoun, Evelyn N	06434	1/15/73
Lemmon, Mark L	06434	1/15/73
Mclean Stewart Invest	06434	1/15/73
Mitchell Energy Corp	06434	1/15/73
Owen, William R	06434	1/15/73
Price, Joe D	06434	1/15/73
Shepherd, R.A., Jr	06434	1/15/73
Tufts, J.D. II	06434	1/15/73
Union Texas Petr. Corp	06434	1/15/73
Willoughby, R.E	06434	1/15/73
Zapata Expl. Co	06434	1/15/73
Arco Oil & Gas Co	06436	1/15/73
Anadarko Petr. Corp	06440	9/20/73
Andarko Prod. Co	06440	9/20/73
Shell Offshore, Inc	06443	3/20/74
American Petr. Co. Tx	06444	3/20/74
Southland Royalty Co	06449	5/10/74
Texaco, Inc	06462	8/29/74

LIST II.—TRANSCONTINENTAL GAS PIPELINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Arco Oil & Gas Co	06470	11/7/74
BHP Petr. Co	06470	11/7/74
Castle, Inc	06470	11/7/74
Conoco, Inc	06470	11/7/74
Cory, Kenneth W	06470	11/7/74
Grampian Co. Ltd	06470	11/7/74
Marathon Oil Co	06470	11/7/74
Mobil Prod. Tx & NM	06470	11/7/74
Sun Expl. & Prod	06470	11/7/74
Texaco Prod., Inc	06470	11/7/74
Wintergreen Energy	06470	11/7/74
Mosbacher, Robt	06476	5/1/75
Arco Oil & Gas Co	06478	6/24/75
Brown, George H. Ptr	06486	7/2/75
Phillips Oil Co	06489	5/22/75
Phillips Petr. Co	06489	5/22/75
Coastal O&G Corp	06490	12/10/75
Samedan Oil Corp	06491	12/10/75
Arco Oil & Gas Co	06496	1/7/76
Huffco Petr. Corp	06502	2/10/76
Jerry Chambers Expls. Co	06502	2/10/76
Fina Oil & Gas, Inc	06503	7/15/76
Petrofina Delaware	06503	7/15/76
Mobil Oil Expl. & Prod	06504	7/29/76
Phillips Petr. Inc	06505	8/11/76
Paine W-Geodyn Ptr. IB	06508	9/3/76
Paine W-Geodyn Ptr. IC	06508	9/3/76
Paine W-Geodyn Ptr. IB	06509	9/3/76
Paine W-Geodyn Ptr. IC	06509	9/3/76
Phillips Oil Co	06510	9/3/76
Newmont Oil Co	06511	9/1/76
Shell Offshore, Inc	06513	9/1/76
TXP Opr. Co	06514	9/1/76
Eason Oil Co	06515	9/1/76
Southland Royalty Co	06516	9/1/76
Newmont Oil Co	06520	9/23/76
McMoran-Freeport Oil	06521	9/1/76
Amoco Prod. Co	06526	11/8/76
Union Texas Petr. Corp	06528	11/23/76
Phillips Petr. Co	06530	12/2/76
Texaco Prod. Inc	06538	1/28/77
TXP. Opr Co	06560	7/29/77
Mobil Oil Expl. & Prod	06563	8/25/77
Do	06564	8/25/77
Linder Energy Co	06573	10/26/77
Louisiana General Oil co	06573	10/26/77
Moody, C.W. Jr	06576	8/11/77
Mosabacher, Robt	06576	8/11/77
Nicklos O&G Co	06576	8/11/77
Scott, C.J	06576	8/11/77
Wainoco O&G Co	06576	8/11/77
TXP Opr. Co	06577	11/16/77
Mobil Prod. TX & NM	06578	12/6/77
Mosbacher, Robt	06580	8/8/77
Mobil Prod. TX & NM	06582	12/19/77
Enstar Petr. Co	06585	12/15/77
Moses, Lannie M	06585	12/15/77
Mullins, Betsy N	06585	12/15/77
Odeco O&G Co	06585	12/15/77
Petro Lewis Sands, Inc	06585	12/15/77
Texas Ranger, Inc	06585	12/15/77
Mobil Prod. TX & NM	06586	12/19/77
Do	06589	12/31/77
Shell Offshore, Inc	06590	1/9/78
Texaco, Inc	06593	1/25/78
TXP Opr. Co	06595	2/9/78
Texaco, Inc	06597	1/25/78
Shell Offshore, Inc	06603	3/3/78
Do	06604	3/3/78

LIST II.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
TXP Opr. Co	06605	3/3/78
Do	06606	3/3/78
Shell Offshore, Inc	06608	3/10/78
Conoco, Inc	06610	3/17/78
Shell Offshore, Inc	06610	3/17/78
Chevron USA, Inc	06614	5/12/78
TXP Opr. Co	06615	5/15/78
Union Expl. Part., Ltd	06616	5/16/78
Do	06618	5/16/78
La Land & Expl. Co	06619	5/16/78
Union Expl. Part., Ltd	06619	5/16/78
La Land & Expl. Co	06620	5/16/78
Union Expl. Part., Ltd	06620	5/16/78
Odeco O&G Co	06624	6/13/78
TXP Opr. Co	06625	6/28/78
Petro Lewis Funds, Inc	06626	6/26/78
Do	06627	6/26/78
Do	06633	7/19/78
Mobil Oil Expl. & Prod	06640	8/10/78
Newmont Oil Co	06643	8/15/78
Mobil Prod TX & NM	06644	8/11/78
Amoco Prod. Co	06649	9/7/78
Coastal O&G Corp	06652	9/19/78
Mesa Petro. Co	06652	9/19/78
McMoran-Freeport Oil	06654	10/14/78
Unidel Oil Corp	06655	10/24/78
Chevron USA, Inc	06659	9/21/78
Texaco, Inc	06661	9/27/78
Mobil Prod. TX & NM	06664	9/27/78
Koch Industries, Inc	06667	10/4/78
Santa Fe-Andover Oil	06667	10/4/78
Phillips Petr. Co	06668	10/16/78
Mosbacher, Robt	06671	10/13/78
King Ranch, Inc	06674	9/18/78
Phillips Petr. Co	06675	10/20/78
Ocean O&G Co	06677	11/1/78
Do	06677	11/1/78
Phillips Petr. Co	06680	11/16/78
TXP Opr. Co	06684	12/4/78
Chevron USA, Inc	06685	11/28/78
Partnership Prop. Co	06697	12/12/78
Do	06700	12/12/78
TXP Opr. Co	06701	10/22/78
Cenergy Expl. Co	06705	12/1/78
Mobil Prod. TX & NM	06722	1/5/79
Kerr McGee Corp	06723	1/29/79
Mobil Oil Expl. & Prod	06726	1/8/79
Mosbacher, Robt	06729	2/14/79
Pend Oreille O&G Co	06729	2/14/79
TXP Opr. Co	06729	2/14/79
Exxon Corp	06730	2/22/79
FMP Opr. Co	06733	3/2//79
Mesa Petr. Co	06734	3/6/79
TXP Opr. Co	06743	3/20/79
La Land & Expl. Co	06746	3/22/79
Wintergreen Energy	06748	2/22/79
Pennzoil Co	06749	3/23/79
Do	06750	3/23/79
FMP Opr. Co	06753	3/20/79
Mesa Oper. Ltd. Part	06753	3/20/79
Mosbacher, Robt	06755	2/28/79
Hassie Hunt Expl. Co	06757	4/11/79
Mesa Oper. Ltd. Part	06758	3/20/79
Murchison, Gertrude Est	06762	5/2/79
Sun Expl. & Prod	06763	4/1/79
Shell Offshore, Inc	06765	3/20/79
Do	06772	5/9/79
Case Pomeroy Oil Corp	06774	5/17/79
Diamond Shamrock Off	06774	5/17/79

LIST II.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Felmont Oil Corp	06774	5/17/79
FMP Opr. Co	06774	5/17/79
Norse Petr. US, Inc	06774	5/17/79
Texaco Prod., Inc	06774	5/17/79
TXP Opr. Co	06774	5/17/79
Cities Service O&G	06777	4/20/79
Exxon Corp	06781	5/29/79
Phillips Petr. Co	06783	6/1/79
Koch Industries, Inc	06784	6/1/79
Cities Service O&G	06785	4/19/79
Oxy Petr., Inc	06785	4/19/79
Mosbacher, Robt	06789	3/28/79
Marathon Oil Co	06791	6/5/79
Canadian OCC of Calif	06794	4/19/79
NRM Op. Co	06796	6/29/79
TXP Opr.	06796	6/29/79
Mobil Oil Expl. & Prod	06797	6/4/79
Taylor Energy Co	06798	6/15/79
Do	06799	6/15/79
Petro Lewis Funds, Inc	06801	6/21/79
Do	06802	6/21/79
Phillips Petr. Co	06803	6/26/79
Mobil Prod. TX & NM	0685	6/21/79
Amerada Hess Corp	06808	6/15/79
Do	06809	6/15/79
FMP Opr. Co	06810	6/29/79
Petro Lewis Funds, Inc	06813	7/17/79
Do	06814	7/17/79
Do	06815	7/18/79
Do	06820	7/13/79
Union Texas Petr. Corp	06821	6/1/79
TXP Opr. Co	06822	6/29/79
Cenergy Expl. Co	06824	8/1/79
Transcontinental Oil	06827	8/3/79
Amerada Hess Corp	06829	8/10/79
Do	06830	8/10/79
Samedan Oil Corp	06839	8/20/79
La Land & Expl. Co	06840	8/23/79
Lloxy Holdings, Inc	06840	8/30/79
Petro Lewis Funds, Inc	06843	8/30/79
Do	06844	8/30/79
Do	06846	8/30/79
Do	06846	8/30/79
Chevron USA, Inc	06847	8/24/79
FPCO O&G Co	06857	9/17/79
Shell Offshore, Inc	06857	9/17/79
Getty Oil Co	06858	9/18/79
Texaco Prod., Inc	06858	9/18/79
Mobil Expl. & Prod. NA	06868	10/1/79
Phillips Petr. Co	06869	10/4/79
TXP Opr. Co	06871	10/10/79
Do	06873	10/11/79
Amoco Prod., Co	06875	5/29/79
TXP Opr. Co	06877	9/18/79
Enron O&G Co	06878	11/6/79
Oil Participations	06881	11/13/79
Lloxy Holdings, Inc	06885	11/20/79
Mobil Oil Expl. & Prod	06890	10/1/79
Mosbacher, Robt	06896	12/31/79
TXP Opr. Co	06896	12/31/79
Amoco Prod. Co	06909	1/22/80
Texaco, Inc	06910	1/22/80
Houston Oil & Mineral	06911	12/4/79
Diamond Shamrock Off	06914	1/17/80
FMP Opr. Co	06914	1/17/80
Norse Petr. US, Inc	06914	1/17/80
Texaco Prod., Inc	06914	1/17/80
TXP Opr. Co	06914	1/17/80

LIST II.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Texaco, Inc	06916	1/25/80
Do	06917	1/25/80
Wintergreen Energy	06918	1/3/80
Petro Resources, Inc	06919	1/1/80
Mesa Oper Ltd. Part	06923	12/3/79
TXP Opr. Co	06924	2/20/80
Do	06928	3/4/80
Mesa Oper. Ltd. Part	06930	3/5/80
S&S A Gen. Ptr	06931	1/24/80
Diamond Shamrock Off	06932	3/13/80
North Central Oil	06939	3/19/80
TXP Opr. Co	06949	4/14/80
Do	06950	4/12/80
Do	06953	4/24/80
FMP Opr. Co	06956	4/24/80
TXP Opr. Co	06960	5/5/80
Do	06961	5/5/80
Mobil Expl. & Prod. NA	06967	5/8/80
Superior Oil Co	06967	5/8/80
Amoco Prod Co	06975	6/10/80
BHP Petr. Americas, Inc	06977	6/19/80
Mobil Expl. & Prod., NA	06981	7/14/80
Sonat Expl. Co	06982	7/18/80
Shell Offshore, Inc	06988	7/28/80
Do	06989	7/28/80
Cox, Edwin L	06996	7/31/80
Trust 12	06996	7/31/80
Arco Oil & Gas Co	06999	8/5/80
Pioneer Prod. Co	61000	8/21/80
TXP Opr. Co	61005	8/18/80
Do	61006	8/18/80
Do	61016	8/21/80
Chevron USA, Inc	61018	7/27/80
Transcontinental Oil	61018	7/27/80
Conoco, Inc	61020	8/1/80
Enserch Expl. Inc	61024	7/31/80
Chevron USA, Inc	61025	10/29/80
Southland Royalty Co	61026	11/4/80
EMP Opr. Co	61028	11/7/80
TXP Opr. Co	61032	11/7/80
Mesa Oper. Ltd. Part	61033	11/4/80
Shell Offshore, Inc	61033	11/4/80
TXP Opr. Co	61034	11/4/80
Shell Western E&P	61034	9/29/80
Kerr McGee Corp	61036	11/18/80
Texaco Prod., Inc	61041	12/1/80
Kerr McGee Corp	61043	12/1/80
Do	61044	11/28/80
Shell Offshore, Inc	61046	12/1/80
Mesa Oper. Ltd. Part	61047	12/10/80
Do	61048	12/10/80
Do	61049	12/15/80
Mesa Petr. Co	61050	12/10/80
Diamond Shamrock Off	61052	12/23/80
Union Expl. Part. Ltd	61052	12/23/80
Shell Offshore, Inc	61054	12/15/80
Case Pomeroy Oil Corp	61057	12/31/80
Aminoil USA, Inc	61059	1/9/81
Phillips Petr. Co	61059	1/9/80
Felmont Oil Corp	61061	10/8/80
Shell Offshore, Inc	61065	12/31/80
Phillips Petr. Co	61066	1/23/81
Sohio Petr. Co	61067	1/21/81
Petro Oil Co	61068	2/3/81
Odeco O&G Co	61074	1/21/81
Case Pomeroy Oil Corp	61074	2/11/81
Felmont Oil Corp	61075	2/11/81
Phillips Oil Co	61079	12/9/80
Phillips Petr. Co	61079	12/9/80

LIST II.—TRANSCONTINENTAL GAS PIPELINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Aminoil USA, Inc	61080	2/20/81
Phillips Petr. Co	61080	2/20/81
FMP Opr. Co	61085	3/1/81
Do	61086	3/1/81
Do	61087	3/1/81
Do	61090	3/1/81
Murphy Oil Corp	61091	3/6/81
Ocean O&G Co	61091	3/6/81
Odeco O&G Co	61091	3/6/81
Cities Service O&G	61093	3/17/81
Texaco, Inc	61094	3/2/81
Amoco Prod., Co	61096	4/1/81
Pelto Oil Co	61099	3/25/81
Mobil Oil Expl. & Prod	61104	4/15/81
HNG Oil Co	61108	4/1/81
Getty Oil Co	61110	4/22/81
Do	61111	4/22/81
ANR Prod. Co	61115	5/11/81
Kerr McGee Corp	61117	5/15/81
Amerada Hess Corp	61119	6/14/81
Sun Expl. & Prod	61124	6/5/81
Conoco, Inc	61129	6/26/81
Orlando-Soi Ptr	61130	4/21/81
Mobil Prod. TX & NM	61134	7/1/81
Arco Oil & Gas Co	61137	5/19/81
Sohio Petr. Co	61138	7/14/81
Arco Oil & Gas Co	61143	5/19/81
Do	61145	5/19/81
Do	61147	6/24/81
Shell Western E&P	61148	7/1/81
Mobil Oil Expl. & Prod	61150	7/15/81
Do	61151	7/15/81
Do	61152	7/15/81
Do	61153	7/15/81
Do	61154	7/15/81
TXP Opr. Co	61160	8/11/81
Newmont Oil Co	61166	9/2/81
Do	61167	9/2/81
Do	61168	9/2/81
Do	61169	9/2/81
Conoco, Inc	61170	9/1/81
ANR Prod., Co	61171	9/1/81
Petro Prod., Co	61171	9/1/81
TXP Opr. Co	61171	9/1/81
Newmont Oil Co	61173	9/2/81
Shell Offshore, Inc	61175	8/26/81
Essex Offshore, Inc	61177	8/21/81
Felmont Oil Corp	61178	8/21/81
Sun Expl. & Prod	61187	9/14/81
Mobil Prod., TX & NM	61188	4/1/81
Superior Oil Co	61189	10/5/81
Mobil Expl. & Prod. NA	61190	10/5/81
Samedan Oil Corp	61190	10/5/81
Superior Oil Co	61190	10/5/81
Coastal O&G Corp	61193	9/22/81
Mesa Oper. Ltd. Part	61195	10/13/81
Arco Oil & Gas Co	61199	10/30/81
Decalta Intl. Corp	61201	10/23/81
Mobil Prod., TX & NM	61202	11/9/81
Phillips Petr. Co	61203	10/30/81
Sohio Petr. Co	61205	11/18/81
Sun Expl. & Prod	61207	12/2/81
Getty Oil Co	61210	12/3/81
Odeco O&G Co	61212	12/2/81
Conoco, Inc	61223	1/7/82
Enron, Corp	61228	1/22/82
Hamilton Bros. Oil Co	61230	1/11/82
FMP Opr. Co	61231	2/16/82
TXP Opr. Co	61231	2/16/82

LIST II.—TRANSCONTINENTAL GAS PIPELINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Kerr McGee Corp	61233	5/21/82
Cenergy Expl. Co	61237	3/5/82
Texaco, Inc	61239	3/8/82
Conoco, Inc	61245	3/29/82
Newmont Oil Co	61245	3/29/82
Felmont Oil Corp	61250	4/29/82
Case Pomeroy Oil Corp	61251	4/29/82
Kerr McGee Corp	61259	8/20/82
Shell Western E&P	61260	7/20/82
TXP Opr. Co	62264	9/27/82
Newmont Oil Co	61273	1/11/83
Union Expl. Part. Ltd	61274	1/28/83
FMP Opr. Co	61276	2/18/83
Exxon Corp	61279	4/15/83
Shell Offshore, Inc	61287	5/10/83
Texaco Prod., Inc	61299	10/21/83
Cities Service O&G	61304	3/1/84
Mesa Oper. Ltd. Part	61306	3/7/84
Amoco Prod., Co	61315	9/12/84
Union Expl. Part. Ltd	61321	11/16/84
American Prod., Part. III	61336	8/1/85
American Prod., Part. IV	61336	8/1/85
Ameriplor Corp	61336	8/1/85
New York Life O&G I-A	61336	8/1/85
New York Life O&G I-B	61336	8/1/85
New York Life O&G I-C	61336	8/1/85
Union Texas Petr. Corp	61337	11/12/86
Mobil Oil Expl. & Prod	61337	11/12/86
Sun Expl. & Prod	61337	11/12/86
Kerr McGee Corp	61338	8/1/85
Amoco Prod. Co	61339	8/1/85
Phillips Petr. Co	61340	8/1/85
Exxon Corp	61342	8/1/85
Mobil Oil Expl. & Prod	61344	8/1/85
TXP Opr. Co	61347	7/30/85
Southland Royalty Co	61349	7/30/85
FMP Opr. Co	61351	7/30/85
McMoran-Freeport Oil	61351	7/30/85
Exxon Corp	61353	8/5/85
Oil Participations	61354	8/1/85
Superior Oil Co	61356	8/1/85
Mobil Oil Expl. & Prod	61357	8/1/85
Conoco, Inc	61360	8/23/85
Do	61362	8/22/85
Mobil Oil Expl. & Prod	61362	8/22/85
Newmont Oil Co	61362	8/22/85
Orlando-Soi Ptr	61362	8/22/85
Kamlok, Inc	61364	8/27/85
Amerada Hess Corp	63165	8/27/85
Petrus Oil Co	61366	8/26/85
Arco Oil & Gas Co	61368	8/26/85
Mobil Prod. TX & NM	63170	8/26/85
Sun Expl. & Prod	61373	11/12/86
Odeco O&G Co	61374	9/4/85
Felmont Oil Corp	61377	10/16/85
Amoco Prod. Co	61379	10/22/85
SPG Expl. Corp	61380	11/1/85
Mobil Oil Expl. & Prod	61384	7/31/85
Essex Offshore, Inc	61386	12/1/85
Petro Resources, Inc	61389	11/22/85
Amoco Prod. Co	61390	11/22/85
Park Pipe Line	61391	11/22/85
Enstar Petr. Co	61399	1/16/86
Chevron USA, Co	61400	12/6/95
Primary Fuels, Inc	61401	1/16/86
Union Expl. Part. Ltd	61407	1/22/86
Chevron USA, Inc	61408	1/27/86
Mosbacher, Robt	61410	2/17/86
McGowan, John W	61411	2/19/86

LIST II.—TRANSCONTINENTAL GAS PIPELINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Sun Expl. & Prod	61411	11/12/86
Chevron USA, Inc	61415	2/26/86
HNG Oil Co	61421	11/1/86
Texaco Prod., Inc	61422	2/26/86
Conoco, Inc	61427	3/18/86
Texaco Prod., Inc	61430	3/26/86
Sun Expl. & Prod	61432	11/12/86
Hunt W.H. Trust Est	61434	3/26/86
Sun-Ann O&G Co	61434	3/26/86
Conoco, Inc	61436	3/26/86
Do	61438	3/27/86
Shell Western E&P	61448	4/29/86
Phillips Petr. Co	61449	5/8/86
Chevron USA, Inc	61451	5/8/86
Amerada Hess Corp	61461	7/7/86
Do	61462	7/7/86
Chevron USA, Inc	61469	3/1/86
Union Expl. Part., Ltd	61476	9/10/86
Felmont Oil Corp	61494	2/5/87
Tarina Oil Co	61503	12/10/86
Huffco Petr., Corp	61509	3/10/88
Jerry Chambers Expl. Co	61509	3/10/88
Sonat Expl. Co	61518	1/12/88

LIST III.—TRANSCONTINENTAL GAS PIPELINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FERC ORDER NO. 94-A

Producer	TGPL contract	
	Number	Date
Louisiana Land & Expl. Co	00034	4/12/79
Canadian Occidental of Calif., Inc	00036	4/20/79
Do	00046	8/1/79
Do	00048	8/3/79
Arco Oil and Gas Co	00049	10/24/79
Petro-Lewis Funds, Inc	00051	11/19/79
Arco Oil and Gas Co	00056	12/30/81
Do	00062	9/29/79
Elf Aquitaine, Inc	00067	6/22/83
Mobil Oil Expl. & Prod., SE, Inc	06032	9/12/47
Suburban Propane Gas Corp	06100	3/7/58
Sun Expl. & Prod. & Marion Corp	06159	2/12/58
Superior Oil Co	06182	12/30/58
BHP Petroleum (Americas, Inc.)	06233	7/28/60
Knob Hill	06243	7/3/60
Amoco Production Co	06256	4/4/61
Do	06273	1/10/63
Conoco, Inc	06273	7/14/60
Gulf Oil Corp	06286	7/7/65
Knob Hill	06320	3/28/60
Superior Oil Co	06322	5/27/68
Amoco Production Co	06326	3/3/69
Gulf Oil Corp	06345	6/16/69
Superior Oil Co	06368	7/28/74
Sun Expl. & Prod., Co	06391	6/9/7[illegible]

LIST III.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FERC ORDER NO. 94-A—Continued

Producer	TGPL contract	
	Number	Date
Superior Oil Co	06414	5/23/72
Highland Resources	06415	5/24/72
Canadian Superior Oil (US) Ltd	06417	5/25/72
Kerr-McGee Corp	06418	6/8/72
Getty Oil Co	06420	7/3/72
Do	06438	4/2/73
C&K Petroleum	06443	3/20/74
Getty Oil Co	06501	3/22/76
Texaco, Inc	06502	2/10/76
Sun Oil Co	06570	10/26/77
Getty Oil Co	06573	10/26/77
Natresco, Inc	06582	12/19/77
Kerr McGee	06732	2/22/79
Pioneer Prod. Co	06753	3/20/79
NT Corp	06765	8/15/80
Pyro Energy Corp	06769	5/7/79
Sanchez-O'Brien Minerals Corp	06788	6/6/79
Shell Oil	06798	6/15/79
Do	06799	6/15/79
Sanchez-O'Brien Minerals Corp	06812	7/11/79
NT Corp	06822	6/29/79
Getty Oil	06832	8/17/79
Texas Eastern Expl. Co	06839	8/20/79
Petro-Lewis	06857	9/17/79
Texaco, Inc	06866	9/27/79
Phillips Oil Co	06867	10/1/79
Sun Expl. & Prod	06919	1/1/80
Transco Exploration Co	06920	2/18/80
Pioneer Prod. Corp	06923	12/3/79
Shell Onshore Partnership	06931	6/13/80
Diamond Shamrock Offshore	06933	3/13/80
Amoco Production Co	06935	3/14/80
Do	06936	3/14/80
Superior Oil/Oil Participant, Inc	06965	4/23/80
NT Corp	06988	7/28/80
Do	06989	7/28/80
Kerr McGee	61019	9/29/80
Shell Oil Co	61020	8/1/80
Sonat	61027	11/4/80
Kerr McGee	61042	11/26/80
Pioneer Production Corp	61049	12/15/80
Norse Petroleum, Inc	61076	2/11/81
Southern Natural Gas Co	61079	12/9/80
Amerada Hess	61118	6/14/81
Transco Exploration	61140	7/14/81
Arco Oil & Gas	61146	5/19/81
Conoco, Inc	61163	8/24/81
Petro-Lewis Funds, Inc	61171	9/1/81
Florida Expl. Co	61175	8/26/81
Texaco, Inc	61185	9/23/81
Park Pipeline Co	61186	1/1/81
Sun Operating Ltd. Partnership	61192	10/8/81
Sun Expl. & Prod. Co	61212	12/2/81
Superior Oil Co	61215	12/4/81
Texaco, Inc	61227	1/25/82
Sun Expl. & Prod/David Crow Trustee	61232	2/12/82
Pennzoil Prod. Co	61245	3/29/82
Sun Expl. & Prod/David Crow Trustee	61254	6/28/82
Felmont Oil Corp	61257	7/14/82
Amerada Hess	61261	8/23/82
Petro-Lewis Funds	61277	3/21/83
Arco Oil & Gas Co	61367	8/27/85

LIST III.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FERC ORDER NO. 94-A—Continued

Producer	TGPL contract	
	Number	Date
Do	61369	10/1/85

[FR Doc. 88-24680 Filed 10-25-88; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4 and 178

[T.D. 88-69]

Customs Regulations Amendment Relating to Unique Bill of Lading Identifier

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends § 4.7a, Customs Regulations (19 CFR 4.7a), to require that each bill of lading accompanying a shipment of imported cargo carried by vessel be identified by a unique identifier containing not more than 16 characters. This identifier will serve to distinguish the particular bill of lading from other bills of lading issued by that carrier or issuer and from bills issued by others.

The identifier is designed to enable Customs Automated Commercial System to more accurately track the progress of cargo from its arrival to its release. This will eventually enable Customs to automate all phases of the processing of merchandise from its arrival to its entry into the commerce of the U.S. The unique identifier on the bill of lading will greatly facilitate the automated tracking of the merchandise covered by the bill of lading. Customs will require the use of the Standard Carrier Alpha Code (SCAC), for the first four characters of the unique identifier.

The identifier will be required whether or not the issuer of the bill is presently participating in the Automated Commercial System. Further it is the number which must be used on any Customs document which requires the bill of lading number.

EFFECTIVE DATE: This amendment is effective March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Robin Landis, Office of Cargo Enforcement and Facilitation, (202) 566-8151.

SUPPLEMENTARY INFORMATION:

Background

Customs published a notice in the **Federal Register** on December 9, 1987 (52 FR 46602) proposing amendments to § 4.7a, of the Customs Regulations (19 CFR 4.7a). This notice proposed requiring a unique bill of lading number designed to enable Customs Automated Commercial System to more accurately track the progress of cargo from its arrival to its release.

Section 431, Tariff Act of 1930, as amended (19 U.S.C. 1431), requires that the master of every vessel arriving in the U.S. have on board a manifest which contains, among other things, information with respect to the nature of the merchandise on board the vessel. While the information to be provided in the manifest is set forth in section 431, the form of the manifest is to be prescribed by the Secretary of the Treasury. This authority has been delegated to the Commissioner of Customs.

Section 4.7, Customs Regulations (19 CFR 4.7), provides that the manifest shall consist of several documents. Although a bill of lading is not one of the required documents, information from the bill of lading is necessary to complete documentation such as the Cargo Declaration (Customs Form 1302) which forms part of the manifest.

The Cargo Declaration contains a column headed "B/L Nr". When inward foreign cargo is being shipped by container, each bill of lading is to be listed in numerical sequence under that column according to the bill of lading number. At present, the bill of lading number is assigned by the carrier or issuer according to its particular system of internal controls. These systems differ in complexity and sophistication. Accordingly, there is no uniform method by which bills of lading are numbered. In addition, each issuer has a different system with respect to the period of time before which a bill of lading number will be used again.

For more than 3 years, Customs has had under development a system known as the Automated Commercial System (ACS). The ultimate goal of the ACS is to automate all phases of the entry processing of imported merchandise into a single automated system.

Customs has developed the Automated Manifest System (AMS) as an integral module of the ACS. The manifest module is, in essence, both an

imported merchandise inventory control system and a cargo release notification system. By comparing information provided in the manifest with automated Customs entry data, Customs will be able to make informed decisions with respect to the allocation of resources for the inspection of merchandise.

The AMS provides benefits to both carriers and Customs by reducing cost, speeding the movement of cargo and enhancing productivity. For example, faster notice of cargo discrepancies can be given. This quicker communication can reduce transit times and ultimately transportation costs to the consumer. Long term benefits are expected to include better utilization of equipment and better staging of cargo for delivery to consignees of their agents.

Carriers may participate directly in the AMS by transmitting manifest data directly to Customs with their own compatible automated system. Alternatively, carriers may use the computer facilities of port authorities, or other service centers which have established interface capability with Customs. These users would enter and transmit the inward cargo manifest data. Customs would thus have inventory files for these manifests. After analyzing the data, Customs would make its decision with respect to inspection and release of the merchandise. The AMS electronically informs the carrier, service center or port authority when the merchandise is authorized for release. This electronic release notification speeds the flow of cargo.

AMS was designed to use the bill of lading number as an identifier for the processing of this data. By focusing on the bill of lading number, Customs can track and make decisions with respect to the disposition of cargo. In order for the bill of lading identifier to function, however, it is obviously essential that each bill of lading number refer uniquely to an individual shipment by a particular carrier or issuer.

The proposed regulation (52 FR 46602), sets forth a uniform method by which carriers and other bill issuers would be required to number their bills of lading. It was proposed that the identifier would be 12 characters in length. It was further proposed that the first four of these characters consist of the four character Standard Carrier Alpha Code (SCAC) assigned to that carrier or issuer in the National Motor Freight Traffic Association, Inc., Directory of Standard Multi-Modal Carrier and Tariff Agent Codes. The SCAC code is considered to be the simplest and most easily utilized method of recognizing the identity of the carrier or other issuer. The next seven characters were to be either numerals or letters (or a combination), allowing carriers to utilize the identifier with their own system. It was proposed that the last character should be a "check digit", a numeral which is designed to be used to verify the validity of the preceding digits.

To make certain that the identifier remains unique, the proposed regulation provided that the number assigned to the bill of lading shall not be used by the issuer for another bill of lading for a period of 10 years after issuance.

Discussion of Comments

Sixty-two comments were received, many of them quite detailed, touching on various aspects of the proposal. Nearly all of the commenters agreed with the concept of the unique identifier. They disagreed on the format that the identifier should take.

Comment: Several commenters understood the necessity for uniqueness in bills of lading issued by a carrier, but did not understand why each carrier could not employ its own system for uniqueness which was particularly suited to its commercial needs. This flexible approach it was argued, is the best one. As long as each system is individually compatible with AMS, Customs should be satisfied.

Customs Response: Customs would prefer to allow each carrier to employ the system most convenient for that carrier. Unfortunately, the AMS simply could not accommodate such diversity. It is essential that a uniform system be in place for AMS to function, especially as participation in the system grows.

Comment: Many commenters felt that the SCAC Code should not be part of the unique identifier. They noted that the SCAC Code for the international carrier is already captured in AMS and that its inclusion in the identifier is superfluous. In addition, they argued that requiring the SCAC Code as part of the identifier does not leave enough possible combinations to account for all of the bills of lading that they might issue. Finally, certain commenters stated that use of the SCAC will cause confusion with their container numbers which are also identified by the SCAC code.

Customs Response: The SCAC code is included in the identifier to allow the bill of lading number, standing alone, to identify the issuer. This will enable Customs personnel to focus on the issuer for enforcement purposes. In addition, since the proposal embraces all bills of lading, it is obviously not true that the international carrier's SCAC code will always be the same as the issuer's code. While a few carriers use the SCAC code for other purposes, we believe that the SCAC code is the best method for Customs to identify the issuer of the bill. Accordingly, Customs has decided to retain the requirement that the first four digits consist of the SCAC code.

Comment: Several commenters argued that the identifier is not long enough to allow for the 10-year uniqueness period.

Customs Response: Customs believes that many of the commenters have failed to realize that they may use alpha as well as numeric symbols in the unique identifier. These commenters may be underestimating the number of bills that can be issued under the proposal. However, upon further consideration of the matter, Customs has determined that additional places in the identifier are appropriate in order to accommodate a greater number of bills of lading and to conform the proposal to the international standard. Accordingly, Customs has decided to change the format of the identifier to require that the identifier contain up to twelve characters after the SCAC Code. In addition, Customs has determined that a uniqueness period of 10 years is too burdensome. Accordingly, Customs has changed the period during which the number must remain unique to 3 years.

Comment: Many commenters believe that Customs should not unilaterally impose this requirement on carriers which must do business in a variety of countries. The decision as to the proper format for unique identifier should be worked out at the international level.

Customs Response: Customs has pursued this initiative at the international level for some time. It has not been possible to reach a consensus as to the proper format for a unique identifier. Because a unique identifier is necessary to the continued implementation and expansion of Customs automation efforts, Customs has decided that it can no longer await resolution at the international level. However, Customs has adopted the international standard of 12 characters for the numbering portion of the identifier.

Comment: Many carriers state that they have a substantial investment in the automation system which they presently have in place and that the modification of their system to the one required by Customs will be costly.

Customs Response: Customs recognizes that there are expenses associated with the conversion from existing systems to the system which Customs is mandating. It must be recognized that any system adopted by Customs would require changes on the part of some carriers. Customs has chosen the format that is most

operationally sound for Customs while taking into account the comments received.

Comment: Some commenters would like an identifier which would be long enough to include additional digits for their own business purposes. They suggest a longer identifier, of 22 digits.

Customs Response: As discussed above, Customs has decided to add four places to the identifier. We believe that adding any more digits to the identifier would be operationally unacceptable. The additional key stroking of these digits would cause an inevitable increase in data transmission errors. Accordingly, we decline to enlarge the identifier beyond the addition four places.

Comment: Several commenters stated that the numbering of a bill of lading should be left to carriers rather than prescribed by government regulation.

Customs Response: Customs has the authority to prescribe the format of the bill of lading under existing law. We believe that Customs responsibilities of assuring the rapid and smooth movement of international cargo provide a sound basis for this initiative.

Comment: Many of the commenters opposed the use of a check digit. These commenters believed that employing the check digit requires a degree of technical sophistication that is simply not present among those who are charged with issuing the bills of lading. These commenters believe that the check digit should be eliminated.

Customs Response: Upon further consideration of the matter, Customs believes that the advantages of a check digit are outweighed by the problems which may be caused by its implementation. Accordingly, Customs has eliminated the check digit as part of the unique identifier.

Comment: Many carriers request that Customs prescribe a period for the implementation of the uniqueness requirement because of the time that will be taken in making the transition to the new requirement. Certain commenters believe that a 12-month period in which to make changes is required. Others believe that a minimum of 6 months is necessary.

Customs Response: Customs agrees that a transitional period is desirable. Upon consideration of the comments and the nature of the regulatory change, Customs deems it appropriate that this amendment shall become effective on March 31, 1989.

The identifier will then be required on bills of lading, whether or not the issuer of the bill is participating in ACS. It will be the number which must be used on any Customs document which requires the bill of lading number.

In order for Customs to implement the unique bill of lading identifier, all issuers of bills of lading are required to submit to Customs a SCAC code verified by the National Motor Freight Traffic Association. It will also be necessary for the issuers of bills of lading to submit: An accurate spelling of the corporate name; complete address, zip code, and telephone number of the corporate headquarters. This information should be sent to: Director, Office of Automated Commercial Systems, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 4220, Washington, DC 20229.

If a carrier or issuer of bills of lading is not yet in possession of a SCAC code, one should be obtained by contacting Mr. Paul Levine at the following address: National Motor Freight Traffic Association, Inc., 2200 Mill Road, Alexandria, VA 22314, Telephone number: (703) 838–1822.

Customs will accept only one SCAC code from each carrier, and those issuing bills of lading will be expected to be in complete compliance with the aforementioned requirements.

After a careful review and analysis of all the comments and further consideration of the subject matter, Customs has decided to adopt the aforementioned amendment to Part 4, Customs Regulations (19 CFR Part 4) as proposed; however, the format of the unique identifier has been changed as follows. The unique bill of lading number will be comprised of two elements. The first element will be the four character SCAC code of the issuer of the bill of lading. The second element may be up to 12 characters in length and may be either alpha and/or numeric. When alpha and numeric characters are used, the alpha characters must be grouped in the first or last positions of the identifier and not commingled with numeric characters. The check digit has been eliminated. Customs further determined that the number assigned to the bill of lading shall not be used by the issuer for another bill of lading for a period of 3 years. Finally, all carriers must submit their designated SCAC code and the additional information as required in this notice, before March 31, 1989 which is the effective date of these regulatory changes.

Regulatory Flexibility Act

The document will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12291

The document does not meet the criteria for a "major rule" as specified by E.O. 12291. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

The amendments are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). The collection of information contained in this final regulation has therefore 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 1515–0412. The estimated average burden associated with the collection of information in this final rule is 6 minutes. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for U.S. Customs Service.

Drafting Information

The principal authors of this document were Myles B. Harmon and Ann S. Minardi, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Carriers, Manifest, Vessels, Bill of lading.

19 CFR Part 178

Reporting and recordkeeping requirements.

Amendments

This document amends Parts 4 and 178, Customs Regulations (19 CFR Part 4, 178), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3, 91, 2103.

2. Section 4.7a is amended by adding a new paragraph (c)(2)(iii) to read as follows:

§ 4.7a Inward manifest; information required; alternative forms.

* * * * *

(c) *Cargo Declaration* * * *

(2) * * *

(iii) All bills of lading, whether issued by a carrier, freight forwarder, or other issuer, shall contain a unique identifier consisting of up to 16 characters in length. The unique bill of lading number will be comprised of two elements. The first element will be the first four characters consisting of the carrier or issuer's four digit Standard Carrier Alpha Code (SCAC) assigned to that carrier in the National Motor Freight Traffic Association, Inc., Directory of Standard Multi-Modal Carrier and Tariff Agent Codes, applicable supplements thereto and reissues thereof. The second element may be up to 12 characters in length and may be either alpha and/or numeric.

When alpha and numeric characters are used, the alpha characters must be grouped in the first or last positions of the identifier and not commingled with numeric characters. The unique identifier shall not be used by the carrier, freight forwarder or issuer for another bill of lading for a period of 3 years after issuance.

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3, 91, 2103.

2. Section 178.2 is amended by inserting, in numerical order, the following entry:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
4.7a.....	Unique bill of lading identifier for inward manifests.	1515-0142

* * * * *

Michael H. Lane,

Acting Commissioner of Customs.

Approved: October 19, 1988.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88-24755 Filed 10-25-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

Payments by Electronic Funds Transfer

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations at 30 CFR Part 218 to reflect a change in references to the electronic communications system used by the United States Department of the Treasury (Treasury) to process electronic funds transfers. The "Treasury Financial Communication System" (TFCS) was replaced by the Treasury with the "Financial Management Service Fedwire Deposit System (FDS). This final rule amendment replaces the references to the TFCS with references to the new FDS.

EFFECTIVE DATE: October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, P.O. Box 25165, MS-662, Building 85, Denver Federal Center, Denver, Colorado 80225, telephone: (303) 231-3432, FTS 326-3432.

SUPPLEMENTARY INFORMATION:

I. Discussion of Amendments

Part 218 of 30 CFR contains MMS regulations governing the collection of royalties, rentals, bonuses, and other monies due the Federal Government. The regulations require that royalty payments in excess of $10,000 and deferred bonus payments from successful bidders in competitive Outer Continental Shelf lease sales be made by Electronic Funds Transfer (EFT) using the Federal Reserve Communication link to the TFCS. The EFT requirement accelerates the collection and deposit processing of payments received by MMS and allows the Government to have immediate use of the funds.

Paragraphs 218.51(a)(1) and 218.155(c) of the regulations include a reference to the Treasury's TFCS. Because the Treasury has replaced the TFCS with a new electronic communications system, the FDS, MMS is amending its regulations to reference the name of the new system.

II. Procedural Matters

Administrative Procedure Act

The changes included in this rulemaking are technical corrections only and not substantive changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final regulation. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make this regulation effective upon publication in the **Federal Register.**

Executive Order 12291

The Department of the Interior (Department) has hereby determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This final rulemaking is to reflect a change in references as the result of the implementation of a new electronic communications system by the Treasury.

Regulatory Flexibility Act

Because this rulemaking is for technical correction of existing regulations, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Paperwork Reduction Act of 1980

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.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human enviornment and a detailed statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(c)] is not required.

List of Subjects in 30 CFR Part 218

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral

resources, Reporting and recordkeeping requirements.

Date: October 14, 1988.

Thomas M. Gernhofer,

Acting Director, Minerals Management Service.

For the reasons set out in the preamble, 30 CFR Part 218 is amended as follows:

TITLE 30—MINERAL RESOURCES

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for Part 218 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraph (a)(1) of § 218.51 under Subpart B is amended by changing the words "Treasury Financial Communications System (TFCS)" in the first sentence to "Financial Management Service Fedwire Deposit System (FDS)." The revised first sentence reads as follows:

§ 218.51 Method of payment.

(a) *Payment of royalties.* (1) All payors whose aggregate royalty payment obligation to MMS on the payment due date totals $10,000 or more must make royalty payment by Electronic Funds Transfer (EFT) using the Federal Reserve Communications System (FRCS) link to the Financial Management Service Fedwire Deposit System (FDS), unless otherwise directed by MMS. * * *

* * * * *

3. Paragraph (c) of § 218.155 under Subpart D is amended by changing the acronym "TFCS" in the sixth sentence to "FDS." The revised sentence reads as follows:

§ 218.155 Method of payment.

* * * * *

(c) * * * Payors will not be held responsible for late payment due to actions beyond their control, such as mechanical or systems failure of FRCS or FDS. * * *

* * * * *

[FR Doc. 88-24725 Filed 10-25-88; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 351b and 351c

[DoD Directives 5129.3 and 5129.4]

Disestablishment of Positions; Assistant Secretary of Defense; Research and Technology; Development and Support

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The positions of Assistant Secretary of Defense (Research and Technology) and Assistant Secretary of Defense (Development and Support) have been disestablished therefore, 32 CFR Parts 351b and 351c are no longer necessary.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Linda M. Bynum, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301, telephone (202) 697-4111.

SUPPLEMENTARY INFORMATION:

List of Subjects.

32 CFR Part 351b

Organization and functions (Government agencies), Research and technology.

32 CFR Part 351c

Organization and functions (Government agencies), Development and support.

PARTS 351b AND 351c—[REMOVED]

Accordingly, Title 32, Chapter I is amended by removing Parts 351b and 351c.

October 21, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-24716 Filed 10-25-88; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 111

Supplements and Enclosures in Second-Class Publications

AGENCY: Postal Service.

ACTION: Final rule; delay of effective date.

SUMMARY: At the request of publishers, the Postal Service has decided to delay the effective date of the final rule on supplements and enclosures in second-class mail.

DATES: This document is effective October 26, 1988. The effective date of the September 15, 1988 (53 FR 35813) is delayed to March 19, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Young, (202) 268-5321.

SUPPLEMENTARY INFORMATION: On September 15, 1988, the Postal Service published a final rule entitled "Supplements and Enclosures in Second-Class Publications" (53 FR 35813-20) with an effective date of December 18, 1988. Since publication of the final rule, the Postal Service has received a number of requests from publisher and publishers' associations to delay the rule's effective date. The requesters expressed concern regarding their ability to comply with the new regulations for a variety of reasons, including the upcoming Christmas mailing season, substantial commitments for supplement material that many publishers believed they could enclose with a second-class publication until after the end of 1988, and the fact that supplemental material has been ordered, purchased, and in a number of cases, already delivered for mailings in early 1989. Without a delay of the effective date, the requesters stated that they would experience severe and unrecoverable financial losses.

Based upon these requests, the Postal Service has decided to delay the effective date of the final rule until March 19, 1989. Although the requests for a delay of the effective date centered around two new requirements for mailing loose supplements with bound publications, namely the requirement to endorse them "Supplement to" followed by the name of the publications or the name of the publisher, and the requirement that the supplement contain at least 25% nonadvertising matter, the Postal Service has decided to delay the effective date of the entire final rule. The implementation of all parts of the final rule, with its interrelated changes, on the effective date of the next quarterly issuance of the Domestic Mail Manual will simplify implementation of the final rule and avoid the confusion for Postal Service employees and customers which, experience has shown, would otherwise surely result.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in

the Federal Register as provided by 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-24753 Filed 10-25-88; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7E3543/R985; FRL-3467-9]

Pesticide Tolerance for Carbaryl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide carbaryl in or on the raw agricultural commodity fresh dill. The Interregional Research Project No. 4 (IR-4) petitioned for this tolerance.

EFFECTIVE DATE: October 26, 1988.

ADDRESS: Written objections, identified by the document control number, [PP 7E3543/R985], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

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

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of September 8, 1988 (53 FR 34792), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 7E3543 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of Florida.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the residues of the insecticide carbaryl (1-naphthyl N-methylcarbamate) in or on the raw agricultural commodity fresh dill at 0.2 par per million (ppm).

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

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: October 17, 1988.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.169(e) is amended by adding and alphabetically inserting the listing for the raw agricultural commodity fresh dill, to read as follows:

§ 180.169 Carbaryl; tolerances for residues.

* * * * *

(e) * * *

Commodities	Parts per million
* * * * *	
Dill (fresh)	0.2
* * * * *	

[FR Doc. 88-24734 Filed 10-25-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-111; RM-5359]

Radio Broadcasting Services; Vero Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Treasure Coast Broadcasting Company, Limited Partnership, substitutes Channel 229C2 for Channel 228A at Vero Beach, Florida, and modifies its license for Station WGYL(FM) to specify operation on the higher powered channel. Channel 229C2 can be allotted to Vero Beach with a site restriction of 4.6 kilometers (2.9 miles) southeast. The coordinates for this allotment are North Latitude 27-36-04 and West Longitude 80-22-40. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 5, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-111, adopted September 28, 1988, and released October 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for Vero Beach, Florida is amended by removing Channel 228A and adding Channel 229C2.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-24694 Filed 10-25-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-99; RM-6074]

Radio Broadcasting Services; Cornelia and Chatsworth, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Habersham Broadcasting Company, substitutes Channel 257C2 for Channel 257A at Cornelia, Georgia, and modifies its license for Station WCON-FM to specify operation on the higher powered channel. Channel 257C2 can be allotted to Cornelia in compliance with the Commission's minimum distance separation requirements and can be used at Station WCON-FM's present transmitter site. The coordinates for this allotment are North Latitude 34-30-57 and West Longitude 83-32-20. This action also modifies the license of Cohutta Broadcasting Company for Station WQMT(FM), Chatsworth, Georgia, to specify operation on Channel 255A in lieu of its present Channel 257A. Channel 255A can be allotted to Chatsworth in compliance with the Commission's minimum distance separation requirements and can be used at Station WQMT(FM)'s present transmitter site. The coordinates for this allotment are North Latitude 34-45-29 and West Longitude 84-43-59. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 5, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-99, adopted September 28, 1988, and released October 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments is amended under Georgia by removing Channel 257A and adding Channel 257C2 to Cornelia and by removing Channel 257A and adding Channel 255A to Chatsworth.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-24693 Filed 10-25-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-324; RM-5750, RM-5865, RM-6386]

Radio Broadcasting Services; Columbus, Eupora, and Marion, MS and Reform, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Notice of Proposed Rule Making* was issued in response to two separate petitions for rule making. Tri County Broadcasting, Inc. proposed the substitution of FM Channel 241C2 for Channel 269A at Eupora, Mississippi, and modification of its license for Station WEXA(FM), to specify operation on Channel 241C2. Radio Columbus, Inc., requested the substitution of FM Channel 241C2 for Channel 276A at Columbus, Mississippi, and modification of its license for Station WMBC, to reflect the higher class channel. Eupora and Columbus are located approximately 79 kilometers apart, and Section 73.207 of the Rules require 190 kilometers between Class C2 co-channels. Therefore, the proposals are mutually exclusive.

Tri County Broadcasting Company, Radio Columbus, Inc. and Rego Broadcasting Company filed a counterproposal in an attempt to resolve the conflicting proposals. The counterproposal was put on public notice May 26, 1988, and all of the parties to the proceeding have agreed to the substitution of channels as proposed in the petitions and in the joint counterproposal. Therefore, we shall substitute Channel 241C2 for Channel 269A at Eupora, Mississippi, and modify the license of Station WEXA(FM) to reflect the new channel (33-31-20 and 89-04-30), substitute Channel 276C2 for Channel 276A at Columbus, Mississippi, and modify license of Station WMBC to specify operation on Channel 276C2 (33-29-48 and 88-31-50), substitute Channel 236A for Channel 276A at Marion, Mississippi, and modify the license of Station WQIC-FM to specify operation on the new Class A channel (32-26-08 and 88-36-24), and substitute Channel 269C2 for Channel 269A at Reform, Alabama, and modify the license of Station WVRT-FM to reflect the higher class channel (33-1.-32 and 87-59-39). With this action, this proceeding is terminated.

EFFECTIVE DATE: December 5, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-324, adopted September 14, 1988, and released October 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Mississippi, by removing Channel 269A and adding Channel 241C2 at Eupora, by removing Channel 276A and adding Channel 276C2 at Columbus, by removing Channel 276A and adding 236A at Marion.

3. In § 73.202(b), the Table of FM Allotments is amended, under Alabama, by removing Channel 269A and adding Channel 269C2 at Reform.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-24696 Filed 10-25-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-165; RM-5978, RM-6198, RM-6425]

Radio Broadcasting Services; Sioux Center, Iowa, Sioux Falls, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Tri-State Broadcasters, Inc., substitutes Channel 230C2 for Channel 232A at Sioux Center, Iowa, and modifies its license for Station KVDB-FM to specify operation on the higher powered channel. Channel 230C2 can be allotted to Sioux Center in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) west. The coordinates for this allotment are North Latitude 43-04-00 and West Longitude 96-14-30. The Commission also substitutes Channel 279C2 for Channel 228A at Sioux Falls, South Dakota, at the request of Vaughn Broadcasting Group, and modifies its license for Station KKRC(FM) to specify operation on the higher powered channel. Channel 279C2 can be allotted to Sioux Falls in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.1 kilometers (1.3 miles) east. The coordinates for this allotment are North Latitude 43-32-52 and West Longitude 96-42-33. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 5, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-165, adopted September 28, 1988, and released October 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for Sioux Center, Iowa is amended by removing Channel 232A and adding Channel 230C2. The FM Table of Allotments for Sioux Falls, South Dakota is amended by removing Channel 228A and adding Channel 279C2.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-24695 Filed 10-25-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-604; RM-6089]

Radio Broadcasting Services; Waynesboro, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 235A to Waynesboro, Tennessee, as that community's first FM service, at the request of Pioneer Radio, Inc., licensee of AM Station WTNR at Waynesboro. A site restriction is imposed of 3.9 kilometers (2.4 miles) south of the community at coordinates 35-17-08 and 87-45-16. With this action, this proceeding is terminated.

DATES: Effective December 5, 1988; the window period for filing applications will open on December 6, 1988, and close on January 5, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-604, adopted September 28, 1988, and released October 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Tennessee, by adding Channel 235A, Waynesboro.

Steve Kaminer,

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

[FR Doc. 88-24697 Filed 10-25-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-603; RM-6084]

Radio Broadcasting Services; Brownfield, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 282C2 for Channel 280A at Brownfield, Texas, and modifies the license of Station KKTC(FM) to specify operation on the higher class channel, as that community's first wide coverage area FM service, as requested by Brownfield Broadcasting Corp. Channel 282C2 can be allotted to Brownfield as a substitute for Channel 280A at a restricted site 5.1 kilometers (3.2 miles) east of the community, at coordinates 33-11-39 and 102-13-23. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 5, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-603, adopted September 28, 1988, and released October 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International

Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Texas, by adding Channel 282C2 and removing channel 280A at Brownfield.

Steve Kaminer,

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

[FR Doc. 88–24698 Filed 10–25–88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 204

Department of Defense; Federal Acquisition Regulation Supplement; Information Reporting to the IRS

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council has approved revisions to the DoD FAR Supplement to implement the interim Federal Acquisition Regulation coverage on IRS information reporting recently approved by the Civilian Agency Acquisition Council and the DAR Council. The FAR coverage will appear in FAC 84–40. The DFARS revisions provide the mechanism whereby the information will be collected in DoD and reported to IRS through the Federal Procurement Data System.

EFFECTIVE DATE: This rule is effective for all solicitations issued on or after November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, Telephone: (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

26 U.S.C. 6041 and 6041A, in part, require payers, including the Federal Government, to report to the IRS certain payments made in the course of business. Information required to be reported includes company name, corporate status, taxpayer identification number (TIN), corporate parent, if any, and if there is a corporate parent, the name and TIN of the parent. Failure or refusal of an offeror to furnish the TIN may result in a 20 percent reduction of payments otherwise due under the contract.

26 U.S.C. 6050M requires heads of Federal Executive agencies to report certain contract information to the IRS. The information required to be reported for contract actions over $25,000 includes name and TIN of contractor; name and TIN of parent (if any); date of contract action; amount obligated on the contract; and the duration of the contract.

In order for the Department of Defense to comply with the Internal Revenue Service (IRS) reporting requirements, as implemented in FAR Subparts 4.9 and 52, DoD FAR Supplement Subparts 204.6, Contracting Reporting, and 204.9, Information Reporting to the IRS, have been modified to provide for contractors to submit their TIN and certain related information to the appropriate contracting office.

Public comments are not necessary because this regulation does not have significant cost or administrative impact on contractors or offerors and does not have significant effect beyond the internal operating procedures of the Department of Defense.

B. Regulatory Flexibility Act

Regulatory Flexibility Act is not applicable because the proposed policy need not be published in the **Federal Register** as it does not have significant effect beyond the internal operating procedures of the Department of Defense.

C. Paperwork Reduction Act

The rule does not impose information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and OMB approval is not required pursuant to 5 CFR Part 1320.

List of Subjects in 48 CFR Part 204

Government procurement.

October 19, 1988.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Part 204 is amended as follows:

1. The authority citation for 48 CFR Part 204 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 204—ADMINISTRATIVE MATTERS

2. In section 204.671–5 paragraph (b) is amended by revising Items B4, B5E, B5F, and B5G to read as follows:

204.671–5 Instructions for completion of DD Form 350.

* * * * *

(b) Part B, DD Form 350.

* * * * *

Item B4, Contract Completion Date. Enter the year, month and day of the last contract delivery date or the end of the performance period as set forth in the contract. Enter each segment as a 2-digit number. Use 01 through 12 for January through December. For example, enter 2 January 1999 as 990102.

* * * * *

Item B5E, Contractor's Taxpayer Identification Number (TIN). When required by FAR Subpart 4.9, enter the TIN that identifies the contractor receiving the award. Otherwise, leave this item blank.

Item B5F, Parent TIN. When required by FAR Subpart 4.9, enter the TIN of the parent company (common parent). Otherwise, leave this item blank.

Item B5G, Parent Name. If Item B5F is completed, enter the name of the contractor's parent company (common parent). Otherwise, leave this item blank.

3. A new Subpart 204.9 is added to read as follows:

Subpart 204.9—Information Reporting to the IRS

204.903 Procedures.

(S–70) For DoD, the information needed to meet the reporting requirements set forth will be reported using the DD Form 350, Individual Contract Action Report (over $25,000) in accordance with instructions in Subpart 204.6.

[FR Doc. 88–24606 Filed 10–25–88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

48 CFR Parts 301, 302, 304, 305, 306, 307, 315, 317, 319, 332, 339, 342, and 352

Acquisition Regulation; Miscellaneous Amendments

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is amending its acquisition regulation (HHSAR), Title 48 CFR Chapter 3, to make various administrative and procedural changes.

EFFECTIVE DATE: October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, Procurement Analyst, Division of Acquisition Policy, telephone (202) 245–8890.

SUPPLEMENTARY INFORMATION: The Department is amending its acquisition regulation to make the following changes.

Section 301.602–3, Ratification of unauthorized commitments, is being added to implement and supplement Federal Acquisition Regulation (FAR) coverage recently issued in Federal Acquisition Circular (FAC) 84–33. As a result, existing HHSAR section 304.170, Ratification of unauthorized contract awards, is being eliminated because it is duplicative.

Section 305.303, Announcement of contract awards, is being added to formalize procedures requiring contracting officers to notify the Department's Congressional Liaison Office of awards in the amount of $1 million or more.

Section 307.105–2, Special program clearances or approvals, is being revised to update the listing and description of the clearances and approvals required to be completed by the program office for inclusion in the request for contract document submitted to the contracting office.

Subpart 317.71, Supply and Service Acquisitions Under the Government Employees Training Act, is being revised to reflect recent determinations made by the Comptroller General and the Department's Office of General Counsel. Both have determined that the acquisition of standardized, "off-the-shelf" training courses does not have to be processed through or by contracting officials.

Section 319.870, Acquisition of technical requirements, is being amended to add language to clarify how the Small Business Administration is processing Source nominations made by the Department under the section 8(a) program.

Subpart 332.9, Prompt Payment, is being added to implement and supplement the FAR coverage on the subject as addressed in the recently issued FAC 84–33. As a result, existing Subpart 342.72, Payments to Contractors, is being removed because the coverage is duplicative of the new FAR Subpart 332.9.

Subpart 339.70, ADP Clearances and Systems Security, is being revised to update nomenclature and office designations.

The contract clauses in sections 352.242–72 through 352.242–79 are being removed as a result of the recent issuance in FAC 84–33 of FAR clause 52.232–25, Prompt Payment, which is to be used in place of all the referenced clauses.

The remaining amendments concern adding office designations and making internal procedural revisions.

The Department of Health and Human Services adheres to the policy that the public, or certain elements comprising it, should have an opportunity to provide comments on regulations which may have an impact on them. The Department has determined, however, that this rule contains no amendments that would have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the Department. As a result, the Department is not requesting comments on these acquisition regulations and is publishing them as a final rule.

The Department of Health and Human Services certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et.seq.); therefore, no regulatory flexibility statement has been prepared. This document does not contain information collection requirements which require the approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et.seq.).

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 301, 302, 304, 305, 306, 307, 315, 317, 319, 332, 339, 342, and 352

Government procurement.

Accordingly, the Department amends 48 CFR Chapter 3 as set forth below.

Date: October 11, 1988.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

As indicated in the preamble, Chapter 3 of Title 48, Code of Federal Regulations, is amended as shown.

1. The authority citation for Parts 301, 302, 304, 305, 306, 307, 315, 317, 319, 332, 339, 342, and 352 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

PART 301—[AMENDED]

301.304 [Amended]

2. Paragraph (d) of section 301.304 is amended by adding reference to the Indian Health Service in the listing as follows:

Organization	Prefix
* * * * *	
Public Health Service	PHS
* * * * *	
Health Resources and Services Administration.	HRSA
Indian Health Service	IHS
National Institute of Health	NIH
* * * * *	

3. Subpart 301.6 is amended by adding section 301.602–3 as follows:

301.602–3 Ratification of unauthorized commitments.

(b) *Policy.* (1) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. However, execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may be later ratified. The ratification must be in the form of a written document clearly stating that ratification of a previously unauthorized act is intended and must be signed by the head of the contracting activity (HCA).

(2) The HCA or his/her designee is the official authorized to ratify an unauthorized commitment (but see (b)(3), below).

(3) Ratification authority may be redelegated by the HCA, but not below the level of the principal official responsible for acquisition (PORA).

(c) *Limitations.* (5) The concurrence of legal counsel concerning the payment issue is optional.

(7) The ratification shall be in written document form containing verification of each limitation stated in FAR 1.602–3(c)(1)–(6), and shall be processed in accordance with 301.602–3(e) *Procedures.*

(e) *Procedures.* (1) The individual who made the unauthorized contractual commitment shall furnish the reviewing contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to: a statement as to why the contracting office was not used, a statement as to why the proposed contractor was selected, a list of other sources

considered, a description of work to be performed or products to be furnished, the estimated or agreed contract price, a citation of the appropriation available, and a statement of whether the contractor has commenced performance.

(2) The contracting officer will review the submitted material, and prepare the ratification document if he/she determines that the commitment may be ratifiable. The contracting officer shall forward the ratification document and the submitted material to the HCA or designee with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the HCA or designee will coordinate the request for ratification with the Office of General Counsel, Business and Administrative Law Division.

(3) If ratification is authorized by the HCA or designee, the file will be returned, along with the ratification document, to the contracting officer for issuance of a purchase order or contract, as appropriate.

(4) HCA's or their designees will report the number and dollar value of requests for ratifications received and ratifications authorized each calendar quarter. Reports shall be submitted in an original and one copy to the Deputy Assistant Secretary for Management and Acquisition to arrive no later than 30 calendar days after the close of each calendar quarter.

PART 302—[AMENDED]

302.100 [Amended]

4. Section 302.100 is amended as follows:

a. In the opening paragraph of the definition of the term "principal official responsible for acquisition", add the designation "Indian Health Service (IHS)", between the designations "Health Resources and Services Administration (HRSA)," and "National Institutes of Health (NIH),".

b. In the listing of organizational references which follows the paragraph, add the designation "IHS—Director, Division of Grants and Contracts, Office of Administration and Management" between the listings for "HRSA" and "NIH".

c. In the first listing of the organizational reference for "NIH", remove the phrase "(For acquisitions assigned to the Division of Contracts and Grants)". and

d. Remove the second listing of the organizational reference for "NIH" which reads "NIH—Director, Division of Procurement, Office of Research Services (For acquisitions assigned to the Division of Procurement)".

PART 304—[AMENDED]

304.170 [Removed]

5. Section 304.170 is removed.

PART 305—[AMENDED]

305.102 [Removed]

6. Section 305.102 is removed.

7. Subpart 305.3 is added to read as follows:

Subpart 305.3—Synopses of Contract Awards

Sec.
305.303 Announcement of contract awards.

Subpart 305.3—Synopses of Contract Awards

305.303 Announcement of contract awards.

(a) *Public announcement.* Any contract, contract modification, or delivery order in the amount of $1 million or more shall be reported by the contracting officer to the Office of the Deputy Assistant Secretary for Legislation (Congressional Liaison), Room 406G, Hubert H. Humphrey Building. Notification shall be accomplished by providing a copy of the contract or award document face page to the referenced office prior to the day of award, or in sufficient time to allow for an announcement to be made by 4:00 p.m. Washington, DC time on the day of award.

PART 306—[AMENDED]

8. Section 306.501 is amended by adding the following entry between the "HRSA" and "NIH" designations.

306.501 Requirement.

* * * * *

IHS—Associate Director, Office of Administration and Management

* * * * *

PART 307—[AMENDED]

307.105-2 [Amended]

9. Paragraph (a) of Section 307.105-2 is amended as follows:

a. In item (1) *Automated data processing.*, remove the term "HHS ADP Systems Manual" and replace it with the term "HHS Information Resources Management (IRM) Manual" in both places where it appears within the item; remove the designation "Office of Management Analysis and Systems (OMAS)," and replace it with "Office of Information Resources Management (OIRM),"; and correct the reference to "Title 41 CFR Chapter 150;" to read "Title 41 CFR Chapter 201;".

b. In Item (2) *ADP systems security.*, remove the title "ADP Systems Manual," and replace it with the title "HHS IRM Manual,".

c. Remove item (3) and replace it with the following:

* * * * *

(3) *Advisory and assistance services.* OPDIV and STAFFDIV heads and regional directors are responsible for review and approval of all proposed advisory and assistance services contracts and purchase orders. (See General Administration Manual Chapter 8-15.)

d. Remove item (4) and replace it with the following:

* * * * *

(4) *Evaluation contracts.* The Assistant Secretary for Planning and Evaluation (ASPE) must approve all evaluation projects for proposed solicitations, except those which have been included in research, demonstration, or evaluation plans previously approved by the ASPE.

* * * * *

e. Remove item (9) and replace it with the following:

* * * * *

(9) *Paperwork Production Act.* Under the Paperwork Reduction Act of 1980 (Pub. L. 96-511), a Federal agency shall not collect information or sponsor the collection of information from ten or more persons (other than Federal employees acting within the scope of their employment) unless, in advance, the agency has submitted Standard Form 83, Request for OMB Review, to the Director of the Office of Management and Budget, and the Director has approved the proposed collection of information. Procedures for the approval may be obtained by contacting the OPDIV reports clearance officer. (See Title 5 CFR Part 1320 and General Administration Manual Chapter 10-20.)

* * * * *

f. Remove item (11) *Classified contracts.*, and redesignate existing items (12), (13), (14), and (15) as (11), (12), (13), and (14), respectively.

g. In newly designated item (11) *Publications.*, remove the phrase "in excess of $2,500 and" in the first sentence.

h. In newly designated item (12) *Public affairs services.*, correct the form designation to read "Form HHS—524,".

PART 315—[AMENDED]

315.406-5 [Amended]

10. Section 315.406-5(a)(2) is amended by adding the word "and" after the semi-colon at the end of the paragraph in item (xv), by removing items (xvi) and

(xviii), by redesignating item (xvii) as item (xvi), and by removing the semi-colon and word "and" from newly designated item (xvi) and replacing them with a period.

315.408 [Amended]

11. Section 315.408 is amended by removing the second sentence.

PART 317—[AMENDED]

317.206 [Amended]

12. Section 317.206 is amended by correcting the FAR reference to read "17.206(b)".

13. Subpart 317.71 is revised to read as follows:

Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Traning Act

Sec.
317.7100 Scope of subpart.
317.7101 Applicable regulations.
317.7102 Acquisition of training.

Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Training Act

317.7100 Scope of subpart.

This subpart provides alternate methods for obtaining training in non-Government facilities under the Government Employees Training Act, 5 U.S.C. Chapter 41.

317.7101 Applicable regulations.

Basic policy, standards, and delegations of authority to approve training are contained in HHS Personnel Manual Instruction 410–1.

317.7102 Acquisition of training.

(a) The acquisition of interagency training courses and non-governmental off-the-shelf training courses, whether for individual employees or for groups of employees, is the responsibility of the Assistant Secretary for Personnel Administration.

(b) Non-governmental training must be acquired through the contracting office if there are costs for training course development or for modification of off-the-shelf training courses.

PART 319—[AMENDED]

319.870 [Amended]

14. Section 319.870 is amended as follows:

a. In the first sentence of paragraph 319.870(a)(2), remove the word "shall" and replace it with "may".

b. In the fourth sentence of paragraph 319.870(a)(2) (i.e., the second sentence in parentheses), add the phrase "which are neither unique nor complex and requirements" between the words "requirements" and "for".

c. Between the fourth and fifth sentences of paragraph 319.870(a)(2) (i.e., the second and third sentences within parentheses), add the following sentence: "Only in extenuating circumstances will SBA accept these types of requirements when technical evaluation of more than one concern is requested." and

d. In the first sentence of paragraph 319.870(a)(4), remove the phrase "is required or".

PART 332—[AMENDED]

15. Subpart 332.9 is added to read as follows:

Subpart 332.9—Prompt Payment

Sec.
332.902 Definitions.
332.905 Invoice payments.

Subpart 332.9—Prompt Payment

332.902 Definitions.

"Fiscal office" means the office responsible for: (a) Determining whether interest penalties are due a contractor and, if so, the amount, (b) determining whether an invoice offers a financially advantageous discount, (c) maintaining records for and submission of prompt payment reports to the Deputy Assistant Secretary, Finance (DASF), ASMB, OS, and (d) processing payments to the Treasury Department to allow for payment to a contractor when due. The fiscal office shall fulfill the roles of the "designated billing office" and the "designated payment office."

332.905 Invoice payments.

(a)(2)(ii) and (b)(3). In most instances, Government acceptance or approval can occur within the five (5) working day constructive acceptance period specified in paragraph (a)(6) of the Prompt Payment clause at FAR 52.232–25 or paragraph (a)(5) of Alternate I to the Prompt Payment clause. However, the contracting officer should coordinate this provision with the Government office that will be responsible for the acceptance or approval function. The contracting officer should specify a longer period where the 5 working day period is not reasonable or practical. Considerations include, but are not limited to, the nature of supplies or services being accepted, inspection and testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A period less than 5 working days is not scheduled.

(i) In instances where the contracting officer receives the invoice and the contract requires payment to be made within 30 days after receipt of a proper invoice, the contracting officer shall submit the approved invoice to the fiscal office no later than sixteen (16) calendar days from receipt of a proper invoice by the designated fiscal office. However, when a contract provides for a payment due date other than 30 days after receipt of a proper invoice, and if contracting officer approval of the invoice is required before payment can be made, the contracting officer shall reach agreement with the fiscal office prior to award as to when the invoice is to be received in the designated fiscal office.

PART 339—[AMENDED]

339.7001 [Amended]

16. Section 339.7001 is amended as follows:

a. In the introductory paragraph, remove the title "HHS ADP Systems Manual," and replace it with "HHS Information Resources Management (IRM) Manual," and remove the designation "Office of Management Analysis and Systems (OMAS)," and replace it with "Office of Information Resources Management (OIRM),".

b. In paragraph 339.7001(a), remove the acronym "OMAS" and replace it with "OIRM", and insert the phrase "Exhibit 4–10–A of" between the words "in" and "Chapter 4–10".

c. In the first sentence of paragraph 339.7001(b), remove the acronym "OMAS" and replace it with "OIRM", and insert the parenthetical phrase "(delegation of procurement authority (DPA))" between the words "document" and "is".

d. In the second sentence of paragraph 339.7001(b), remove the words "initiate action on" and replace them with "issue a solicitation based on", and insert "(DPA)" between the words "document" and "is".

339.7002 [Amended]

17. Section 339.7002 is amended as follows:

a. Add the following sentence to the end of paragraph 339.7002(a): "The project officer is responsible for setting forth the specific portions of Part 6, ADP Systems Security, of the HHS IRM Manual which are applicable to the instant acquisition."

b. Paragraphs 339.7002(b)(2) and 339.7002(b)(3) are both amended by removing the title "HHS ADP Systems Manual." and replacing it with "HHS IRM Manual."

PART 342—[AMENDED]

Subpart 342.72—[Removed]

18. Subpart 342.72 is removed.

PART 352—[AMENDED]

352.242-72 through 352.242-79 [Removed]

19. Sections 352.242–72 through 352.242–79 are removed.

[FR Doc. 88–24721 Filed 10–25–88; 8:45 am]
BILLING CODE 4150-04-M

VETERANS ADMINISTRATION

48 CFR Parts 807 and 852

Acquisition Regulations Relating to Cost Comparisons

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) is amending the Veterans Administration Acquisition Regulation (VAAR) to implement the office of Management and Budget (OMB) Circular A–76, which requires that a comparison be utilized in determining whether required services will be performed by Federal employees or by a contractor. This regulation will provide the means for enhancing the VA implementation of the requirements of OMB Circular A–76.

EFFECTIVE DATE: October 18, 1988.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Acquisition Policy Staff (93), Office of Acquisition and Material Management, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC, (202) 233–2334.

SUPPLEMENTARY INFORMATION:

I. Background

This regulaion was published as a proposed rule on February 22, 1988 (53 FR 5201), in order to solicit public comment on the proposed acquisition-related guidance in conducting A–76 cost comparisons. After consideration of comments received, the proposed rule is being adopted with change mandated by the Veterans Benefits and Services Act of 1988 (Pub. L. 100–322) which requires two bidders for all A–76 solicitations at VA health care facilities, and a minor change requested by OMB.

There were three responses from the notice of proposed rulemaking. The first response was received from the National Federation of Federal Employees and expressed no objection to the proposed rule.

The second response was from the Small Business Administration (SBA) and expressed objection to the proposed rule at § 807.304–72 which requires that, under certain A–76 cost comparisons, at least two responsible and responsive bids must be received in order to consider contracting out a VA activity. The Chief Counsel for Advocacy, Small Business Administration, submitted an objection to our certification that the proposed rule was not subject to the Regulatory Flexibility Act (RFA) and that in any case the VA proposed rule would not have a significant impact upon a substantial number of small entities. We have concluded that the SBA assertion that the rule falls within the scope of section 601(2) of the RFA is correct. However, § 807.304–72 requiring two commercial bidders under A–76 cost comparisons has now been statutorily mandated by Pub. L. 100–322 for all A–76 studies conducted at VA health care facilities. Over a 5-year period, we currently project 275 A–76 studies at VA health care facilities. We project that a maximum of 20 percent will result in only one bid, or 55. Of these, we project half of the single bidders will be small business, or 28 small businesses. This number itself may not even meet the test of "substantial number." Furthermore, the impact should be minimized since situations of single bidders will normally be discovered in the sources sought phase thereby obviating bid preparation costs.

We base our conclusions that the rule will have minimal impact on other than VA medical center functions on its limited application. The two-bidder requirement will only be used in A–76 solicitations and only if its use is fully justified by the individual cricumstances of the cost comparison. The rule applicable to nonmedical care functions clearly states that the two-bidder requirement is expected to be used sparingly. VA guidance to contracting officers emphasizes that other more traditional approaches to ensuring selection of responsible bidders are to be favored over use of a two-bidder requirement. However, when a current in-house function is of a sensitive nature, such as that having significant potential adverse impact upon veteran beneficiaries if the function were disrupted, and for which the time frame for establishing an alternative source is lengthy, and which meets other salient criteria identified in § 807.304–72, and if the approval of the facility director or department of staff office head is obtained, the two-bidder requirement is considered a prudent safeguard.

The VA currently has approximately 100 commercial activities at nonmedical facilities which will be studied over the next 5 years. We project, as a maximum, that 33⅓ percent of these studies will meet the criteria for requiring two-bidders, or 33 studies (33⅓%×100). Based upon our experience with A–76 cost comparisons, 10–20 percent of the solicitations will result in only one bidder. Therefore, we can project six instances over a 5-year period in which a solicitation will either not be issued or will be cancelled as a result of the two-bidder rule. Of such occurrences, we project that 50 percent, or three, will be small businesses. We consider that a rule affecting three small businesses over 5 years is of minimal impact. Furthermore, we do not expect the impact upon these three to be significant since in most cases the VA will be able to determine instances of a single potential source during the sources sought phase of the cost comparison. The small business would, therefore, not incur bid preparation costs.

SBA contends that the VA two-bidder A–76 policy is unprecedented, that the concern with single bidder reliance is unfounded, that other safeguards exist and that A–76 provides protection since functions which are not successfully performed by contractors may be brought back in-house. The VA does acknowledge that other safeguards exist and emphasizes those safeguards in preference to a two-bidder requirements. The A–76 allowance for converting in-house functions if a commercial source cannot successfully perform the function is considered in § 807.304–72(b)(2). The VA also acknowledges that the two-bidder policy is unique but contends it is a prudent protection to the possible adverse effect of single source reliance for critical VA functions. The requirement for two responsible bidders for A–76 cost comparisons has been official VA policy for 7 years. The reason for that policy was earlier experience in contracting out two highly capital intensive functions in which the respective contractors were the only commercial sources for the service. In one case, the firm was unable to perform during the subsequent contract period and in the other case subsequent contract costs escalated significantly. The two-bidder requirement was intended to provide protection against such occurrences. In order to ensure that the two-bidder requirement is only use under appropriate conditions, its usage requires high level approval and its usage is centrally monitored.

OMB has also objected to the VA two-bidder requirement as being unduly restrictive. Again, the VA is now required by law to use the two-bidder

requirement in the majority of its A–76 studies. In those studies in which the VA retains discretionary use of the two-bidder requirement, its use will be under exceptional circumstances. However, its use under such circumstances as identified in § 807.304–72 is considered necessary. OMB also recommends a minor revision to the clause in § 852.207–70, "Report of Employment Under Commercial Activities," which is being adopted. The change will clarify that the right of first refusal is for permanent Federal employees.

The Notice of Cost Comparison provision in § 852.207–71(b) is amended to reflect the requirements in Pub. L. 100–322. The two-bidder requirement pertaining to solicitations which accept both a Goverment-owned, Contractor-operated (COCO) or Contractor-owned, Contractor-Operated (COCO) has been determined to require two GOCO bids to consider contracting on a GOCO basis and two COCO bids to consider contracting on a COCO basis.

OMB Circular A–76, Transmittal No. 7, was issued in July 1988. Transmittal No. 7 rescinded the earlier Transmittal No. 4 which had required that a bidder's/offeror's projected contributions to social security and thrift-profit sharing plans be deducted from their respective bid/offer for cost comparison purposes. Therefore, §§ 807.370 and 852.207–73 are unnecessary and are removed from the final regulation.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

For the reasons enunciated in this preamble, the VA certifies that this rule will not have a significant impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to these final regulations.

List of Subjects in 48 CFR Parts 807 and 852

Government procurement.

Approved: October 18, 1988.

Thomas K. Turnage,

Administrator.

In 48 CFR Chapter 8, Part 807 and sections 852.207–70, 852.207–71, and 852.207–72, are added as set forth below:

1. Part 807 is added to read as follows:

PART 807—ACQUISITION PLANNING

Subpart 807.3—Contractor Versus Government Performance

Sec

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 807.3—Contractor Versus Government Performance

807.300 Scope of subpart.

This subpart prescribes basic procedures and principles to be followed in performing the contracting aspect of the OMB Circular A–76 cost comparison process.

807.302 General

(a) Pursuant to 38 U.S.C. 5010(c)(2), all A–76 cost comparisons of commercial and/or industrial activities performed by the VA Department of Medicine and Surgery (DM&S) at VA medical facilities will be based upon comparative cost of the first five years of contract performance. Consequently, such cost comparisons will specify contractual commitments for one year plus four one-year renewal options (see FAR 17.2). (Other VA departments and staff offices may use contractual commitments for a minimum of one year with two one-year renewal options or a maximum of one year with four one-year renewal options.) Furthermore, 38 U.S.C. 5010(c)(4) prescribes a cost comparison methodology which differs from that contained in OMB Circular A–76. In order that bidders/offerors are made aware of the cost comparison methodology which will be applied, the provision in 852.207–72, Cost Comparison Criteria—VA Medical Facilities, will be included in solicitations for cost comparisons of VA DM&S activities which are currently performed at VA medical facilities by VA employees.

807.300 Procedures.

807.304–72 Requirement for second commercial sources for A–76 solicitations.

(a) Pub. L. 100–322 established a requirement that for A–76 cost comparisons conducted at health-care facilities, a contract can only be awarded if the A–76 solicitation results in responsive bids/offers from at least "two responsible, financially autonomous bidders (offerors)." Consequently, A–76 solicitations for functions at VA health-care facilities will contain the provision specified in 852.207–71.

(b) The general policy of the VA, except as identified in paragraph (a) of this section, is to proceed with A–76 cost comparison if one or more responsive and responsible bidder/offerors respond to an A–76 solicitation. However, if justified and approved in accordance with this section, an A–76 solicitation may require that two responsive and responsible bidders/offerors respond to the solicitation and will use the appropriate provision specified in 852.207–71. If the requirement for two bidders is approved and used, the cost comparison process will be terminated and the solicitation cancelled unless two bids/offers are received.

(c) The justification for use of a second commercial source requirement shall address each of the following criteria:

(1) Criticality of the activity under study to the mission of the facility and the degree of adverse impact on facility from disruption in services.

(2) Amount of resources needed (facility and capital investment, time frame, and costs attributed to obtaining adequate staff) to convert the service back to in-house operation.

(3) The availability and feasibility of obtaining the service from other VA facilities or other Government facilities.

(4) Evaluation of anticipated bidder's/offeror's essential qualification characteristics.

(5) Availability of other commercial sources in close geographic proximity to the facility.

(d) Requests to use the provisions specified in 852.207–71 will be prepared by the director (or head of the requesting element for activities consisting of less than 10 FTEE) of the facility in which the commercial activity presently exists. The request will, at a minimum, address the criteria in paragraph (b) of this section and will be forwarded for approval as follows:

(i) For A–76 solicitations comparing in-house activities consisting of less than 10 FTEE, approval is delegated to the facility director.

(ii) For A–76 solicitations comparing in-house activities consisting of 10 FTEE or more, approval will be made by the respective department head or staff office director, or their designee.

(e) A copy of each approval granted pursuant to paragraphs (c) and (d) of this section will be forwarded to Director, Office of Program Analysis and Evaluation (07), through the respective department head or staff office director,

within five working days of such approval.

807.304-73 Bid opening/receipt of proposals.

The date established for bid opening or receipt of proposals will normally be 90 days after sending the request for publication to the Commerce Business Daily (CBD) (65 days after issuing the solicitation).

807.304-75 Bid acceptance.

Bid acceptance shall be 90 days from bid opening/receipt of proposals in order to accommodate the time necessary to evaluate bids/offers, finalize the cost comparison and process any appeals. Contracting officers will insert "90 days" in FAR clause 52.214-15.

807.304-76 Contract effective date.

(a) A transition from in-house performance to contract requires a period of time from contract award to beginning of contract performance (contract effective date). This time is necessary to allow for personnel adjustments, e.g., right of first refusal process, and to allow a reasonable period for the contractor to make necessary resource reallocations. The contract effective date should be carefully considered in conjunction with the A-76 Task Group and must be specified in the solicitation.

(b) Although outplacement planning to minimize the effect of any necessary reduction in force should be initiated in advace of bid opening/receipt of proposals as prescribed by Office of Personnel and Labor Relations, there are also employee and labor organization reduction-in-force notice requirements which must be satisfied.

(c) When bargaining unit employees will be affected, facility officials also should review and comply with any employee or labor organization notice requirements in applicable negotiated agreements.

807.304-77 Right of first refusal.

(a) In addition to the Right of First Refusal clause specified in FAR 52.207-3, the contracting officer will include the clause "Report of Employment Under Commercial Activities" in 852.207-70. This clause is primarily intended to verify that the contractor is meeting its obligation to provide adversely affected Federal workers the first opportunity for employment openings, for which they qualify, created by the contract.

(b) The Report of Employment Under Commercial Activities clause is also prescribed to avoid inappropriate severance payment. In order to implement the clause, the contracting officer (or Contracting Officer's Technical Representative (COTR)) must first obtain a list from the servicing personnel office of Federal employees, including their Social Security numbers, who will be adversely affected as a result of the anticipated contract. The list should be requested as soon as a preliminary determination is made to contract out a function subject to A-76. (Contracting officers may designate a COTR to coordinate the information and reporting requirements.)

PART 852—[AMENDED]

2. The authority citation for Part 852 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

3. In Subpart 852.2, sections 852.203-70, 852.203-71, and 852.203-72 are added to read as follows:

852.207-70 Report of employment under commercial activities.

As prescribed in 807.304-75, the following clause will be included in A-76 cost comparison solicitations:

Report of Employment Under Commercial Activities (March 1987)

(a) Consistent with the Government post-employment conflict of interest regulations, the contractor shall give adversely affected Federal employees the right of first refusal for all employment openings under this contract for which they are qualified.

(b) *Definitions.* (1) An "adversely affected Federal employee" is:

(i) Any permanent Federal employee who is assigned to the government commercial activity, or

(ii) Any employee identified for release from his or her competitive level or separated as a result of the contract.

(2) "Employment openings" are position vacancies created by this contract which the contractor is unable to fill with personnel in the contractor's employee at the time of the contract award, including positions within a 50 mile radius of the commercial activity which indirectly arise in the contractor's organization as a result of the contractor's reassignment of employees due to the award of this contract.

(3) The "contract start date" is the first day of contractor performance.

(c) *Filling employment openings.* (1) For a period beginning with contract award and ending 90 days after the contract start date, no person other than an adversely affected Federal employee on the current listing provided by the contracting officer shall be offered an employment opening until all adversely affected and qualified Federal employees identified by the contracting officer have been offered the job and refused it.

(2) The contractor may select any person for an employment opening when there are no qualified adversely affected Federal employees on the latest current listing provided by the contracting officer.

(d) *Contracting reporting requirements.* (1) No later than five working days after contract award the contractor shall furnish the contracting officer with the following:

(i) A list of employment openings including salaries and benefits,

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

(2) By contract start date, the contractor shall provide the contracting officer with the following:

(i) The names of adversely affected Federal employees offered an employment opening,

(ii) The date the offer was made,

(iii) A brief description of the position,

(iv) The date of acceptance of the offer and the effective date of employment,

(v) The date of rejection of the offer, if applicable for salary and benefits contained in the rejected offer, and

(vi) The names of any adversely affected Federal employees who applied but were not offered employment and the reason(s) for withholding an offer.

(3) For the first 90 days after the contract start date, the contractor shall provide the contracting officer with the names of all persons hired or terminated under the contract within five working days of such hiring or termination.

(e) *Information provided to the contractor.* (1) No later than 10 working days after the contract award, the contracting officer shall furnish the contractor a current list of adversely affected Federal employees exercising the right of first refusal, along with their completed job application forms.

(2) Between the contract award and start dates, the contracting officer shall inform the contractor of any reassignment or transfer of adversely affected employees to other Federal positions.

(3) For a period up to 90 days after contract start date, the contracting officer will periodically provide the contractor with an updated listing of adversely affected Federal employees reflecting employees recently released from their competitive levels or separated as a result of the contract award.

(f) *Qualification determination.* The contractor has a right under this clause to determine adequacy of the qualifications of adversely affected Federal employees for any employment openings. However, an adversely affected Federal employee who held a job in the Government commercial activity which directly corresponds to an employment opening shall be considered qualified for the job. Questions concerning the qualifications of adversely affected Federal employees for specific employment openings shall be referred to the contracting officer for determination. The contracting officer's determination shall be final and binding on all parties.

(g) *Relation to other statutes, regulations and employment policies.* The requirements of this clause shall not modify or alter the contractor's responsibilities under statutes, regulations or other contract clauses pertaining to the hiring of veterans, minorities or handicapped persons.

(h) *Penalty for Noncompliance.* Failure of the contractor to comply with any provision

of this clause may be grounds for termination for default.

(End of Clause)

852.207-71 Notice of cost comparison.

When authorized in accordance with 807.304-72, the FAR provision 52.207-1, Notice of Cost Comparison (Sealed-Bid), or 52.207-2, Notice of Cost Comparison (Negotiated), whichever is appropriate, will be supplemented with the following provision for the circumstances prescribed:

(a) When only COCO bids or only GOCO bids will be accepted:

Notice of Cost Comparison (1988)

(a) Reference is made to the provision "Notice of Cost Comparison (Sealed-Bid) or (Negotiated)," FAR 52.207-1 (or 52.207-2).

(b) Bidders (offerors) are placed on notice that no contract will be awarded, irrespective of cost comparison results, unless *two or more responsive and responsible financially autonomous bidders* (offerors) respond to this solicitation.

(End of Provision)

(b) If GOCO and COCO bids/offers will be considered, the following supplemental provision will be used:

Notice of Cost Comparison—Supplement (1988)

(a) Reference is made to the provision "Notice of Cost Comparison (Sealed-Bid) or (Negotiated)," FAR 52.207-1 (or 52.207-2).

(b) Bidders (offerors) are placed on notice that this solicitation allows contractors to bid (offer) and/or Government-owned, Government-operated (GOCO) basis. However, a COCO method of performance will only be considered if two or more responsive and responsible financially autonomous firms bid (offer) on a COCO basis, and a GOCO bid will only be considered if two or more responsive and responsible financially autonomous firms bid (offer) on a GOCO basis.

(End of Provision)

852.207-72 Cost comparison criteria—VA medical facilities.

As prescribed in 807.302(a), the following provision will be included in the solicitation for cost comparison of DM&S activities currently performed at VA medical centers by VA employees.

Cost Comparison Criteria—VA Medical Facilities (1988)

Bidder/offerors are placed on notice that the cost comparison calculations will conform to the criteria prescribed in Title 38, United States Code, Section 5010. In accordance with Section 5010(c)(21), a contract award will not be made unless the total cost of performance over the first five years of such performance (including the cost to the Government of conducting the study) is lower by 15 percent or more than the cost of performance by Federal employees.

(End of Provision)

[FR Doc. 88-24705 Filed 10-25-88 8:45 am]

BILLING CODE 8320-01-M

Proposed Rules

Federal Register
Vol. 53, No. 207
Wednesday, October 26, 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

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Rice

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Proposed rule.

SUMMARY: In compliance with the requirements for periodic review of regulations, the Federal Grain Inspection Service (FGIS or Service) is proposing to revise the United States Standards for Rice. The Service proposes to revise the United States Standards for Rough Rice by adding a separate category for heat-damaged kernels and redefining the special grade "weevily" to the more inclusive and meaningful term "infested." The Service also proposes to revise the United States Standards for Rough Rice, Brown Rice for Processing, and Milled Rice by: (1) Incorporating the insect infestation tolerances in the standards, (2) revising the rounding procedures as stated in the sections on percentages to more generally accepted mathematical procedures, (3) eliminating many of the footnotes and references to footnotes throughout the standards and incorporating the information into the text of the standards, and (4) making other miscellaneous nonsubstantive changes to simplify and provide for uniform provisions and language in the standards.

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspections and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

DATE: Comments must be submitted on or before November 25, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090–6454.

Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail.

Telex users may respond as follows: to Lewis Lebakken Jr., TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at Room 0628 South Building, 1400 Independence Avenue, SW, Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Review of Standards

On January 7, 1988, the Service published in the **Federal Register** (53 FR 411) a request for public comment on the review of the United States Standards for Rice and specific issues identified by interested parties. The request for comments explained that the Rice Millers' Association (RMA) had requested that the Service review the heat-damaged kernels factor limits for rough rice and that the Service was reviewing the heat-damaged kernels factor limits for brown rice for processing (brown rice), and the mathematical rounding procedures. The objective of the review is to ensure that the standards continue to serve the needs of the marketplace to the greatest extent possible.

Interested parties were invited to participate in the rulemaking process by submitting written comments. During the 45-day comment period, one comment was received from a rice miller. The commenter suggested revising the factor limits for total seeds and heat-damaged kernels (TS&HT) and heat-damaged kernels and objectionable seed (HT&OBS) in rough rice and brown rice to equal the milled rice standards. The commenter stated that HT&OBS limits for rough and brown rice far exceed the limits found in the milled rice standard, making it virtually impossible to process any specific grade level of rough rice or brown rice into an equivalent grade of milled rice. In addition, in a later correspondence, the RMA also recommended modifying the rough and brown rice standards to better reflect the milled rice standard. However, the RMA recommended only revising the number of heat-damaged kernels allowed in rough rice and brown rice to equal milled rice.

The current standards for rough rice and milled rice have one grade factor HT&OBS which is determined on a milled rice basis. That is, rough rice is dehulled and milled in the laboratory to simulate the commercial milling process, and then the milled portion is analyzed for HT&OBS. Conversely, the brown rice standard includes a grading factor for heat-damaged kernels which is determined on a milled rice basis and another grading factor for objectionable seeds which is determined on a brown rice basis. These different testing procedures and factor limits make it difficult to compare separately the HT&OBS for each standard. Table 1, provides a comparison of the combined limits for HT&OBS.

TABLE 1.—COMPARISON OF HEAT-DAMAGED KERNELS AND OBJECTIONABLE SEEDS LIMITS FOR ROUGH, BROWN, AND MILLED RICE.

Factors	U.S. Grade					
	1	2	3	4	5	6
Rough Rice: HT&OBS [1]	3	5	8	22	32	75
Brown Rice: Heat-damaged kernels [1]	1	2	4	8	15	N/A
Objectionable seeds [2]	2	10	20	35	50	N/A
Total HT&OBS [3]	3	12	24	43	65	N/A
Milled Rice: HT&OBS [1]	1	2	5	15	25	75

[1] Number in 500 grams determined on a milled rice basis.
[2] Number in 500 grams determined on a brown rice basis.
[3] Brown rice has separate limits for heat-damaged kernels and objectionable seeds. Total shown for comparison purposes only.

Objectionable seeds include all seeds, except rice and the species *Echinochloa crusgalli* which is commonly known as barnyard grass, watergrass, or Japanese millet. The presence of *Echinochloa crusgalli* seeds is addressed by the TS&HT factor in rough rice and brown rice standards and the total seeds, heat-damaged, and paddy kernels factor in the milled rice standard. Heat-damaged kernels are materially discolored and damaged as a result of heating due to improper storage, and parboiled rice kernels in nonparboiled rice which are equal to or darker than the interpretive line for heat-damaged kernels.

Objectionable Seeds

The Service believes that tightening the limits on objectionable seeds would be unnecessary. The normal milling process involves removing impurities, such as objectionable seeds. Reducing the number of seeds allowed in rough rice to the same level allowed in milled rice (e.g., reducing the U.S. No. 2 Rough Rice limit from 5 to 2 HT&OBS), could encourage producers to use additional herbicides during production or modify harvesting or other production techniques to control weeds. Reducing the number of seeds allowed in brown rice to the milled rice tolerances would have the same impact as changing the rough rice limits; plus, a change in the basis of determination from brown rice to milled rice would be necessary.

Whether an adjustment in the level of objectionable seeds is warranted to reduce but not eliminate the margin between rough and brown rice with milled rice is not clear at this time. Further review would be necessary before the Service would propose any change to the limits for objectionable seeds in rough rice and brown rice.

Heat-Damaged Kernels

The RMA and the one commenter recommended that the heat-damaged kernel limits for rough and brown rice equal the limits for milled rice. Heat-damaged kernels are determined on a milled rice basis for all three kinds of rice; thus, equalizing the limits is possible. However, for brown rice the current limits are not based on a direct count. Brown rice kernels and pieces of kernels that are heat-damaged are weighed and every 0.02-gram equals a count of one. Conversely, for rough and milled rice, each kernel or piece of a kernel equals a count of one. The desirability of changing the brown rice procedure for determining heat-damaged kernels is not clear at this time. Further review would be necessary before the Service would propose any change regarding the brown rice heat-damaged kernel limits or procedures.

However, in order to tighten the heat-damaged kernel limis for rough rice without changing the objectionable seed units, the RMA proposes to create a category for heat-damaged kernels. During a March 1977 meeting, the RMA noted that the technology was readily available and at a reasonable cost to remove objectionable seeds from rough rice during the normal milling process but that removing heat-damaged kernels is more difficult and expensive. Further, heat damage occurs as a result of heating due to improper storage or the parboiling of rice, conditions generally more controllable than field weeds.

Therefore, the Service is proposing to revise the rough rice standards by adding a separate category for heat-damaged kernels equivalent to the milled rice HT&OBS factor limits. This would provide rice mills a reasonable opportunity to produce an equivalent quality of milled rice because they would only need to remove objectionable seeds from the rough rice, rather than HT&OBS.

Basis of Determination for Brown Rice

The commenter also suggested that all factors for brown rice, except paddy kernels (kernels that are ½ or more covered with a hull), be graded on a milled rice basis with the grade factor limits the same as milled rice. That is, the brown rice would be milled in the laboratory and inspectors would analyze the milled rice for all factors except paddy kernels. The commenter stated that this would give the brown rice buyer a better idea of what the rice would grade after milling.

The concept of grading brown rice on a milled rice basis will most likely give distinctly different factor results because of the laboratory milling process. For example, seeds or soft chalky kernels may crumble and become pulverized; and the bran of red rice or a spot of damage may be rubbed off during the laboratory milling process. Consequently, the milling procedure may improve the quality of the rice. Therefore, the factor limits influenced by the laboratory milling process should be determined and reduced accordingly. The Service believes that further review would be necessary before the Service would propose any changes to brown rice for processing standards.

Infestation

The Service also proposes to redesignate the rough rice special grade "weevily" to "infested." The term "infested" would be used because it more appropriately describes rough rice containing live insects injurious to stored rice and the term "weevily" connotes a specific insect species, e.g., *Sitophilus* spp. Infested refers to rough rice found to contain live insect infestation above a threshold level. Other insects, in addition to types of weevils, are included within the scope of the term infested rough rice.

In addition, the Service proposes that the tolerances for insects injurious to stored rough rice be defined according to sampling designations as follows: (1) Representative sample, (2) Lot as a whole (stationary), and (3) Sample as a whole during continuous loading/unloading. These proposed tolerances are the same as those presently being applied in FGIS instructions except for minor editorial changes.

For rough rice, the representative sample would include the work portion and the file sample if needed, and when available. The work portion (except lots sampled during continuous loading/unloading) would be considered infested if it contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice. Lot as a whole (stationary) would be infested if two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice, or 15 or more live Angoumois moths or other live moths injurious to stored rice are found in, on, or about the lot. Sample as a whole during continuous loading/unloading would be infested if two or more live weevils, or one live weevil and one or more other live insects injurious to stored grain, or five or more other live insects injurious to stored rice are found in a component sample. The minimum sample size in 500 grams per each 100,000 pounds of rice.

The Service also proposes to incorporate the insect tolerances for brown rice and milled rice in the apopropriate grade tables. For brown rice, two or more live insects injurious to stored rice is considered Sample grade. For milled rice, two or more live or dead insects injurious to stored rice is considered Sample grade. These proposed tolerances are presently in FGIS instructions and have been applied to rice inspection for several years.

Rounding

It is also proposed that the Service change its current procedure for rounding percentages for all rice standards. The current rounding procedures for percentages provide that when a figure to be rounded is followed by a figure greater than 5, the figure is rounded up to the next higher figure, e.g., 0.46 is reported as 0.5; when a figure to be rounded is followed by a figure less than 5, the figure is to be retained, e.g., 0.44 is reported as 0.4; when figures that are even are followed by the figure 5, the even figure is retained, e.g., 0.45 is reported as 0.4; and when a figure is odd and followed by a figure of 5, the figure is rounded to the next higher even figure, e.g., 0.35 is reported as 0.4.

The proposed rounding rules simply stated provide that a figure to be rounded followed by a 5 or a figure greater than 5 be rounded up to the next higher figure, e.g., report 0.35 as 0.4, 6.46 as 6.5. If the figure is followed by a number less than 5, the figure is retained, e.g., report 8.34 as 8.3. These proposed rounding procedures are consistent with rounding performed by calculators and in computer applications. Accordingly, this proposed change would adopt more generally accepted mathematical rounding procedures and would facilitate the understandability and usage of the standards.

The presence of footnotes in the standards has caused confusion among users of the standards and made publication difficult. To eliminate such confusion, most footnotes and references to footnotes are proposed to be removed from the standards. The information contained in the footnotes are included, as appropriate, within the text of the standards. Footnotes contained within the body of the grade tables were retained. In addition, it is proposed that §§ 68.204, 68.254, and 68.304 titled *Temporary modifications in equipment and procedures* be removed as necessary. It is also proposed that a section in each subpart be added giving the mailing address where instructions and information may be obtained from the Service. In addition to the proposed changes previously discussed, the table which appears in the *Code of Federal Regulations* at 7 CFR § 68.210, *Grades and grade requirements for the classes of rough rice* would be corrected to accurately reflect the provisions of the final rule published August 12, 1977 (42 FR 40871).

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agricultural commodities, Rice.

For reasons set forth in the preamble, 7 CFR Part 68 is proposed to be amended as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

Subpart C—United States Standards for Rough Rice

Subpart D—United States Standards for Brown Rice for Processing

Subpart E—United States Standards for Milled Rice

2. Footnote 1 is removed from Subparts C, D, and E headings and the following statement is added directly below each Subpart heading to read as follows:

Note.—Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

§§ 68.202, 68.203, 68.207, 68.208, 68.252, 68.253, 68.255, 68.258, 68.259, 68.302, 68.303, 68.305, 68.308, 68.315 [Amended]

3. Footnote 2 is removed from §§ 68.202(m), 68.203, 68.207, 68.208, 68.252(o), 68.253, 68.255, 68.258, 68.259, 68.302(m), 68.302(y), 68.303, 68.305, 68.308, and 68.315(a).

§§ 68.203, 68.207, 68.208, 68.258, 68,259, 68.308 [Amended]

4. Footnote 3 is removed from §§ 68.203, 68.207, 68.208, 68.258, 68.259, and 68.308.

§ 68.202 [Amended]

5. Section 68.202(m) is amended removing "set forth in the Rice Inspection Handbook" at the end of the last sentence and adding "prescribed in FGIS instructions" in its place.

§ 68.203 [Amended]

6. Section 68.203 is amended by removing "set forth in the Rice Inspection Handbook" and "set forth in the Rice Inspection Handbook HB 918–11" references and adding "prescribed in FGIS instructions" in both places.

§ 68.204 [Removed]

§§ 68.205 and 68.206 [Redesignated as §§ 68.204 and 68.205]

7. Section 68.204 is removed and §§ 68.205 and 68.206 are redesignated as §§ 68.204 and 68.205, respectively.

§ 68.207 [Redesignated as § 68.206 and Amended]

8. Section 68.207 is redesignated as § 68.206 and amended by removing "the Rice Inspection Handbook, and the Equipment Manual" and adding "FGIS instructions" in its place.

§ 68.208 Redesignated as § 68.207 and Amended]

9. Section 68.208 is redesignated as § 68.207 and amended by removing "the Rice Inspection Handbook" and adding "FGIS instructions" in its place.

§ 68.209 [Redesignated as § 68.208 and Revised]

10. Section 68.209 is redesignated as § 68.208 and revised to read as follows.

§ 68.208 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 8.34 as 8.3 and 1.22 as 1.2.

(b) *Recording.* All percentages except for milling yield, are stated in whole and tenth percent to the nearest tenth percent. Milling yield is stated to the nearest whole percent.

11. A new § 68.209 is added to read as follows:

§ 68.209 Information.

Requests for the Rice Inspection Handbook, Equipment Handbook, or for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090–6454, or any field office or cooperator.

12. Section 68.210 is revised to read as follows:

Grades, Grade Requirements, and Grade Designations

§ 68.210 Grades and grade requirements for the classes of rough rice. (See also § 68.212.)

Grade	Maximum limits of—							
	Seeds and heat-damaged kernels				Chalky kernels [1]			
	Total (singly or combined) (number in 500 grams)	Heat-damaged kernels and objectionable seeds (number in 500 grams)	Heat-damaged kernels (number in 500 grams)	Red rice and damaged kernels (singly or combined) (percent)	In long grain rice (percent)	In medium or short grain rice (percent)	Other types [2] (percent)	Color requirements [1]
U.S. No. 1	4	3	1	0.5	1.0	2.0	1.0	Shall be white or creamy.
U.S. No. 2	7	5	2	1.5	2.0	4.0	2.0	May be slightly gray.
U.S. No. 3	10	8	5	2.5	4.0	6.0	3.0	May be light gray.
U.S. No. 4	27	22	15	4.0	6.0	8.0	5.0	May be gray or slightly rosy.
U.S. No. 5	37	32	25	6.0	10.0	10.0	10.0	May be dark gray or rosy.
U.S. No. 6	75	75	75	[3] 15.0	15.0	10.0	10.0	May be dark gray or rosy.
U.S. Sample grade: [4]								

[1] For the special grade Parboiled rough rice, see § 68.212(b).
[2] These limits do not apply to the class Mixed Rough Rice.
[3] Rice in grade U.S. No. 6 shall contain not more than 6.0 percent of damaged kernels.
[4] U.S. Sample grade shall be rough rice which:
(a) Does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 6, inclusive; or
(b) Contains more than 14.0 percent of moisture; or
(c) Is musty, or sour, or heating; or
(d) Has any commercially objectionable foreign odor; or
(e) Is otherwise of distinctly low quality.

13. Section 68.212 is amended by removing § 68.212(c); redesignating § 68.212(a) and (b) as (b) and (c); and adding a new paragraph § 68.212(a) to read as follows:

§ 68.212 Special grades and requirements.

* * * * *

(a) *Infested rough rice.* Tolerances for live insects responsible for infested rough rice are defined according to sampling designations as follows:

(1) *Representative sample.* The representative sample consists of the work portion, and the file sample if needed and when available. The rough rice (except when examined according to paragraph 3 below) will be considered infested if the representative sample contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice.

(2) *Lot as a whole (stationary).* The lot as a whole is considered infested when two or more live weevils, or one live weevil and one or more live insects injurious to stored rice, or five or more other live insects injurious to stored rice, or 15 or more live Angoumois moths or other live moths injurious to stored rice are found in, on, or about the lot.

(3) *Sample as a whole during continuous loading/unloading.* The minimum sample size for rice being sampled during continuous loading/unloading is 500 grams per each 100,000 pounds of rice. The sample as a whole is considered infested when a component (as defined in FGIS instructions) contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice.

* * * * *

14. Section 68.213 is revised to read as follows:

§ 68.213 Special grade designation.

The grade designation for infested, parboiled, or smutty rough rice shall include, following the class, the word(s) "Infested," "Parboiled Light," "Parboiled," "Parboiled Dark," or "Smutty," as warranted, and all other information prescribed in § 68.211.

§ 68.252 [Amended]

15. Section 68.252(o) is amended by removing "set forth in the Rice Inspection Handbook" in the last sentence and adding "prescribed in FGIS instructions" in its place.

§ 68.253 [Amended]

16. Sections 68.253 is amended by removing "set forth in the Rice Inspection Handbook" in the last sentence and adding "prescribed in GFIS instructions" in its place.

§ 68.254 [Removed]

17. Section 68.254 is removed.

§ 68.255 [Redesignated as § 68.254 and amended]

18. Section 68.255 is redesignated as § 68.254 and amended by removing "set forth in the Rice Inspection Handbook" and adding "prescribed in FGIS instructions" in its place.

§§ 68.256 and 68.257 [Redesignated as §§ 68.255 and 68.256]

19. Sections 68.256 and 68.257 are redesignated as §§ 68.255 and 68.256, respectively.

§ 68.258 [Redesignated as § 68.257 and Amended]

20. Section 68.258 is redesignated as § 68.257 and amended by removing "the Rice Inspection Handbook and the Equipment Handbook" and adding "FGIS instructions" in is place.

§ 68.259 [Redesignated as § 68.258 and Amended]

21. Section 68.259 is redesignated as § 68.258 and amended by removing "the Rice Inspection Handbook" at the end of the first sentence and adding "FGIS instructions" in its place.

§ 68.260 [Redesignated as § 68.259 and Revised]

22. Section 68.260 is redesignated as § 68.259 and revised to read as folows:

§ 68.259 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 8.34 as 8.3 and 1.22 as 1.2.

(b) *Recording.* All percentages, except for milling yield, are stated in whole and tenth percent to the nearest tenth percent. Milling yield is stated to the nearest whole percent.

23. A new § 68.260 is added to read as follows:

§ 68.260 Information.

Requests for the Rice Inspection Handbook, Equipment Handbook, or for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090–6454, or any field office or cooperator.

§ 26.261 [Amended]

24. Section 68.261 is amended by adding "two or more" after "(f) contains" in the table.

§ 68.302 [Amended]

25. Section 68.302(d)(5), (6), and (7) are amended by removing "§§ 68.303 and 68.304" in each paragraph and adding "§ 68.303" in its place.

26. Section 68.302(m) is amended by removing "set forth in the Rice Inspection Handbook" and adding "prescribed in FGIS instructions" in its place.

27. Section 68.302(y) is amended by removing "set forth in the Equipment Handbook" and adding "prescribed in FGIS instructions" in its place.

§ 68.303 [Amended]

28. Sections 68.303 is amended by removing "set forth in the Rice Inspection Handbook" and adding "prescribed in FGIS instructions" in its place.

§ 68.304 [Removed]

29. Section 68.304 is removed.

§ 68.305 [Redesignated as § 68.304 and Amended]

30. Section 68.305 is redesignated as § 68.304 and amended by removing "set forth in the Rice Inspection Handbook" and adding "prescribed in FGIS instructions" in its place.

§§ 68.306 and 68.307 [Redesignated as §§ 68.305 and 68.306]

31. Sections 68.306 and 68.307 are redesignated as §§ 68.305 and 68.306, respectively.

§ 68.308 [Redesignated as § 68.307 and Amended]

32. Section 68.308 is redesignated as § 68.307 and amended by removing "the Rice Inspection Handbook" and adding "FGIS instructions" in its place.

§ 68.309 [Redesignated as § 68.308 and Revised]

33. Section 68.309 is redesignated as § 68.308 and revised to read as follows:

§ 68.308 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 8.34 as 8.3 and 1.22 as 1.2.

(b) *Recording.* The percentage of broken kernels removed by a 5 plate in U.S. No. 1 and 2 Milled Rice and the percentage of objectionable seeds in U.S. No. 1 Brewers Milled Rice is reported to the nearest hundredth percent. The percentages of all other factors are recorded to the nearest tenth of a percent.

34. A new § 68.309 is added to read as follows:

§ 68.309 Information.

Requests for the Rice Inspection Handbook, Equipment Handbook, or for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090–6454, or any field office or cooperator.

§ 68.310 [Amended]

35. Section 68.310 is amended by adding "two or more" after "(f) contains" in the table.

§ 68.311 [Amended]

36. Section 68.311 is amended by adding "two or more" after "(f) contains" in the table.

§ 68.312 [Amended]

Section 68.312 is amended by adding "two or more" after "(g) contains" in the table.

§ 68.313 [Amended]

38. Section 68.313 is amended by adding "two or more" after "(h) contains" in the table.

§ 68.315 [Amended]

39. Section 68.315(a) is amended by removing "according to commercially accepted practice" and adding "as defined in the regulation issued pursuant to the Federal Food, Drug, and Cosmetic Act at 21 CFR 130.3(d)" in its place.

40. Section 68.315(d) is amended by removing "§ 68.307" in the first sentence and adding "§ 68.306" in its place.

Date: October 4, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88–24703 Filed 10–25–88; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS Number: 1040–88]

Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend regulations for the Immigration and Naturalization Service relating to temporary alien workers seeking classification under section 101(a)(15)(H) of the Immigration and Nationality Act. This proposed rule supersedes a previous Notice of Proposed Rulemaking published on

August 8, 1986 at 51 FR 28576 which proposed to amend the Immigration and Naturalization Service's regulations at 8 CFR 214.2(h). The purpose of that proposed rule was to clarify Service requirements for classification, admission and maintenance of status under the H classification. Due to the controversial nature of the previous proposed rule and the extensive modifications which the Service proposes to make to the proposal after considering the comments and consulting with affected groups, the Service is issuing this new Notice of Proposed Rulemaking to give the public an opportunity to comment on the changes.

DATE: Interested persons are invited to submit written comments on this proposed rule on or before November 25, 1988.

ADDRESS: Please submit written comments in triplicate to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 Eye Street NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Flora T. Richardson, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536: Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION: On August 8, 1986 at 51 FR 28576, the Immigration and Naturalization Service published a Notice of Proposed Rulemaking proposing to amend the Service's regulations at 8 CFR 214.2(h). A main objective of that rule was to establish realistic standards for determining who qualifies as an alien of distinguished merit and ablility for H–1 classification. In this respect, the rule defined profession and preeminence and listed the eligibility criteria for a member of the professions and for a person who is preeminent in his or her field. The rule also clarified the licensure requirement for H–1 classification.

The proposed rule specified the different filing requirements for certain types of petitions and made other technical amendments designed to promote consistency in the adjudication of H petitions. Some requirements were made more definitive, such as those relating to accompanying aliens, documentation of qualifications of aliens, restrictions on training programs, revocation of approved petitions, and limits on a temporary stay in the United States. Other requirements for obtaining benefits, such as those for extension of visa petitions and validity periods of petitions were modified. For the most part, the proposed rule simply restated in regulatory form existing Service policy for the H nonimmigrant classification.

The proposed rule generated extensive interest from the general public, labor and management organizations, and Members of Congress regarding standards for the H–1 classification. There was concern expressed by many commenters that the Service was being too restrictive in its interpretation of distinguished merit and ability, while others believed that the interpretation and standards go beyond Congressional intent and statutory authority. Several Congressional Committees were concerned that the regulations may expand the number of H–1 workers admitted to this country and result in displacement of American workers or depression of wages and working conditions in certain occupations and industries. They requested that the Service delay publication of a final rule until October 1, 1988 and during the intervening year, determine the occupational backgrounds of H–1 workers, the impact of H–1 workers on the American workforce, wages and working conditions of H–1 workers, and the impact of proposed regulations on admission of H–1 workers in industries now utilizing such workers.

The Service contracted with a well-known consulting firm to conduct a study on the impact of H–1 nonimmigrants on the American labor market. The results of the study were submitted to Congress in July 1988. Overall, the study found that the H–1 nonimmigrants admitted to the United States do not have an adverse impact on the labor market in terms of displacement of United States workers or depression of wages and working conditions. However, the study also found that a significant number of H–1 admissions are entry to mid-level professionals who only nominally meet the statutory standard of "distinguished merit and ability". These workers are, for the most part, sought by employers to meet labor shortages of American workers in occupational fields, such as nursing, engineering, and computer science. The contractor concluded that denial of H–1 petitions for such workers would result in undue hardship to employers and recommended a statutory change to establish a separate nonimmigrant category to accommodate them. The H–2 category would be inappropriate for these workers because it requires the jobs to be temporary in nature. Jobs filled by H–1 professional workers are usually permanent in nature.

Congress has again delayed publication of a final rule on the previous August 8, 1986, proposed rules until October 1, 1989, to give itself an opportunity to review and respond to the study. Congress would need time to amend the statute to establish a separate nonimmigrant category for entry to mid-level professionals, or to pass a legal immigration bill which responds to the needs of the American labor market. In the meantime, the Service is faced with mounting litigation regarding the standards for professionals. In view of this, the Service is proposing this significantly modified H rule which addresses the major areas of concern of the public, employers, labor organizations and Congress.

This Notice of Proposed Rulemaking reflects the Service's policies and interpretation of Congressional intent for the H classification at this time. It proposes significant changes from the previous proposed rule regarding the documentation required to establish eligibility for H–1 classification as a professional, a person of prominence, or as an accompanying alien. Changes are also proposed to procedures for consultation with unions and other experts, procedures for filing an H petition, and procedures for documenting the qualifications of aliens under the H classification. In addition, new provisions for the H–2B classification regarding temporariness and filing requirements are proposed due to the nature and increased volume of H–2B petitions now being filed since implementation of the Immigration Reform and Control Act (IRCA) of 1986.

IRCA amended section 101(a)(15)(H)(ii) to provide a new H–2A nonimmigrant classification for temporary agricultural labor separate from other temporary nonagricultural services or labor, now designated H–2B.

Since there are special criteria for the admission, extension, and maintenance of status for H–2A workers, the Service published an interim final rule effective June 1, 1987, to implement IRCA. Therefore, the provisions of this proposed rule will apply to H–2A workers only to the extent that they do not conflict with the special agricultural provisions. Paragraph (h)(4) of this proposed rule has been reserved for later incorporation of the H–2A provisions. Paragraph (h)(5) of these regulations relate only to nonagricultural (H–2B) services or labor.

The Service believes that these proposed revisions would clarify policy as it relates to the H nonimmigrant category for the public and Service

officers; would facilitate the admission of exceptional, professional, and skilled workers needed by businesses and other organizations; would curb abuses; and would promotion consistency in Service determinations.

Discussion of Proposed Amendments

Filing of Petitions

A petition to classify a worker under section 101(a)(15)(H) would be filed by a United States employer (or foreign employer under the H-1 classification) with the Service office which has jurisdiction over I-129H petitions in the area of intended employment. Such a petition generally involves one employer, one beneficiary, and employment in one location. Since the Service accommodates other types of petitions; the proposed rule prescribes filing requirements which do not fit the usual situation:

(A) *Services or training in more than one location.* When the services or training will be performed in more than one location, the Service has previously allowed the petitioner to file the petition in any one of the locations where the services will be performed. The Service has difficulty in locating and tracking such petitions when inquiries arise, especially in the entertainment industry. For control purposes, the petitioner would be required to file the petition with the Service office which has jurisdiction over I-129H petitions in the area where the petitioner is located. The address which the petitioner specifies on the new Form I-129H as its location would be where the petitioner is located for filing purposes. If the petitioner is a foreign employer, the petition would be filed with the Service office which has jurisdiction over I-129H petitions in the area where the services will begin.

(B) *Agents as petitioner.* In recognition of the fact that certain services involve workers who are traditionally self-employed or who use agents to arrange their employment with numerous employers, the Service would permit an established agent to file a petition in behalf of the employer(s). Whenever the beneficiary(ies) would be employed by a single employer or whenever the beneficiary(ies) would not be using the services of an established agent, the actual employer(s) would have to file the petition.

(C) *Multple beneficiaries on an H-1 petition.* The H-1 classification requires separate documentation which shows that each individual qualifies as a professional or person of prominence, except where the person is a member of a group and the reputation of the group as a whole is evaluated for H-1 classification, or where the person is an accompanying alien to an individual or group of distinguished merit and ability in the arts, cultural, entertainment, or professional sports field. In view of this, the rule would clarify that the filing of a separate petition for each H-1 beneficiary is required unless the alien is an accompanying alien or a member of a group.

Since documentation oif qualifications of H-2 and H-3 beneficiaries is less complex than for H-1 classification, more than one beneficiary may be included in an H-2 or H-3 petition if the beneficiaries will be performing the same service or receiving the same training in the same geographical area and will be applying for visas at the same consulate.

(D) *Named beneficiaries.* The Service proposes that every H petition, except those involving certain seasonal agricultural workers include the names of the beneficiary(ies) and other identifying information required by Form I-129H. The determination which the Service must make before granting H-1, H-2, and H-3 classification relates not just to the Service or training, but also the alien's qualifications or circumstances. In addition, the Service view the identification of beneficiaries as a control against certain abuses which could occur, as inflating the actual number of workers needed and including ineligible beneficiaries in a group.

(E) *Substitution of beneficiaries.* An approved H petition is generally limited to the named beneficiary(ies). This rule would clarify that substitution of beneficiaries may be made only in approved H-1 and H-2B petitions involving a group where the qualifications of the individual beneficiaries were not considered in according H classification, such as a foreign hockey team, orchestra, dance troupe, or theatrical group. In all other cases, a new petition would be required.

H-1 Petition for Alien of Distinguished Merit and Ability

This proposed rule would explain and clarify the standards for H-1 classification and the Service's criteria for determining which aliens qualify for H-1 classification. It also clarifies licensing requirements and defines an accompanying alien and other terms used in this rule.

(A) *Interpretation of distinguished merit and ability.* The Service proposes to codify into regulations its interpretation of the statutory standard for distinguished merit and ability under the H-1 classification. Distinguished merit and ability may be established in one of two ways. First, aliens who are members of the professions within the meaning of section 101(a)(32) of the Act, 8 U.S.C. 1101(a)(32), are classifiable as aliens of distinguished merit and ability; *Matter of Essex Cryogenics Industries, Inc.*, 14 I&N Dec. 196 (Dep. Assoc. Comm. 1972); *Matter of General Atomic Company*, 17 I&N Dec. 532 (Comm. 1980). Second, aliens who are prominent or renowned in their field of endeavor are classifiable as aliens of distinguished merit and ability; *Matter of Shaw*, 11 I&N Dec. 277 (D.D. 1965).

Heretofore, the Service has not consolidated into regulation the standards for determining who qualifies as a member of the professions or a person of prominence in his or her field. The proposed rule would describe the current criteria for qualification based on case law, and would add two new categories of prominence (one related to the performing arts and one related to business). It would also clarify and simplify the rules for determining when a person may be deemed a professional by virtue of education and experience.

(1) *Definition of profession and standards for professionals.* This rule would set forth the definition of "profession" and the standards for qualifying as a member of the professions. A "profession" means an occupation which requires theoretical and practical application of a body of specialized knowledge to fully perform the occupation in such fields of human endeavor as: Architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business, accounting, law, and theology. A profession requires completion of a specific course of education at an accredited college or university, culminating in a baccalaureate or higher degree in a specific professional field, and attainment of such degree or its equivalent in the minimum requirement for entry into the profession in the United States. There are two categories of persons who do not meet these requirements but are nevertheless regarded as professionals. The first category is persons who, after passage of normal professional tests and requirements, are granted full state licenses to practice the profession. The second category is persons who lack the required degree but, by virtue of a combination of college-level education, specialized training or experience, and professional standing are in fact lawfully practicing at a professional level. (Persons who, because of lack of training or licensure, cannot qualify as professionals may, if they have achieved

positions of responsibility and significance in business, qualify as "prominent". (See discussion below.) The Service has long recognized that full state licensure in a profession or a combination of education, experience, and professional standing may result in training which is equivalent to the professional training which is normally gained through attainment of a professional degree. The proposed rule would specify the extent and type of education and experience required in order for a person to qualify as a professional. Adoption of such a rule would make it easier for the public to understand the criteria for qualification, and would simplify administration for the Service.

To qualify as a member of the professions, the alien is required to:

- Hold a United States baccalaureate or higher degree required by the profession from an accredited college or university, or
- Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the profession from an accredited college or university, or
- Hold an unrestricted state license which authorizes him or her to fully practice the profession and be engaged in that profession in the state of intended employment, or
- Have completed at least two years of college-level training appropriate to the profession, have demonstrated that he or she has sufficient specialized training and/or professional experience combined with the college-level education to be equivalent to a United States baccalaureate or higher degree required by a profession, and have attained professional standing and recognition in the particular field.

(2) *Criteria for prominence.* The basic standard for prominence is the possession of skills and recognition substantially above those ordinarily encountered, to the extent that a person so described is prominent in his or her field of endeavor; *Matter of Shaw, supra.* Although existing case law and regulations set forth the types of documentation which must be attached to a petition to establish prominence, this rule would codify those documentation requirements and would establish definitive standards for determining prominence in two new categories. Prominence could be established by an individual alien or by a team or ensemble consisting of a group of aliens. The alien(s) would be required to:

- Have sustained national (foreign or U.S.) or international acclaim and recognition for achievements in the particular field evidenced by at least three different forms of documentation, such as those described in the rule at (h)(3)(i)(D), or
- Be an artist who, or an artistic group which is recognized by governmental agencies, cultural organizations, scholars, arts administrators, critics, or other experts in the particular field for excellence in developing, interpreting, or representing a narrow and clearly identifiable, unique or traditional ethnic, folk, cultural, musical, theatrical, or other artistic performance or presentation; be coming to the United States primarily for educational or cultural event(s) to further the understanding of or development of that art form; and be sponsored primarily be educational, cultural, or governmental organizations which promote such international cultural activities and exchanges, or
- Have exceptional career achievement in business in executive, managerial, or highly technical positions evidenced by at least three significant factors such as those specified in the proposed regulations at (h)(3)(i)(C)(*4*).

To establish that an alien or group has sustained national or international acclaim and recognition for achievements in a particular field, the petitioner would have to show at the time a petition is filed that the alien or group has a prolonged or significant record of critically acclaimed successes and achievements. Persons with ephemeral or short-lived acclaim and recognition in their field and those who are just developing in a field with potential for national or international acclaim are not eligible for H–1 classification.

The Service's current regulations describe the types of documentation required for entertainers to establish that they have national or international acclaim and recognition in their field. This rule would specify the types of evidence required to document this standard in any field, including entertainment. This diversified listing of documentation also provides guidance on how many forms of evidence would be required to establish eligibility.

Although the previous proposed rule included the standard types of documentation which the service over the years has required for entertainers to establish prominence, the standard and documentation were perceived as new and more restrictive than current requirements. Most of the commenters were under the impression that every entertainer must obtain an H–1 visa to perform services in the United States. The fact is that foreign artists who are not qualified for H–1 status may seek H–2B classification to perform the same services after obtaining from the Department of Labor a labor certification or a notice that such certification cannot be made. It appears that many petitioners have come to rely on the H–1 classification as the most expedient nonimmigrant classification for aliens who perform services in the arts, cultural, and entertainment industry. This is because they have obtained H–1 petition approvals that were in error in previous years from some field offices that did not follow the standards in existing regulations.

While the Service is sensitive to the unique circumstances of the arts, cultural, and entertainment industry, the need to promote cultural exchange, and the desire of the public for exposure to other cultures and a variety of entertainment, the Service is bound by the statutory requirements of the Immigration and Nationality Act in administering the H classification. The Service's regulations, case law, and other policy must conform to Congressional intent. Congress did not build into the H classification the flexibility for the Service to consider such factors as cultural exchanges, reciprocity, freedom and artistic expression, personal preferences, or economic hardship to the petitioner in according H Classification. Nor is there a mechanism for applying lesser standards for classification to the arts, cultural, and entertainment industry than to any other industry.

The new criteria reflected in the last two standards would recognize certain unique artists or ensembles which previously have not qualified for H–1 classification but clearly possess qualifications which are exceptional in nature, and certain persons with exceptional career achievement in business. The Service does not believe that inclusion of such persons under the H–1 classification would have an adverse impact on the labor market nor would it diminish the stringent standards for distinguished merit and ability previously required for H–1 classification.

The rule would include in the H–1 distinguished merit and ability category, artists who are recognized exponents of unique forms of artistic expression which by their nature cannot receive the national or international acclaim which is possible in what might be termed the mainstream arts. Artists in this subcategory must still be recognized for their excellence and significance in minor or performing art forms by

authorities in ethno-musicology, drama, dance, etc. Events where qualifying artists perform or present their art form would have to be primarily educational or cultural in nature. This provision would exclude artists who are coming to the United States primarily to provide commercial entertainment.

The second new standard under the prominence category would rectify the situation whereby certain aliens with substantial amounts of work experience and significant achievements in business are employed in high-level positions requiring a broad range of responsibilities but have not been able to qualify for H–1 classification as professionals or persons of prominence by current standards, while a recent college graduate in a profession, such as engineering, can qualify. To qualify as prominent, the alien would be required to have exceptional career achievement in business in executive, managerial, or highly technical positions evidenced by at least three factors, such as managerial responsibility for at least 100 employees, 10 years of experience, salary in excess of $75,000 per year, and contributions of significance to the business industry. Every individual who owns or manages a business or who holds a high position in a business would not be considered prominent. In addition, this new category is not intended to accommodate all other high level business persons who cannot qualify as professionals.

(3) *Accompanying alien status.* The proposed rule would authorize accompanying alien status only for highly skilled, essential support staff who accompany H–1 beneficiaries in the arts, cultural, entertainment, and professional sports fields to the United States. This provision is intended to recognize that certain individuals or groups in the arts, cultural, entertainment, and professional sports fields provide a variety of short-term services and rely on the same individuals to regularly provide essential support for those services, such as the band for an H–1 vocalist or the choreographer for a dance troupe. The personal preference of the H–1 individual or group for working with a particular individual would not be a consideration in grantig accompanying alien status.

Essential support staff would derive H–1 classification from the H–1 alien or group in the above fields to whom his or her skills are essential if:

- The alien is coming to the United States to perform support services which cannot be readily performed by a U.S. worker,
- The alien's services are essential to the successful performance of services to be rendered by the H–1 alien or group, and
- The alien possesses appropriate qualifications, significant prior experience with the H–1 alien or group, and critical knowledge of the specific type of services to be performed so as to render success of the services dependent upon his or her participation.

(4) *Consultation with experts.* The proposed rule would provide that the director shall approve or deny a petition in the entertainment industry based on the information in the record when he or she has no doubt about H–1 eligibility or ineligibility. In all other cases, before making a decision, it is proposed that the director shall consult unions, other organizations, or recognized critics or other experts in the appropriate entertainment field regarding the qualifications of the alien and the nature of the services to be performed. This rule would establish a system for seeking a balance of views in doubtful cases. The regulations would require consultation with a management organization whenever an opinion is sought from a labor organization. In addition, the director would have the discretion to consult with critics or other experts instead of a labor and a management organization.

Licensure for H Classification

This rule would clarify the licensure requirement for H classification. An alien who is accorded H classification must be able to engage in his or her occupation immediately upon entering the United States. If the occupation requires a state or local license for an individual to engage in that occupation, an alien seeking H classification in that occupation must have that license to be found qualified to enter the United States and immediately engage in the occupation. A temporary license (except for a professional nurse) is acceptable if the alien is authorized to fully perform the duties of the occupation under applicable state law.

There are two exceptions to the licensure requirement. First, where a state allows an individual to fully engage in the occupation under the supervision of licensed senior or supervisory personnel, H classification may be accorded. Second, where a foreign professional nurse has passed the Commission on Graduates of Foreign Nursing Schools examination and met other prescribed requirements, H classification may be accorded.

Whenever the alien possesses a temporary license (or results of the CGFNS in the case of professional nurses), it is proposed that the petition shall be approved for a period not to exceed one year. The alien's request for extension of stay beyond one year would have to include evidence that he or she has obtained a permanent license or still holds a temporary license valid through the period of time which the extention is requested.

H–2B Petition for Alien To Perform Temporary Services or Labor

Every petition to classify an alien as an H–2B temporary nonimmigrant worker must have attached to it either a labor certification or a notice that such certification cannot be made, from the Secretary of Labor or the Governor of Guam, as appropriate. This rule would define temporary services, establish certain guidelines under which an H–2B petition could be filed, and specify the documentation required to accompany an H–2B petition.

(A) *Temporary services.* An H–2B nonagricultural temporary worker must be coming temporarily to the United States to perform temporary services or labor, if United States workers capable of performing such services or labor cannot be found or will not be displaced and the employment will not adversely affect the wages and working conditions of similar employed U.S. workers. Temporary services or labor under the H–2B classification would mean any job where the petitioner's need for the duties to be performed by the employee(s) is temporary regardless of whether the underlying job can be described as permanent or temporary. As a general rule, the period of the petitioner's need would have to be a year or less, although there may be extraordinary circumstances where the temporary services or labor would last longer than one year. The petitioner's need for the services or labor would have to be a one-time occurence, a seasonal need, a peakload need, or an intermittent need. The regulations would define these terms.

(B) *Filing guidelines.* This rule would limit the term of a labor certification to one year. This provision would merely set forth in the regulations what is the actual practice of the Secretary of Labor and the Governor of Guam in issuing temporary labor certifications. For H–2B classification, the petitioner would have to be a United States employer or the authorized representative of a foreign employer which shall have a location in the United States, shall have a United States location, shall consider available U.S. workers for the temporary services or labor, and shall offer terms and

conditions of employment which are consistent with the nature of the occupation, activity, and industry in the United States. The petitioner would not be able to file an H–2B petition unless the United States petitioner had applied for a labor certification with the Secretary of Labor or the Governor of Guam within the time limits prescribed or accepted by each and had obtained a labor certification determination.

(C) *Evidence.* The rule would specify the evidence that is required to accompany an H–2B petition. In particular, the petitioner would be required to provide documentation that the individual alien qualifies for the job offer as specified in the labor certification, except in petitions involving a group. The rule sets forth Service requirements for countervailing evidence when the petitioner receives a notice that a certification cannot be made. The petitioner would be required to address availability or nonavailability of U.S. workers, the prevailing wage rate and working conditions in the occupation, and each of the reasons why the Secretary of Labor or the Governor of Guam could not grant the labor certification.

(D) *Changes to procedures for Guam.* Minor technical changes would be made to temporary labor certification procedures for the Territory of Guam to give the Governor authority to expedite the processing of applications in emergent situations and to clarify approval and reporting requirements. For normal processing of temporary labor certification applications, the employer must still place a job order with the Employment Service system for a period of 30 days. This rule would allow the Governor, at his discretion, to reduce this period by as much as 20 days for applications in the entertainment industry. The rule would also clarify that the Commissioner of Immigration and Naturalization must approve specific construction wage rates on Guam prior to implementation of new rates; specify the frequency of wage surveys; and require the Governor of Guam to furnish quarterly reports of labor certification workload and determinations.

H–3 Classification for Alien Trainees

(A) *Standards for H–3 training programs.* The Service proposes to clarify and incorporate the administrative interpretations of requirements for H–3 classification from published decisions and other Service policy over the years. Key considerations in determining the validity of an H–3 training program would be: Whether there is a structured training program; whether the training is actually productive employment; whether the training will benefit the alien in pursuing a career abroad; whether the training is available in the alien's country; and whether the alien has the skills which the training program intends to provide. The proposed restrictions on approval of a training program that are specified in this rule are designed to clarify to petitioners and Service officers conditions under which an H–3 training program fails to meet these basic criteria.

(B) *Duration of training.* The Service has observed that the H–3 classification is often requested to enable the alien to engage in actual employment under the guise to a training program. It is the Service's view that the longer the period of training the more likely it is that the alien will be engaged in productive employment. This rule would limit the duration of an H–3 training program to two years.

Extension of visa petition and extension of stay application procedures

Current regulations require the filing and approval of an abbreviated visa petition and an application for extension of stay in order to extend the beneficiary's stay in the United States. This procedure would be amended to require only the filing of an application of extension of stay by the beneficiary, accompanied by a letter (or labor certification determination in H–2 cases) from the employer restating the terms and conditions of employment as specified in the original petition. No action would be taken with respect to the visa petition if the beneficiary's application for extension of stay were denied. Approval of the beneficiary's application for extension of stay would automatically extend the visa petition for the same period. This change in procedure would reduce workload in our Regional Adjudication Centers, where petition extensions constiture a significant portion of their workload. The procedure will also reduce burden and cost to employers involved in this procedure.

Limits on a Temporary Stay (Temporariness)

As with H–1 and L applicants, the Service believes that adoption of a generous but specific limit on a temporary stay in the United States in the H–3 category would curb abuses and best serve the interests of the Service and the affected public. Current regulations already limit the stay of an H–2 beneficiary in the United States to three years. This rule proposes to limit the stay of an H–3 beneficiary to two years. The Service believes that a two year period is sufficient to accomplish the purposes of entering the United States in the H–3 classification. Extensions of stay in increments of six months would be granted in the H–3 classification as long as the total period of stay did not exceed two years. After an H–2 beneficiary has spent three years in the United States, and and H–3 beneficiary has spent two years in the United States, this rule would require that a new petition for the alien in the H or L classification would not be approved nor would the alien be readmitted to the United States as an H or L nonimmigrant unless the alien departed voluntarily and resided outside the United States for six months. The limitations on petition approval and readmission would not apply to aliens whose employment is seasonal, intermittent, or aggregate of six months or less a year.

Effect of Obtaining a Labor Certification or Filing a Preference Petition in the H–2 and H–3 Classifications

The rule would specify that the approval of a permanent labor certification or the filing or a preference petition for an H–2 or H–3 alien beneficiary in the same or a different job or training position with the same employer would be a ground to deny a new petition or the alien's application for an extension of stay.

(A) *H–2 classification.* In the case of an H–2 beneficiary, the employer previously submitted satisfactory representations that the need for the skills, or labor was temporary. If the employer's need has changed, the beneficiary no longer qualifies for H–2 classification in the same job. To avoid abuses of the H–2 classification, the Service would also not accept representative that the permanent services would be in a different job when the labor certification of preference petition is filed by the same employer.

(B) *H–3 beneficiary.* In the case of an H–3 beneficiary, the employer was required to demonstrate that the training position was to benefit the beneficiary in pursuing a career outside the United States. When that same employer obtains a labor certification or files a preference petition for the beneficiary, the Service would conclude that the purpose of the training was to recruit and train the alien to ultimately staff a position in the United States.

The Service believes that the proposed changes reflected in this proposed rule will benefit the public to the extent that they clarify

requirements, curb abuses, and make the H category more useful to businesses and other organizations. They would make clear Service policy regarding admission, the alien's temporary stay in the United States, and requirements for petitioners and beneficiaries who seek approval or classification under the H nonimmigrant category.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does the rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

Information collection requirements contained in this rule have been submitted to OMB under the Paperwork Reduction Act for clearance.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation, Employment, Organization and functions, Passports and visas.

Accordingly, Part 214 of Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a.

2. Section 214.2 is amended by redesignating paragraph (h)(1) through (h)(16) as (h)(2) through (h)(17); adding a new paragraph (h)(1); and revising newly designated paragraphs (h)(2), (h)(3), and (h)(5) through (h)(17) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) *Temporary employees*—(1) *Admission of temporary employees*—(i) Under section 101(a)(15)(H) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services or labor for or to receive training from an employer, if petitioned for by that employer. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(H)(i) as an alien of distinguished merit and ability, or under section 101(a)(15)(H)(ii) as an alien who is coming to perform agricultural labor or services of a temporary or seasonal nature or other temporary services or labor, or under section 101(a)(15)(H)(iii) as an alien who is coming as a trainee. These classifications are commonly called H–1, H–2A and H–2B, and H–3, respectively. The employer must file a petition with the Service for review of the services or training and for a determination of the alien's eligibility for classification as a temporary employee or trainee, before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures whereby these classifications may be applied for and granted, denied, extended, revoked, or appealed.

(ii) *Description of Classifications.* (A) An "H–1" classification applies to an alien who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability. In the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, the alien must be coming pursuant to an invitation from a public or nonprofit private educational research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency. Although the services to be performed may be temporary or permanent in nature, it must be established that the employment is only for a temporary period.

(B) An "H–2A or H–2B" classification applies to an alien who is coming temporarily to the United States (*1*) to perform agricultural labor or services of a temporary or seasonal nature, or (*2*) to perform other temporary service or labor, if unemployed persons capable of performing such service or labor cannot be found in this country. This classification does not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession. The temporary or permenant nature of the services or labor to be performed must be determined. This classification requires a temporary labor certification issued by the Secretary of Labor or the Governor of Guam or a notice from one of them that certification cannot be made prior to the filing of a petition with the Service.

(C) An "H–3" classification applies to an alien who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training. The alien may receive training from an employer in any field other than graduate medical education, such as agriculture, commerce, comunication, finance, government, or the professions. This classification may not be used when all of the training will be at an academic or vocational institution.

(2) *Petitions*—(i) *Filing of petitions*—(A) *General.* A United States emloyer or foreign employer (under the H–1 classification) seeking to classify an alien as an H–1, H–2, or H–3 temporary employee shall file a petition in duplicate on Form I–129H with the Service office which has jurisdiction over I–129H petitions in the area where the alien will perform services or receive training or as further prescribed in this section. All petitions in the arts, cultural, or entertainment industry notwithstanding the location of filing, shall be adjudicated only at the appropriate Regional Service Center, except petitions for Canadian musicians to be employed within 50 miles of the Canadian border.

(B) *Services or training in more than one location.* A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I–129H petitions in the area where the petitioner is located. The address which the petitioner specifies as its location on the I–129H petition shall be where the petitioner is located for purposes of this paragraph. If the petitioner is a foreign employer with no United States location, the petition shall be filed with the Service office which has jurisdiction over the area where the employment will begin.

(c) *Services or training for more than one employer.* If the beneficiary will perform nonagricultural services for or receive training from more than one employer, each employer must file a separate petition with the Service office which has jurisdiction over the area where the alien will perform services or receive training, unless an established agent files the petition. The alien may work part-time for multiple employers provided each has an approved petition for the alien.

(D) *Change in employers.* If the alien is in the United States and decides to change employers, the new employer must file a new petition on Form I–129H. If the alien is accorded the same H classification, an extension of stay is not required until the alien's previously authorized stay is about to expire. If the new petition is accompanied by an application for extension of stay on Form I–539 and the new petition is approved, the extension of stay may be granted for the validity of the approved

petition, but may not exceed the limit on the alien's temporary stay that is prescribed in paragraph (h)(12)(ii) and (iii) of this section.

(E) *Amended or new petition.* The petitioner shall file an amended or new petition with the Service office where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the beneficiary's eligibility as specified in the original approved petition and obtain approval from the Service. An amended or new H–2B petition must be accompanied by an amended or new labor certification determination.

(F) *Agents as petitioners.* In cases where a foreign employer authorizes an agent to act in its behalf and in nonagricultural occupations where workers traditionally are self-employed or use agents to arrange short-term employment in their behalf with numerous employers, an established United States agent may file the petition in the following circumstances:

(*1*) A person or company in business as an agent may file the H petition involving multiple employers as the representative of the actual employers and the beneficiary(ies) if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the specific dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. In questionable cases, a contract between the employers and the beneficiary(ies) may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentaiton.

(*2*) An agent which assumes responsibility as the actual employer must guarantee the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary(ies). The agent/employer must also provide an itinerary of definite employment and information or any other services planned for the period of time requested.

(ii) *Multiple beneficiaries*—(A) *H–1 petitions.* More than one beneficiary may be included in an H–1 petition if they are members of a group seeking classification based on the reputation of the group as an entity, and not the reputation of individual members, or they are accompanying aliens deriving H–1 classification from a principal H–1 beneficiary to whom their support is determined to be essential. The petition shall include the name and other identifying information required by Form I–129H for each beneficiary. If the beneficiaries will be applying for visas at more than one consulate, the petitioner shall submit a separate Form I–129H for each consulate. If the beneficiaries will be applying for admission at more than one port of entry, the petitioner shall submit an additional copy of Form I–129H for each port of entry.

(B) *H–2 and H–3 petitions.* More than one beneficiary may be included in an H–2 or H–3 petition if the beneficiaries will be performing the same service or receiving the same training in the same geographical area. If they will be applying for visas at more than one consulate, the petitioner shall submit a spearate I–129H petition for each consulate. If the beneficiaries will be applying for admission at more than one port of entry, the petitioner shall submit an additional copy of Form I–129H for each port of entry.

(iii) *Named beneficiaries.* Every nonagricultural I–129H petition must include the names of beneficiaries and other required information when filed.

(iv) *Substitution of beneficiaries.* Substitution of beneficiaries may be made only in H–1 and H–2B petitions involving a group where the qualifications of individual beneficaries will not be or were not considered in according H classification. To request a substitution, the petitioner shall notify the consular office at which the alien will apply for a visa or the port of entry where the alien will apply for admission.

(3) *Petition for alien of distinguished merit and ability (H–1)*—(i) *Standards for H–1 classification.* H–1 classification may be granted to an individual in his or her own capacity, based on a petition filed on behalf of that individual, or in his or her capacity as a member of a group, based on a petition filed on behalf of the group, or to an accompanying alien as defined in paragraph (h)(3)(i)(B)(*4*) of this section, and included in the same petition for an individual or group of distinguished merit and ability.

(A) *Types of H–1 classification*—(*1*) *H–1 classification in individual capacity.* H–1 classification may be granted to an alien who is of distingished merit and ability. An alien of distinguished merit and ability is one who is a member of the professions or one who is prominent in his or her field and who is coming to the United States to perform services which require a professional or person of prominence.

(*2*) *H–1 classification as a member of a group.* A group of distinguished merit and ability consists of two or more persons who function as a unit, such as an athletic team or a performing ensemble. The group as a whole must be prominent in its field and must be coming to the United States to perform services which require a group of prominence. A person who is a member of a group of distinguished merit and ability may be granted H–1 classification based on that relationship, but may not perform services separate and apart from the group unless he or she is granted H–1 classification in an individual capacity.

(*3*) *H–1 classification as an accompanying alien.* A person who is an accompanying alien, as defined in paragraph (h)(3)(i)(B)(*4*) of this section, to an individual or group of distinguished merit and ability may be granted H–1 classification based on that relationship. The H–1 classification derived from the individual or group of distinguished merit and ability does not entitle an accompanying alien to individual H–1 classification when the alien will perform services separate and apart from the individual or group of distinguished merit and ability.

(B) *Definitions.* (*1*) "Profession" means an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such fields of human endavor as: Architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business, accounting, law, theology, and the arts. A profession requires completion of a specific course of education at an accredited college or university, culminating in a baccalaureate or higher degree in a specific occupational specialty, where attainment of such degree or its equivalent is the minimum requirement for entry into the profession in the United States. There are two categories of persons who do not meet these requirements but are nevertheless regarded as professionals. They are persons who, after passage of normal professional tests and requirements, are granted full state licenses to practice the profession and persons who lack the required degree but, by virtue of a combination of academic training and professional experience are in fact lawfully practicing at a professional level.

(*2*) "Prominence" means a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of endeavor.

(3) "Group" means two or more persons established as one united entity to provide some form of service or activity, and the reputation of the group, not that of individual members, is considered in according H classification.

(4) "Accompanying alien" means a support person such as a manager, trainer, musical accompanist, or other highly skilled, essential person determined by the director to be coming to the United States to perform support services which cannot be readily performed by a United States worker and which are essential to the successful performance of the services to be rendered by an H–1 individual or group in the arts, cultural, entertainment or professional sports field. Such alien must possess appropriate qualifications, significant prior experience with the H–1 individual or group, and critical knowledge of the specific type of services to be performed so as to render success of the services dependent upon his or her participation. A highly skilled alien meeting the above criteria may be accorded H–1 classification based on this relationship with the H–1 individual or group to whom his or her services are essential.

(5) "Recognized authority" means a person who is an expert or an organization which has expertise in a particular field, possesses special skills or knowledge in that field, and is acknowledged by the Service as an acceptable source of information.

(C) Criteria and documentary requirements for a member of the professions. To qualify as a member of the professions, the alien must:

(1) Hold a United States baccalaureate or higher degree required by the profession from an accredited college or university, or

(2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the professiona from an accredited college or university, or

(3) Hold an unrestricted state license which authorizes him or her to fully practice the profession and be engaged in that profession in the state of intended employment, or

(4) Have completed at least two years of college-level training appropriate to the profession, have demonstrated that he or she has sufficient specialized training and/or professional experience combined with the college-level education to be equivalent to a United States baccalaureate or higher degree required by the profession, and have attained professional standing and recognition in the particular field as described below:

(i) For classification under section 101(a)(15)(H)(i) of the Act, three years of specialized training and/or professional experience shall be equivalent to one year of college-level training for purposes of calculating the amount of specialized training and-or professional experience needed to account for the remaining years of college-level training which would be necessary to obtain the required degree,

(ii) The professional experience must be recent and subsequent to the college-level training and include substantially all of the theoretical and practical application of specialized knowledge required at the professional level of the occupation, and

(iii) The alien must establish that he or she has professional standing and recognition by submitting at least one type of documentation such as:

(A) Recognition of professional standing by at least two experts or recognized authorities in the professional field;

(B) Membership in a recognized foreign or United States association in the professional field;

(C) Published material in professional publications by the alien or about the alien's work in the professional field; or

(D) Accreditation by a state in the United States or licensure to practice the profession in a foreign country.

(D) *Criteria and documentary requirements for prominence.* Prominence in a field may be established by an individual alien or by a group. The reputation of the group as an entity, not the qualifications or accomplishments of individual members, shall be evaluated for H–1 classification. Anm alien or group may establish prominence in either one of the following categories. The alien(s) must:

(1) Have sustained national (foreign or U.S.) or international acclaim and recognition for achievements in the particular field evidenced by at least three different types of the following documentation, that the alien or group:

(i) Has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, or contracts;

(ii) Has been the recipient of significant national or international awards or prizes for services performed;

(iii) Has achieved national or international recognition as evidenced by critical reviews or other published material by or about the individual or group in major newspapers, trade journals, or magazines;

(iv) Has performed and will perform services as a lead or starring participant for organizations and at establishments which have a distinguished reputation;

(v) Has a record of major commercial or critically acclaimed successes, as evidenced by such indicia as title, rating, or standing in the field, box office grosses, credit for original research or product development, record sales, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(vi) Has received significant recognition for achievements from organizations, recognized critics, government agencies or other recognized experts in the field in which the alien or group is engaged evidenced by several testimonials which clearly indicate the author's authority, expertise, and knowledge of the alien's achievements; or

(vii) Has commanded and now commands a high salary or other substantial remuneration for services, as evidenced by contracts or other reliable evidence.

(2) Be an artist who, or an artistic group which is recognized by governmental agencies, cultural organizations, scholars, arts administrators, critics, or other experts in the particular field for excellence in developing, interpreting, or representing a narrow and clearly identifiable, unique or traditional ethnic, folk, cultural, musical, theatrical, or other artistic performance or presentation; be coming to the United States primarily for educational or cultural event(s) to further the understanding of or development of that art form; and be sponsored primarily by educational, cultural, or governmental organizations which promote such international cultural activities and exchanges. An artist or group which seeks H–1 classification under this provision must:

(i) Provide affidavits, testimonials, or letters from recognized experts which attest to the authenticity and excellence of the alien's or group's skills in performing, or presenting the narrow and unique or traditional art form, explain the level of recognition accorded the alien or group in the native country and the United States, and give the credentials of the expert including the basis of his or her knowledge of the alien's or goup's skills and recognition. The alien or group must provide at a minimum:

(A) An affidavit or testimonial from the Ministry of Culture, USIA Cultural Affairs Officer, the academy for the artistic discipline, a leading scholar, a cultural institution, or a major university

in the alien's own country or from a third country except the United States; and

(*B*) A letter from at least two different United States experts (excluding the prospective employer) in the particular field such as cultural organizations, scholars, arts administrators, governmental agencies, and critics.

(*ii*) Evidence that most of the performances or presentations will be educational or cultural events sponsored by educational, cultural, or governmental agencies.

(*3*) Have exceptional career achievement in business in executive, managerial, or highly technical positions evidenced by at least three significant factors such as:

(*i*) Managerial responsibility for an organization or a major subdivision of an organization which has an annual income of at least 25 million dollars;

(*ii*) At least 10 years of progressively responsible experience culminating in a high level executive, managerial, or technical position that involves a broad range of responsibilities;

(*iii*) A salary of at least $75,000 per year;

(*iv*) Responsibility for a workforce of 100 or more employees, at least 50 percent of which includes professional, supervisory, or other managerial employees;

(*v*) Original development of a system or product which has major significance to the industry in which the alien is employed as reported in published materials or opinions of recongized experts in the field or industry;

(*vi*) Recognition for achievements and significant contributions to an industry or field by recognized experts in the industry or field.

(ii) *Special H–1 requirements for certain groups.*—(A) *H–1 petitions for certain professionals and prominent business persons.* The history of a petitioner's submissions to the Service shall be a factor in the adjudication of petitions filed under this part.

(*1*) *Petitioners with a record of H–1 approvals.* (*i*) Where the petitioner has a significant record with the Service of consistently obtaining approval of H–1 classification for professionals and prominent aliens which the petitioner seeks to employ, the director shall waive the requirement for actual evidence of the alien's qualifications. In such a case, the petitioner's detailed description of the alien's qualifications may be accepted in lieu of documents, such as transcripts, diplomas, writings, references, and affidavits. However, if licensure or passage of an examination is required for H–1 classification, a copy of the license or the examination's results must be filed with the petition.

(*ii*) The petitioner's statement shall be in sufficient detail regarding the alien's education, training, work experience, and accomplishments to establish without question that the alien is a professional or prominent alien of distinguished merit and ability as defined in these regulations and that the alien is coming to the United States to perform services which require such merit and ability. In doubtful cases, the director shall require actual evidence of these facts.

(*2*) *Petitioner with record of H–1 denials.* Where the petitioner has a significant record with the Service of filing H–1 petitions which cannot be approved, a higher burden of proof shall be required. The petitioner will be required to provide extensive evidence in the form of supporting documents, such as transcripts, diplomas, writings, references, and affidavits to establish eligibility for H–1 classification.

(B) *H–1 petitions for prominent aliens in the arts, cultural, or entertainment field*—(*1*) *Adjudication of petition.* (*i*) In determining whether an alien in the arts, cultural, or entertainment field is prominent and whether the services require a person of prominence, the Regional Service Center director shall consider, but not be limited to, evidence described in paragraph (h)(3)(i)(D) of this section, and where he or she deems necessary, may require further evidence on any of those or other appropriate factors.

(*ii*) The Regional Service Center director may decide not to require documentation of any of the factors in paragraph (h)(3)(i)(D) of this section, if the alien or group is of such distinguished merit and ability that the name or reputation standing by itself would be sufficient to establish without any question that the alien or group is of distinguished merit and ability and that the alien or group is coming to the United States to perform services which require such merit and ability. In such a case, the petitioner must have provided a statement which describes the beneficiary's standing and achievements in the field of endeavor.

(*iii*) The Regional Service Center director shall approve or deny the petition based on the information in the record when that information clearly establishes H–1 eligibility or ineligibility in accordance with paragraph (h)(3)(i)(D)(*1*) and (*2*) of this section. In all other cases, before making a decision, the director shall consult with the appropriate union and a management organization, or recognized critics or experts in the appropriate field for an advisory opinion regarding the qualifications of the alien and the nature of the services to be performed.

(*2*) *Advisory opinions.* An advisory opinion may be furnished orally by an appropiate official, subject to later confirmation in writing, when requested by the director. The written opinion shall be signed by a duly authorized and responsible official of the organization consulted. Advisory opinions shall be nonbinding upon the Service.

(*3*) *Accompanying alien or member of a group.* When an accompanying alien is given the same H–1 classification as the principal H–1 beneficiary, the notation "Accompanying Alien" shall be noted on the approved petition and the alien's travel documents. When a group is accorded H–1 classification, "member of an H–1 group" shall be noted on the petition and Form I–94, Arrival and Departure Record, of individual aliens who are members of the group.

(*C*) *H–1 petitions for physicians*—(*1*) *Beneficiary requirements.* An H–1 petition for a physician shall be accompanied by evidence that the physician:

(*i*) Has a license to practice medicine in the state of intended employment if the physician will perform any direct patent care and the state requires the license, and

(*ii*) Has a full and unrestricted license to practice medicine in a foreign state or has graduated from a medical school in the United States or in a foreign state.

(*2*) *H–1 classification for alien graduates of foreign medical schools*—(*i*) *Petitioner requirements.* If the alien graduated from a medical school in a foreign state, the petitioner must establish that:

(*A*) The alien physician is coming to the United States primarily to teach or conduct research, or both, at or for a public or nonprofit private educational or research institution or agency at the invitation of that institution or agency, and

(*B*) No patient care activities will be performed, except those that are incidental to the physician's teaching or research.

(*ii*) *Exemption for physicians of national or international renown.* A physician who graduated from a medical school in a foreign state and who is of national or international renown in the field of medicine is exempt from the requirements in paragraph (h)(3)(ii)(B)(*2*)(*i*) of this section.

(*3*) *H–1 classification for alien graduates of United States medical schools.* An alien who graduated from a medical school in the United States and who is in all respects qualified for

nonimmigrant classification under section 101(a)(15)(H)(i) of the Act is eligible for that classification in order to participate in a medical residency in the United States and to perform any other services as a member of the medical profession, including services primarily involving direct patient care.

(*D*) *H–1 petitions for professional nurses*—(*1*) *Beneficiary requirements.* An H–1 petition for a professional nurse shall be accompanied by evidence that the nurse has passed the examination given by the Commission on Graduates of Foreign Nursing Schools, or has obtained a full and unrestricted permanent license to practice professional nursing in the state of intended employment.

(*2*) *Petitioner requirements.* The petitioner must provide a statement certifying that the beneficiary is fully qualified and eligible under the laws governing the place of intended employment to engage in the practice of professional nursing immediately upon admission to the United States, and that under those laws, the petitioner is authorized to employ the beneficiary to perform services as a professional nurse. If the laws governing the place where the services will be performed place any limitations on the services to be rendered by the beneficiary, the statement shall contain details as to the limitations. The director shall consider any limitations in determining whether the services which the beneficiary would perform are those of a professional nurse.

(*iii*) *General documentary requirements for H–1 classification.* An H–1 petition filed on Form I–129H shall be accompanied by:

(*A*) Documentation, certifications, affidavits, degrees, diplomas, writings, reviews, or any other required evidence sufficient to establish that the beneficiary is a person of distinguished merit and ability as described in paragraphs (h)(3)(i) (C) and (D) of this section, and that the services the beneficiary is to perform require a person of such merit and ability. The evidence shall conform to the following:

(*1*) School records, diplomas, degrees, affidavits, contracts, and similar documentation submitted must reflect periods of attendance, courses of study, and similar pertinent data, be executed by the person in charge of the records of the educational or other institution, firm, or establishment where education or training was acquired, and be an original document or a certified copy. Uncertified photocopies of documents such as advertisements, playbills, reviews, and other such published material are acceptable.

(*2*) Affidavits submitted by present or former employers or recongized experts certifying to the recognition and outstanding ability of the beneficiary shall specifically describe the beneficiary's recognition and ability in factual terms and must set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(B) Copies of any written contracts between the petitioner and beneficiary, or a summary of the terms of the oral agreement under which the beneficiary will be employed, if there is no written contract.

(iv) *Licensure for H classification*—(A) *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except a professional nurse) seeking H classification in that occupation must have that license to be found qualified to enter the United States and immediately engage in employment in the occupation.

(B) *Temporary licensure.* If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature and degree of performance of the duties, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alein under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

(C) *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall also examine the nature and degree of the performance of duties. If an analysis of the facts demonstrates that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

(D) *Professional nurses.* In lieu of licensure, professional nurses shall provide the evidence required in paragraph (h)(3)(ii)(C)(*1*) of this section.

(E) *Limitation on approval of petition.* In any occupation, including professional nursing, where licensure is required, the H petition may only be approved for a period of one year or for the period that the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. An alien who is accorded H classification without the permanent license may not be granted an extension of stay or accorded a new H classification after the one year or after the temporary license expires unless he or she has obtained a permanent license in the state of intended employment.

* * * * *

(5) *Petition for alien to perform temporary nonagricultural services or labor (H–2B)*—(i) *General.* An H–2B nonagricultural temporary worker shall be coming temporarily to the United States to perform temporary services or labor, if United States workers capable of performing such services or labor cannot be found or will not be displaced and if the wages and working conditions of United States workers will not be adversely affected by the alien's employment.

(ii) *Temporary services or labor*—(A) *Definition.* Temporary services or labor under the H–2B classification refers to any job where the petitioner's need for the duties to be performed by the employee(s) is temporary, regardless of whether the underlying job can be described as permanent or temporary.

(B) *Nature of petitioner's need.* As a general rule, the period of the petitioner's need must be a year or less, although there may be extraordinary circumstances where the temporary services or labor might last longer than one year. The petitioner's need for the services or labor shall be a one-time occurrence, a seasonal need, a peakload need, or an intermittent need:

(1) One-time occurrence. The petitioner must establish that it has not employed workers to perform the services or labor in the past and that it will not need workers to perform the services or labor in the future.

(2) Seasonal need. The petitioner must establish that the services or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The petitioner shall specify the period(s) of time during each year which it does not need the services or labor. The employment is not seasonal if the periods during which the services or labor is not needed is unpredictable or subject to change or is considered a vacation period for the petitioner's permanent employees.

(3) Peakload need. The petitioner must establish that it regularly employs permanent workers to perform the services or labor at the place of employment and that it needs to significantly supplement its permanent staff at the place of employment on a temporary basis due to a seasonal or short-term demand no more than once a year and that the temporary additions to

staff will not become a part of the petitioner's regular operation.

(4) Intermittent need. The petitioner must establish that it has not employed permanent or full-time workers to perform the services or labor, but occasionally or intermittently needs temporary workers to perform the services or labor for short periods of 30 days or less.

(iii) *Procedures*—(A) Prior to filing a petition with the director to classify an alien as an H–2B worker, the petitioner which shall be a United States employer, shall apply for a temporary labor certification with the Secretary of Labor for all areas of the United States, except the Territory of Guam. In the Territory of Guam, the United States petitioning employer shall apply for a temporary labor certification with the Governor of Guam. The labor certification shall be advice to the director on whether or not United States workers capable of performing the temporary services or labor are available and whether or not the alien's employment will adversely affect the wages and working conditions of similarly employed United States workers.

(B) For H–2B classification, the petitioner shall be a United States employer or the authorized representative of a foreign employer which shall have a location in the United States, shall consider available U.S. workers for the temporary services or labor, and shall offer terms and conditions of employment which are consistent with the nature of the occupation, activity, and industry in the United States.

(C) The petitioner may not file an H–2B petition unless the United States petitioner has applied for a labor certification with the Secretary of Labor or the Governor of Guam within the time limits prescribed or accepted by each, and has obtained a labor certification determination as required by paragraph (h)(5)(iv) or (h)(5)(v) of this section.

(D) The Secretary of Labor and the Governor of Guam shall separately establish procedures for administering the temporary labor certification program under his or her jurisdiction.

(E) After obtaining a determination from the Secretary of Labor or the Governor of Guam, as appropriate, the petitioner shall file a petition on Form I–129H, accompanied by the labor certification determination and supporting documents, with the director having jurisdiction for I–129Hs in the area of intended employment.

(iv) *Labor certifications, except Guam*—(A) *Secretary of Labor's determination.* An H–2B petition for temporary employment in the United States, except for temporary employment on Guam, shall be accompanied by a labor certification determination that is either:

(1) A certification from the Secretary of Labor stating that qualified workers in the United States are not available and that the alien's employment will not adversely affect wages and working conditions of similarly employed United States workers; or

(2) A notice detailing the reasons why such certification cannot be made. Such notice shall address the availability of U.S. workers in the occupation and/or the prevailing wages and working conditions of U.S. workers in the occupation, except where the employer will not be paying a wage for the services to be performed.

(B) *Validity of the labor certification.* The Secretary of Labor may issue a temporary labor certification for a period of up to one year.

(C) *U.S. Virgin Islands.* Temporary labor certificates filed under section 101(a)(15)(H)(ii)(b) of the Act for employment in the United States Virgin Islands may be approved only for entertainers and athletes for periods not to exceed 45 days.

(D) *Attachment to petition.* The petitioner may file a petition accompanied by either one of the Secretary of Labor's determinations with the director. If the petitioner received a notice from the Secretary of Labor that certification cannot be made, the petitioner may present countervailing evidence that qualified workers in the United States are not available and that the terms and conditions of employment are consistent with the nature of the occupation, activity, and industry in the United States. All such evidence submitted will be considered in adjudicating the petition.

(E) *Countervailing evidence.* The countervailing evidence presented by the petitioner shall be in writing and shall address availability of U.S. workers, the prevailing wage rate for the occupation in the United States, and each of the reasons why the Secretary of Labor could not grant a labor certification. The petitioner may also provide other appropriate information in support of the petition. The director, at his or her discretion, may require additional supporting evidence.

(v) *Labor certification for Guam*—(A) *Governor of Guam's determination.* An H–2B petition for temporary employment on Guam shall be accompanied by a labor certification determination that is either:

(1) A certification from the Governor of Guam stating that qualified workers in the United States are not available to perform the required services and that the alien's employment will not adversely affect the wages and working conditions of United States resident workers who are similarly employed on Guam; or

(2) A notice detailing the reasons why such certification cannot be made. Such notice shall address the availability of U.S. workers in the occupation and/or the prevailing wages and working conditions of U.S. workers in the occupation, except where the employer will not be paying a wage for the services to be performed.

(B) *Validity of the labor certification.* The Governor of Guam may issue a temporary certification for a period up to one year.

(C) *Attachments to petition.* The employer may file a petition accompanied by either one of the Governor's determinations. If the employer receives a notice from the Governor of Guam that certification cannot be made, the employer shall present countervailing evidence that qualified persons in the United States are not available and that the terms and conditions of employment are consistent with the nature of the occupation, activity, and industry in the United States. All such evidence submitted will be considered in adjudicating the petition.

(D) *Countervailing evidence.* The countervailing evidence presented by the petition shall be in writing and shall address availability of United States workers, the prevailing wage rate, and each of the reasons why the Governor of Guam could not make the required certification. The petitioner may also provide any other appropriate information in support of the petition. The director, at his or her discretion, may require additional supporting evidence.

(E) *Criteria for Guam labor certifications.* The Governor of Guam shall establish systematic methods for determining the prevailing wage rates and working conditions for individual occupations on Guam and for making determinations as to availability of qualified United States residents.

(1) Prevailing wages and working conditions. The system to determine wages and working conditions must provide for consideration of wage rates and employment conditions for occupations in both the private and public sectors, in Guam and/or in the United States (as defined in section 101(a)(38) of the Act), and may not

consider wages and working conditions outside of the United States. If the systems will include utilization of advisory opinions and consultations, they must be provided by officially sanctioned groups which reflect a balance of the interests of the private and public sectors, government, unions and management.

(2) *Availability of United States workers.* The system for determining availability of qualified United States workers must require the prospective employer to:

(*i*) Advertise the availability of the position for a minimum of three consecutive days in the newspaper with the largest daily circulation on Guam;

(*ii*) Place a job offer with an appropriate agency of the Territorial Government which operates as a job referral service at least 30 days in advance of the need for the services to commence, except that for applications in the entertainment industry, the 30-day period may be reduced by the Governor by not more than 20 days;

(*iii*) Conduct appropriate recruitment in other areas of the United States and its territories if sufficient qualified United States construction workers are not available on Guam to fill a job. The Governor of Guam may require a job order to be placed more than 30 days in advance of need to accommodate such recruitment;

(*iv*) Report to the appropriate agency the names of all United States resident workers who applied for the position, indicating those hired and the job-related reasons for not hiring;

(*v*) Offer all special considerations to all United States resident workers that the employer provides to nonimmigrant alien workers, such as the payment of transportation expenses;

(*vi*) Meet the prevailing wage rates and working conditions determined under the wages and working conditions system by the Governor; and

(*vii*) Agree to meet all Federal and Territorial requirements relating to employment, such as nondiscrimination, occupational safety, and minimum wage requirements.

(F) *Approval and publication of employment systems on Guam*—(1) *Systems.* The Commissioner of Immigration and Naturalization must approve the system to determine prevailing wages and working conditions and the system to determine availability of United States resident workers and any future modifications of the systems prior to implementation. If the Commissioner, in consultation with the Secretary of Labor, finds that the systems or modified systems meet the requirements of this section, the Commissioner shall publish them as a notice in the **Federal Register** and the Governor shall publish them as a public record in Guam.

(2) *Approval of construction wage rates.* The Commissioner must approve specific wage data and rates used for construction occupations on Guam prior to implementation of new rates. The Governor shall submit new wage survey data and proposed rates to the Commissioner for approval at least eight weeks before authority to use existing rates expires. Surveys shall be conducted at least every two years, unless the Commissioner prescribes a lesser period.

(G) *Reporting.* The Governor shall provide the Commissioner statistical data on temporary labor certification workload and determinations. This information shall be submitted quarterly no later than 30 days after the quarter ends.

(H) *Invalidation of temporary labor certification issued by the Governor of Guam*—(1) *General.* A temporary labor certification issued by the Governor of Guam may be invalidated by a director if it is determined by the director or a court of law that the certification request involved fraud or willful misrepresentation. A temporary labor certification may also be invalidated if the director determines that the certification involved gross error.

(2) *Notice of intent to invalidate.* If the director intends to invalidate a temporary labor certification, a notice of intent shall be served upon the employer, detailing the reasons for the intended invalidation. The employer shall have 30 days in which to file a written response in rebuttal to the notice of intent. The director shall consider all evidence submitted upon rebuttal in reaching a decision.

(3) *Appeal of invalidation.* An employer may appeal the invalidation of a temporary labor certification in accordance with Part 103 of this chapter.

(vi) *Evidence for H–2B petitions.* An H–2B petition filed on Form I–129B shall be accompanied by:

(A) *Labor certification or notice.* A temporary labor certification or a notice that certification cannot be made issued by the Secretary of Labor or the Governor of Guam as appropriate;

(B) *Countervailing evidence.* Evidence to rebut the Secretary of Labor's or the Governor of Guam's notice that certification cannot be made, if appropriate;

(C) *Alien's qualifications.* Documentation that the alien qualifies for the job offer as specified in the application for labor certification, except in petitions where the labor certification application requires no education, training, experience, or special requirements of the beneficiary;

(D) *Statement of need.* A statement describing in detail the temporary situation or conditions which make it necessary to bring the alien to the United States and whether the need is a one-time occurrence, seasonal, peakload, or intermittent. If the need is seasonal, peakload, or intermittent, the statement shall indicate whether the situation or conditions are expected to be recurrent.

(6) *Petition for alien trainee (H–3)*—(i) *General.* The H–3 trainee is a nonimmigrant who seeks to enter the United States at the invitation of an organization or individual for the purpose of receiving instruction in any field of endeavor, such as agriculture, commerce, communication, finance, government, transportation, or the professions, as well as training in a purely industrial establishment. This category shall not apply to physicians, who are statutorily ineligible for H–3 classification to receive any type of graduate medical education or training.

(A) *Externs.* A hospital approved by the American Medical Association or the American Osteopathic Association for either an internship or residency program may petition to classify as an H–3 trainee a medical student attending a medical school abroad, if the alien will engage in employment as an extern during his/her medical school vacation.

(B) *Nurses.* A petitioner may seek H–3 classification for a nurse who is not H–1 if it can be established that there is a genuine need for the nurse to receive a brief period of training that is unavailable in the alien's native country and such training is designed to benefit the nurse and the overseas employer upon the nurse's return to the country of origin, if:

(*1*) The beneficiary has obtained a full and unrestricted license to practice professional nursing in the country where the beneficiary obtained a nursing education, or such education was obtained in the United States or Canada;

(*2*) The petitioner provides a statement certifying that the beneficiary is fully qualified under the laws governing the place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training.

(ii) *Evidence*—(A) *Conditions.* The petitioner is required to demonstrate that:

(*1*) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

(iii) *Restrictions.* A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who appears to already possess substantial training and expertise in the proposed field;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

(7) *Certification of documents.* A copy of a document submitted in support of a visa petition filed pursuant to section 214(c) of the Act and § 214.2(h) of this part may be accepted without the original, if the copy bears a certification by an attorney or by a voluntary agency in accordance with § 204.2(j) of this chapter or by a United States immigration or consular officer. However, the original document shall be submitted if requested by the director.

(8) *Approval and validity of petition*—(i) *Approval.* The director shall consider all the evidence submitted and such other evidence as he or she may independently require to assist his or her adjudication. The director shall notify the petitioner on Form I–171C of the approval of the petition. The approval shall be as follows:

(A) Form I–171C shall include the beneficiary(ies) name(s) and classification and the petition's period of validity. A petition for more than one beneficiary and/or multiple services may be approved in while or in part. Form I–171C shall cover only those beneficiaries approved for classification under section 101(a)(15)(H) of the Act.

(B) The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services or training.

(C) If the petition is approved before the date the petitioner indicates that the services or labor or training will begin, the approved petition's validity period shall reflect the actual dates requested by the petitioner, not to exceed the limits specified in paragraph (h)(8)(ii) of this section, and the date the petition was approved.

(D) If the period of services or training requested by the petitioner exceeds the limit specified in paragraph (h)(8)(ii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(ii) *Validity.* The initial approval period of an H petition shall conform to the limits prescribed as follows:

(A) *H–1 petition.* An approved petition for an alien classified under section 101(a)(15)(H)(i) of the Act is valid for the period of established need for the beneficiary's temporary services, but not to exceed three years.

(B) *H–2B petition*—(1) *Labor certification attached.* If a certification by the Secretary of Labor or the Governor of Guam is attached to a petition to accord an alien a classification under section 101(a)(15)(H)(ii) of the Act, the approval of the petition shall be valid to the date to which the certification is valid, not to exceed one year.

(2) *Notice that certification cannot be made attached*—(i) *Countervailing evidence.* If the petitioner submits a notice from the Secretary of Labor or the Governor of Guam that certification cannot be made, the petitioner shall be informed that he or she may submit countervailing evidence to the director as specified in paragraphs (h)(5)(iii)(E) and (h)(5)(iv)(D) of this section if he or she has not already done so.

(ii) *Approval.* In any case where the director decides not to deny the petition and believes that approval of the H–2B petition is warranted despite the issuance of a notice by the Secretary of Labor or the Governor of Guam that certification cannot be made, the decision shall be certified to the Commissioner pursuant to 8 CFR 103.4. In emergent situations, the certification may be presented telephonically to the Chief of the Administrative Appeals Unit, Central Office. If approved, the petition is valid for the period of established need not to exceed one year. There is no appeal from a decision which has been certified to the Commissioner.

(C) *H–3 petition.* An approved petition for an alien classified under section 101(a)(15)(H)(iii) of the Act is valid for the documented length of the approved training program, not to exceed two years.

(iii) *Spouse and dependents.* The spouse and unmarried minor children of the beneficiary are entitled to H nonimmigrant classification and the same length and type of stay as the beneficiary if the beneficiary will be employed and residing primarily in the United States and if the spouse and unmarried minor children are accompanying or following to join the beneficiary in the United States. Neither the spouse nor a child of the beneficiary may accept employment unless he or she is the beneficiary of an approved petition filed in his or her behalf and has been granted a nonimmigrant classification authorizing his or her employment.

(9) *Denial of petition*—(i) *Multiple beneficiaries.* A petition for multiple beneficiaries may be denied in whole or in part.

(ii) *Notice of intent to deny.* When an adverse decision is proposed on the basis of evidence not submitted by the petitioner, the director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(iii) *Notice of denial.* The petitioner shall be notified on Form I–292 of the decision, the reasons for the denial, and the right to appeal the denial under section 103 of this chapter.

(10) *Revocation of approval of petition*—(i) *General.* The petitioner shall immediately notify the Service of any changes in the employment of a beneficiary which would affect eligibility under section 101(a)(15)(H) of the Act and paragraph (h) of this section.

(ii) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner goes out of business or files a written withdrawal of the petition.

(iii) *Revocation on notice*—(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he/she finds that:

(*1*) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition or if the beneficiary is no longer receiving training as specified in the petition; or

(*2*) The statement of facts contained in the petition was not true and correct; or

(*3*) The petitioner violated terms and conditions of the approved petition; or

(*4*) The petitioner violated requirements of section 101(a)(15)(H) of the Act and/or paragraph (h) of this section; or

(*5*) The approval of the petition violated paragraph (h) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised Form I–171C shall be sent to the petitioner with the revocation notice.

(11) *Appeal of a denial or a revocation of a petition*—(i) *Denial.* A petition denied in whole or in part may be appealed under Part 103 of this chapter.

(ii) *Revocation.* A petition that has been revoked on notice in whole or in part may be appealed under Part 103 of this chapter. Automatic revocations may not be appealed.

(12) *Admission*—(i) *General.* A beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The authorized period of the beneficiary's admission shall not exceed the above limits.

(ii) *H–1 limitation on admission.* An alien who has spent five, or in certain extraordinary circumstances, six years in the United States under section 101(a)(15)(H)(i) and or (L) of the Act may not seek extension, change status or be readmitted to the United States under the H or L visa classification, unless the alien has resided and been physically present outside the United States, except for brief trips for pleasure or business, for the immediate prior year. In view of this restriction, a new petition shall not be approved for an alien who has spent five or six years in the United States under section 101(a)(15)(H)(i) and or (L) of the Act, unless the alien has resided and been physically present outside the United States for the immediate prior year. Brief trips for pleasure or business, for the immediate prior year, are not interruptive of the one-year requirement, but do not count towards fulfillment of that requirement. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous year.

(iii) *H–2B and H–3 limitation on admission.* An alien who has spent three years in the United States under section 101(a)(15)(H)(ii) or two years under section 101(a)(15)(H)(iii) of the Act may not seek extension, change status, or be readmitted to the United States under the H or L classification unless the alien has resided and been physically present outside the United States for the immediate prior six months. In view of this restriction, a new petition shall not be approved for an alien who has spent three years in the United States under section 101(a)(15)(H)(ii) or two years under section 101(a)(15)(H)(iii) of the act unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior six months. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous six months. Brief trips for business with pleasure for the immediate prior six months are not interruptive of the six-month requirement, but do not count towards fulfillment of that requirement.

(iv) *Exceptions.* The limitations in paragraph (h)(12)(ii) and (iii) of this section shall not apply to H–1, H–2B, and H–3 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, each period of stay must be based on a new petition, or the petitioner and the alien must provide clear and convincing proof that the alien qualifies for an exception. Clear and convincing proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

(13) *Extension of visa petition validity.*—(i) *Approval.* A visa petition under section 101(a)(15)(H) of the Act shall be automatically extended, without the filing of Form I–129H, if the director extends the stay of the alien beneficiary(ies) in accordance with paragraph (h)(14) of this section. A new Form I–171C shall be issued to the petitioner at the same time that the beneficiary is notified that his or her extension of stay application has been approved. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. No action shall be taken on the visa petition if the alien's application for extension of stay is denied.

(ii) *Denial.* Although an application for extension of stay under the H classification does not require the filing of a petition extension, the director may consider information relating to the petition in adjudicating the beneficiary's extension of stay. If the director determines that there are grounds to readjudicate the petition before granting or denying the extension, the director shall move to reopen or reconsider the original petition. If the petition is denied, the alien's extension of stay shall be denied for lack of an approved supporting petition.

(14) *Extension of stay*—(i) *Procedure*—(A) *H–1 and H–3 beneficiaries.* If maintaining status, the beneficiary of an H–1 or H–3 petition may apply for an extension of stay by submitting an application for extension of stay, a copy of the original petition approval notice, Form I–171C, and a letter from the petitioner which describes the beneficiary's current duties, hours of work, and salary; indicates whether any terms and conditions of the original petition have changed, gives the reasons for the extension, gives the dates of the alien's periods of stay in the United States for the previous six years under H–1 or the previous three years under H–3, and specifies the new dates of employment or training requested.

(B) *H–2 beneficiaries.* The petitioner must obtain a new labor certification or a notice that certification cannot be made in order for the H–2 beneficiary to apply for an extension of stay. If maintaining status, the H–2 beneficiary

may apply for an extension of stay by submitting an application for extension of stay, a copy of the original petition approval notice, Form I-171C, a statement which gives the dates of the alien's period of stay in the United States for the previous three years, and the new labor certification or notice with countervailing evidence.

(C) *Multiple beneficiaries.* An application for an extension of stay on behalf of multiple beneficiaries covered by the same original petition must be filed by each individual alien, except that in the case of an extension of stay for members of a group as defined in paragraph (h)(3)(i)(B)(*3*) of this section, one application for extension of stay is required with an attached list of beneficiaries.

(ii) *Extension periods*—(A) *H-1 extension of stay.* An extension of stay may be authorized for a period of up to two years for a beneficiary of an H-1 petition. The alien's total period of stay as an H-1 and/or L may not exceed five years, except in extraordinary circumstances. Beyond five years, an extension of stay not to exceed one year may be granted under extraordinary circumstances. Extraordinary circumstances shall exist when the director finds that termination of the alien's services will impose extreme hardship on the petitioner's business operation or that the alien's services are required in the national welfare, safety or security interests of the United States. No further extensions may be granted. If the director decides that approval of the one-year extension is warranted because of extraordinary circumstances, the decision shall be certified to the Administrative Appeals Unit before service on the alien.

(B) *H-2 extension of stay.* An extension of stay may be authorized for the validity of the labor certification not to exceed one year for a beneficiary of an H-2 petition. The alien's total period of stay as an H-2 worker may not exceed three years, except that in the Virgin Islands, the alien's total period of stay may not exceed 45 days.

(C) *H-3 extension of stay.* An extension of stay may be authorized for a period of up to one year for the beneficiary of an H-3 petition. The alien's total period of stay as an H-3 trainee, however, may not exceed two years.

(iii) *Denial of extension of stay.* If an H beneficiary's request for extension of stay is denied, the alien shall be notified of the reasons for the denial. There is no appeal from the denial of an alien's application for an extension of stay.

(15) *Effect of approval of a permanent labor certification or filing of a preference petition on H classification*—(i) *H-1 classification*—(A) *Petitioner*—(*1*) *Conditions.* The approval of a permanent labor certification or the filing of a preference petition for an alien is not by itself a ground to deny an H-1 petition if the director, in his/her judgment, determines that certain conditions are met:

(*i*) The dates of employment must be within the time limit for which an H-1 petition may be authorized, and

(*ii*) The petitioner must establish that temporary classification is not being requested for the principal purpose of enabling the employee to enter the United States permanently in advance of the availability of a visa number.

(*2*) *Evidence.* In deciding whether or not the foregoing conditions have been met, the director will consider evidence provided by the petitioner of factors such as, but not limited to the following, as appropriate:

(*i*) Petitioner's prior history of use of aliens in temporary and permanent capacities and extent to which petitioner has employed aliens without lawful authorization, and

(*ii*) Whether the employment appears to be an accommodation rather than a bona fide employer/employee relationship.

(B) *Beneficiary*—(*1*) *Conditions.* The approval of a labor certification or the filing of a preference petition is not by itself a ground to deny an H-1 beneficiary's application for admission, change of status, or extension of stay if the director, in his or her judgment, determines that certain conditions are met:

(*i*) The alien must demonstrate that he/she has not abandoned residence abroad; and

(*ii*) The alien must establish that he or she intends to enter and remain in the United States only in accordance with any authorized stay and to return abroad voluntarily at or before termination of that authorization, unless he or she has become a permanent resident to the United States in the meantime.

(*2*) *Evidence.* In determining whether the alien meets these conditions, the director shall consider evidence, which the alien shall provide, of appropriate factors such as, but not limited to, the following:

(*i*) Evidence of a residence abroad, such as home, bank accounts, or prospects of a job abroad at the end of the authorized stay;

(*ii*) Close family ties abroad;

(*iii*) History of previous stays in the United States and visa classifications and evidence that the alien has not entered or remained in the United States in violation of status or United States immigration laws; and

(*iv*) Alien's employment history within and outside the United States.

(ii) *H-2B and H-3 classification.* The approval of a permanent labor certification or the filing of a preference petition for an alien in the same or a different job or training position and for the same petitioner shall be a ground to deny the alien's request for extension of stay.

(16) *Effect of strike*—(i) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(H) of the Act shall be denied if the Secretary of Labor certifies to the Commissioner of Immigration and Naturalization that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained and that the employment or training of the beneficiary would adversely affect the wages and working conditions of United States citizens or lawful resident workers.

(ii) If a petition has been approved, but the beneficiary has not yet entered the United States to take up the approved employment or training, and the Secretary of Labor certifies to the Commissioner of Immigration and Naturalization that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of United States citizens or lawful permanent resident workers, the approval of the petition is automatically suspended and the application for admission on the basis of the petition shall be denied.

(iii) If a petition has been approved, the beneficiary has entered the United States to take up the employment or training, the beneficiary is not an "employee" as defined in the National Labor Relations Act ("NLRA") [29 U.S.C. 152(3)], and the Secretary of Labor certifies to the Commissioner of Immigration and Naturalization that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and place of employment or training, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of United States citizens or lawful permanent resident workers, the approval of the petition is automatically suspended.

(iv) If a petition has been approved, the beneficiary has entered the United

States to take up employment, and the beneficiary is an "employee" within the definition of the NLRA, the existence of a strike in the occupation at the place of employment shall result in suspension of the beneficiary's authorization to work, unless the employor establishes to the satisfaction of the Secretary of Labor, who in turn certifies to the Commissioner of Immigration and Naturalization, that less than 30 percent of the work force in the occupation at the place of employment are United States citizens or lawful permanent resident workers.

(v) If a petiton has been approved, the beneficiary has entered the United States to take up employment, and the beneficiary is an "employee" within the definition of the NLRA, the existence of a strike in the occupation at the place of employment shall result in suspension of the beneficiary's authorization to work, if it is established to the satisfaction of the Secretary of Labor, who in turn certifies to the Commissioner of Immigration and Naturalization, that 30 percent or more of the work force in the occupation at the place of employment are United States citizens or lawful permanent resident workers and that the strike has been authorized by a majority of such United States citizens or lawfull permanent resident workers who voted or a majority of such workers are participating in the strike.

(vi) As used in this section, "place of employment" means any location where the employer or a joint employer does business.

(17) *Use of Form I–171C.* The Service shall notify the petitioner on Form I–171C whenever a visa petition or an extension of a visa petition is approved uder the H petition who does not require a nonimmigrant visa may present a copy of Form I–171C at a port of entry to facilitate entry into the United States. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use an original Form I–171C to apply for a new or revalidated visa during the validity period of the petition. The copy of Form I–171C shall be retained by the beneficiary and presented during the validity of the petition reentry to resume the same employment with the same petitioner and to apply for an extension of stay.

* * * * *

Dated: October 5, 1988.

Richard E. Norton,

Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 88–24567 Filed 10–25–88; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL TRADE COMMISSION

16 CFR Part 240

Guides for Advertising Allowances and Other Merchandising Payments and Services

AGENCY: Federal Trade Commission.

ACTION: Publication of staff recommendations for public comment.

SUMMARY: The Federal Trade Commission staff has recommended certain changes to the Commission's Guides on Advertising Allowances and Other Merchandising Payments and Services ("Guides"), issued on May 29, 1969, and amended on August 4, 1972. Before taking action on these recommended changes, the Commission requests comments from the public about them.

The Federal Trade Commission originally issued the Guide to help businesses comply with Sections 2(d) and (e) of the Robinson-Patman Act ("R-P" or the "Act"). According to the FTC staff, the proposed changes have two principal purposes: first, to clarify and correct the Guides and bring them into line with developments in the law and in enforcement policy since their last revision; and second, to eliminate requirements that appear to be necessary and in many instances to lack legal support.

The Commission would welcome comments from the public concerning the changes to the Guides proposed by the FTC staff, proposals for any further changes to the Guides, and, more generally, the usefulness of the Guides, both in their current form and in the form proposed by staff. In addition to comments on the changes proposed by staff, the Commission invities the public to address other issues.

DATE: Comments must be submitted on or before January 24, 1989.

ADDRESSES: Comments should be addressed to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. All Comments should be labeled "Guides for Advertising Allowances".

FOR FURTHER INFORMATION CONTACT: Federal Trade Commission, Washington, DC, 20580, A. Roy Lavik, [202] 326–3334 or Nolan E. Clark, [202] 326–2785.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission staff has recommended certain changes to the Commission's Guides on Advertising Allowances and Other Merchandising Payments and Services ("Guides"), issued on May 29, 1969, and amended on August 4, 1972. Before taking action on these recommended changes, the Commission requests comments from the public about them. The Commission also invites the public to address the following general questions:

(I) Do the existing Guides serve any useful purpose?

(II) Would the public interest be advanced if the Commission left the current Guides as they are without any changes?

(III) Would the public interest be advanced if the Commission simply withdraw the current Guides?

(IV) Would any changes to the Guides in addition to those proposed by staff be in the public interest?

Although revised guides published here do not include the following changes, such changes have been occasionally suggested as desirable, and comments on these ideas would be welcomed:

(A) Defining proportional equality in terms of the amount of effective promotional services received per dollar of promotional expenditure by the seller.

(B) Permitting sellers to proportionalize promotional services to different customers as well as for different media, provided that they have reliable evidence showing that such differences are justified by differences in the amount of effective promotional services being acquired or provided.

(C) Using evidence about the competitive conditions of the buying and selling sides of the market in which promotional services and allowances are granted to help in the assessment of whether the proportional equality requirement is satisfied.

With regard to each of these suggestions, the Commission would welcome public response to the following questions:

(1) What would be the predictable practical effects of the proposed change?

(2) Would economic efficiency and consumer welfare predictably be advanced by the proposed change?

(3) Is the proposed change consistent with the language of the Act and its legislative history?

(4) Would the proposed change be precluded by any controlling case law?

Set forth below is the staff's explanation of the proposed changes.

Sections 2(d) and (e) of R–P prohibit a seller from paying allowances or furnishing services to promote the resale of its products unless the allowances or services are offered to all competing customers on proportionally equal terms. Sections 2(d) and (e) apply only to allowances or services designed

primarily to stimulate resale. If a discrimination principally relates to the original sale from seller to buyer, it is subject to section 2(a) of R–P, not sections 2(d) or (e). This differentiation has important consequences. In contrast to a Section 2(a) violation, a plaintiff need not demonstrate adverse competitive effects to establish a section 2(d) or (e) violation, and although meeting competition is a defense, cost justification is not.

The primary purpose of the Guides is to provide assistance to businesses seeking to comply with sections 2(d) and (e). Private attorneys specializing in R–P practice have told Commission staff that the Guides continue to be widely used, particularly by in-house counsel. Many of the latter reportedly follow the Guides closely to minimize the possibility of private treble damage actions. Because of this substantial reliance, the Commission staff believes it is important that the Guides are accurate and not unnecessarily restrictive.

Because of changes in the law since the Guides were last amended, some Guide provisions do not reflect current law. The Supreme Court's decision in *Falls City Industries, Inc. v. Vanco Beverages, Inc.*, 460 U.S. 428 (1983), has rendered obsolete significant portions of the Guides' discussion of the meeting competition defense. Further, the relevant Guide provisions do not stress the resale requirement of sections 2(d) and (e), in contrast to such recent decisions as *Bouldis v. U.S. Suzuki Motor Corp.*, 711 F.2d 1319 (6th Cir. 1983); *L&L Oil Co. v. Murphy Oil Corp.*, 674 F.2d 1113 (5th Cir. 1982); and *Herbert R. Gibson, Sr.*, 95 F.T.C. 553 (1980), *aff'd*, 682 F.2d 554 (5th Cir. 1982), *cert. denied*, 460 U.S. 1068 (1983). Further, the Guides' *per se* condemnation of price restrictions on co-op advertising allowances has been undercut by the rule of reason approaches of *In re Nissan Antitrust Litig.*, 577 F.2d 910 (5th Cir. 1978), *cert. denied*, 439 U.S. 1072 (1979); *AAA Liquors Inc. v. Joseph E. Seagram & Son*, 705 F.2d 1203 (10th Cir. 1982), *cert. denied*, 461 U.S. 927 (1983); and *Jack Walters & Sons Corp. v. Morton Bldg., Inc.*, 737 F.2d 698 (7th Cir. 1984), *cert. denied*, 469 U.S. 1018 (1984).

Some Guide provisions have been criticized as unnecessarily restrictive, particularly the Guides' use of customer cost as the basis for proportionalizing promotional offers. A cost-based standard means, for example, that a seller would reimburse customer expenditures on different promotional activities at the same percentage of each customer's cost, although the effectiveness of the different promotional services, in generating increased demand for the seller's product, might be different. That result, by tending to suppress differences in productivity, might reduce promotional efficiency. Although the proposed revisions do not reflect these criticisms, comment on the general issue is invited.

Finally, the revisions are designed to bring the Guides into line with the many R–P cases indicating that, where possible, the Act should be construed to promote the procompetitive goals of the other antitrust laws. *See, eg., Automatic Canteen Co. v. F.T.C.*, 346 U.S. 61 (1953); *Great Atlantic & Pacific Tea Co. v. F.T.C.*, 440 U.S. 69 (1979); *O. Hommel Co. v. Ferro Corp.*, 659 F.2d 340 (3d Cir. 1981), *cert. denied*, 455 U.S. 1017 (1982); *General Motors Corp.*, 103 F.T.C. 641 (1984); *Boise Cascade Corporation*, 107 F.T.C. 76 (1986), *remanded*, 837 F.2d 1127 (D.C.Cir. 1988). In *A&P*, the Court considered whether a buyer had a duty under R–P to inform a prospective seller that its bid was substantially lower than a rival's offer. The Court refused to impose such a duty, in part because it would conflict with the Sherman Act's goal of greater price competition. The Court observed: "Imposition of Section 2(f) liability on the buyer in this case would lead to * * * price uniformity and rigidity." 440 U.S. at 80. Consistent with this reasoning, the proposed revisions are intended to make the Guides more procompetitive as well as more accurate.

This section discusses revisions in the order they would appear in the Guides. Following this explanatory section is the full text of the revised Guides, as they would appear in the Code of Federal Regulations. It should be noted that although the Guides appear in the Code of Federal Regulations and, for simplicity, the following explanation sometimes refers to Guide "requirements," the Guides are purely advisory; they are not binding regulations.

Purpose of the Guides

The revised Guides contain a new Guide One which states the purpose of the Guides. The existing Guides discuss the reason for their promulgation in their Introduction, which does not appear in the CFR. The Commission staff believes it important that there be the widest possible dissemination of the Guides' purpose and, therefore, has included this as a separate Guide which will be published in the CFR.

The Commission staff hopes that the Guides will provide assistance to businesses seeking to comply with sections 2(d) and (e) of R–P. The Guides therefore seek not only to give interpretations based on controlling case law but also to giver guidance in those areas not illuminated by cases. The Commission staff's interpretations in these latter areas, however, are believed to be consistent with section 2(d) and (e) language and grounded in their legislative history.

Definition of Customer

There are two proposed revisions to existing Guide 3 ("Who is a customer?"), now renumbered as Guide 4. The first would amend Example 2 by making clear that the promotional plan concerns services to be performed at the retail level and that the context for the competing customer determination in that example is a retailer-oriented promotion.

The second revision would remove Example 3 from existing Guide 8 and place it under revised Guide 4. Example 3 basically parallels Example 2 of revised Guide 4, except that it describes a promotion directed to wholesalers. The juxtaposition of these two examples should bring out more clearly that customer determination depends on the level (or levels) of distribution targeted by a seller's promotion.

Competing Customers

The next revision essentially shifts existing Guide 12 ("Competing customers") to a renumbered Guide 5. The Commission staff believes this enables the reader more easily to assimilate the companion concepts of customer and competing customer by successively discussing them. In addition to the repositioning, the revisions delete the reference to the seller's potential liability under section 2(a) or R-P or section 5 of the FTC Act. Several people said that the reference confused rather than enlightened their clients. The Commission staff believes that the continued inclusion of the reference serves little or no purpose and its exclusion may give greater clarity based on the cited comments.

Interstate Commerce

The proposed revision to Guide 4 ("What is interstate commerce?"), now renumbered Guide 6, states that the commerce requirement of sections 2 (d) and (e) is basically the same as the commerce requirement of section 2(a). The earlier case of *Shreveport Macaroni Manufacturing Co. v. F.T.C.*, 321 F.2d 404 (5th Cir. 1963), *cert. denied*, 375 U.S. 971 (1964), appeared to distinguish the requirements. Two recent cases, however, have indicated that the jurisdictional limitation is essentially

the same for all three sections. *See L&L Oil Co., Inc. v. Murphy Oil Corp.*, 674 F.2d at 1113; *Zoslaw v. MCA Distributing Corp.*, 693 F.2d 870 (9th Cir. 1982), *cert. denied*, 460 U.S. 1085 (1983). Further, there appears to be no compelling reason to differentiate the jurisdictional requirements in various sections of the same act. Accordingly, the proposed language gives a general description of the commerce requirement applicable to Sections 2(a), 2(d) and 2(e).

Services or Facilities

The proposed amendments to Guide 5 ("What are services or facilities?"), now renumbered Guide 7, would emphasize the resale requirement of sections 2 (d) and (e) by adding general language highlighting the requirement and by eliminating overlapping examples listed in existing Guide 5. Moreover, two examples which have been deleted—those concerning the provision of special packaging or package sizes, and the acceptance of returns for credit—seem unlikely to satisfy the resale test as currently interpreted.

Two early Commission decisions, *Luxor, Ltd.*, 31 F.T.C. 658 (1940), and *General Foods Corp.*, 52 F.T.C. 798 (1956), apply section 2(e) to special packaging. The latter case simply relies on the former, however, and its analysis of the issue is brief and conclusory. Recent Commission decisions (not involving special packaging) have interpreted the resale requirement of sections 2 (d) and (e) more strictly. Compare *Gibson*, 95 F.T.C. at 724–30 with *Alterman Foods*, 82 F.T.C. 298, 343 (1973); *see also General Motors*, 103 F.T.C. at 641. These decisions are consistent with recent appellate court opinions emphasizing the resale requirement. *See Bouldis v. U.S. Suzuki Motor Corp.*, 711 F.2d 1319, 1328 (6th Cir. 1983); *Rutledge v. Electric Hose & Rubber Co.*, 511 F.2d 668, 678 (9th Cir. 1975); *Kirby v. P.R. Mallory & Co.*, 489 F.2d 904, 910 (7th Cir. 1973), *cert. denied*, 417 U.S. 911 (1974).

Similarly, one early Commission decision, *Joseph A. Kaplan & Sons*, 63 F.T.C. 1308 (1963), *aff'd in part and modified in part on other grounds*, 347 F. 2d 785 (D.C. Cir. 1965), holds that accepting returns for credit is covered by Section 2(e). However, the analysis on this point was perfunctory and contrary to the thrust of later Commission and judicial decisions. Indeed, the Sixth Circuit recently declined to apply *Kaplan* to the facts in *Bouldis v. U.S. Suzuki Motor Corp.*, 711 F.2d at 1328.

In light of the unmistakable trend in the case law toward a stricter interpretation of the resale requirement, the Commission staff believes it would be misleading to cite special packaging and accepting returns for credit as examples of services that meet this requirement. Although these two services may sometimes satisfy the resale test, it seems likely that these services are often offered to particular customers primarily to promote the original sale. These services, moreover, do not possess the close and obvious connection to resale of the other examples cited (*e.g.*, demonstrators, display materials). Unless public comments provide substantial evidence of the requisite resale nexus, it appears to be clearer to treat each of these services as one of the situations that the Guides do not usually cover.

Proportional Equality

Proposed Guide 8, dealing with proportional equality, is substantially the same as existing Guide 7, with the addition of a new paragraph explaining how proportional equality does not require mathematical precision or absolutely uniform treatment.

Sections 2(d) and (e) require that promotional allowances and services be made available to all competing customers on "proportionally equal" terms. In accordance with the case law, the Guide notes that "[n]o single way to proportionalize is prescribed by law." The Guides have been read to require that the seller use cost, independent of the effectiveness of the promotional services supplied or acquired, as the sole basis for proportionalizing offers among customers. Cost has been considered in essentially two ways: first, that the seller must spend or supply an equal amount for promotional purposes per unit sold to its competing customers; alternatively, that it must spend an amount that bears an equal proportion of its customers' costs of providing a promotional service. An example of the first would be a promotional payment that offers each customer 15 cents per unit of product purchased for advertising in newspapers, and if newspapers are not functionally available to certain customers, by offering them 15 cents per unit for advertising in some alternative way, such as handbills. An example of the second would be the seller paying 50 percent of its customers' cost of advertising in some alternative way if newspapers are not functionally available to some of them.

The proposed revisions would not change the language of the existing Guides in this respect. The Commission is interested in comments on whether the Guides should be revised to make it clear that a seller could vary its allowances or services to reflect differences in value to the seller. For example, should the Guides permit a seller to offer an allowance of $200 to customer A because A will use the allowance for promotions worth $200 to the seller (in terms of the number of potential customers reached), but also permit the seller to pay only $100 to customer B—who buys as much of the seller's product as customer A does, and uses the same promotional medium as A, at the same cost—because the result of B's effort is only worth $100 to the seller? This result might be a more economically efficient allocation of resources to promotional activity than requiring the seller to pay the same amount to each customer, or requiring the seller to pay their actual costs; however, is this result consistent with the Act?

The Act's legislative history indicates that the term "proportional equality" was intended to provide the measure by which a seller could provide promotional services or allowances to both its large and small customers on a basis which would not disproportionally favor the large customers over the small customers. Mr. Teegarden, counsel for the organized wholesale grocers and the draftsman of the Patman bill, stated that "proportional equality" would "depend upon such factors as the nature of the services or facilities for which it is offered and the ability of the competitor to furnish such services or facilities with corresponding value in proportion to the smaller quantities which he might be able to furnish them." [1] Similarly, the Senate and House Judiciary Committee Reports both stated that the phrase "proportionally equal terms" was:

> designed to prevent the limitation of such allowances to single customers on the ground that they alone can furnish the services or facilities in the quantity specified. Where a competitor can furnish them in less quantity, but of the same relative value, he seems entitled, and this clause is designed to accord him, the right to a similar allowance commensurate with those facilities. To illustrate: Where . . . a manufacturer grants to a particular chain distributor an advertising allowance of the stated amount per month per store in which the former's goods are sold, a competing customer with a smaller number of stores, but equally able to furnish the same service per store, and under conditions of the same value to the seller,

[1] Hearings Before the House Committee on the Judiciary on Bills to Amend the Clayton Act, 74th Cong., 1st Sess., at 38 (1935). Mr. Teegarden also considered it obvious that the seller would make payments only to "those customers able to furnish the services or facilities for which they are offered." *Id.*

would be entitled to a similar allowance on that basis.[2]

Similarly, Representative Utterback's explanation of the Conference Report related proportional equality "naturally to those customers' purchases and to their ability to render the services and facilities to be paid for." [3] The legislative history makes clear that the seller's-cost standard was intended to be a means of determining proportional equality. For example, Senator Logan, the Senate Manager of the Patman bill, explained the concept of "proportional equality" on this basis: "If one man buys $100,000 in goods and should be allowed $1,000 for advertising purposes, and another buys $10,000 in goods, he ought to be allowed $100 for advertising." [4] Is it fair to read the legislative history as permitting different payments for services of different value; or is it more accurate to interpret the statements about services of "the same relative value" to the seller to be assertions that the services of different customers, compensated on a sellers-cost basis, would necessarily be of the same value?

The relevant cases are few. Compare *Lever Brothers Co.*, 50 F.T.C. 494 (1953), in which the Commission suggested that either cost or value could be used to measure proportional equality, with *F.T.C. v. Simplicity Pattern Co.*, 360 U.S. 55, 61 (1959), endorsing the "relatively broad scope" the Commission had given to the standard of proportional equality, and *Colonial Stores*, 450 F.2d 733, 743, note 23 (5th Cir. 1971), holding that *Lever Brothers* did not permit a seller to make a grossly disproportionate offer to a single, large customer and attempt to justify the disparity on the gound that the customer's service was uniquely valuable.

There are three other proposed revisions in existing Guides 7 and 9, the former renumbered as revised Guide 8. The first is a clarification of existing language which would remove the implication in paragraph 2 of existing Guide 9 that each alternative promotional plan must be suitable for all competing customers. The purpose of requiring alternatives is to give competing customers who cannot provide or use particular media or services a practical alternative. It is necessary and may be counterproductive to require that the alternatives simultaneously be suitable for all customers.

The second change is more significant and relates to the elimination of footnote 2 to existing Guide 9, the last sentence of which reads in pertinent part: "Also, the purchase of displays or shelf space whether directly or by means of so-called allowances, may be considered an 'unfair method of competition' * * *" This statement implies that the purchase of store space is suspect. However, in *Hastings Manufacturing Co.*, Dkt. No. 4437, [1979–1983 Transfer Binder] Trade Reg. Rep. (CCH) Para. 21,646 (order modification), the Commission recognized that bidding for shelf space is a form of price competition, generally beneficial for the consumer. Additionally, in *Bayou Bottling, Inc. v. Dr. Pepper Co.*, 725 F.2d 300 (5th Cir. 1984), *cert. denied*, 469 U.S. (1984), the Fifth Circuit concluded that shelf space monopolization was unlikely. Noting that retailers generally allocated shelf space in proportion to market activity, the court saw little danger that space would be dominated by one seller.

Cooperative Advertising and Suggested Resale Prices

The final proposed revision to existing Guide 7 would delete Example 8. This example states that a seller should not refuse to reimburse a customer for expenditures on cooperative advertisement because it features a price other than the seller's suggested price. The Commission reiterated this view in a 1980 enforcement policy statement which maintained that it is *per se* illegal for a manufacturer to enter into a cooperative advertising agreement that denies payments when the dealer advertises a discount price or a price less than the one suggested. *See F.T.C. Policy Statement Regarding Price Restrictions in Advertising Programs*, 4 Trade Reg. Rep. (CCH) Para. 30,057 (October 26, 1981). The Commission has now rescinded this policy statement because it applied a broad *per se* rule to a practice that should generally be evaluated under the rule of reason. Consistent with this action, the Commission staff proposes to delete Example 8.

The only appellate decision on point supports this course of action. In *In re Nissan Antitrust Litig.*, 577 F.2d 910 (1978), *cert. denied*, 439 U.S. 1072 (1979), the Fifth Circuit reviewed a cooperative advertising plan that limited reimbursements to advertisements that contained Nissan's suggested price (or no price at all). The plan's impact on price was limited: Retailers could advertise other prices at their own expense and could (and did) sell cars at different prices. Moreover, by encouraging dealer promotion and investment, the plan may have helped Nissan penetrate a market dominated by domestic producers. The trial judge had therefore rejected a jury instruction that the plan was *per se* illegal. The Fifth Circuit upheld this decision and left standing the jury verdict for Nissan.

This case was decided after the Guides were issued but before the issuance of the Commission policy statement. Cases subsequent to the policy statement have all supported the rule of reason approach of *Nissan* rather than the *per se* approach of the policy statement. These cases are not directly on point: They do not involve cooperative advertising and they address manufacturer efforts to hold down, not support, dealer prices. On the other hand, the cases exhibit a considerable reluctance to expand the *per se* rule against vertical price fixing. All sustain limited, *direct* restraints on resale prices, in contract to the *indirect* influence on these prices exerted by restrictions on cooperative advertising. Further, in allowing manufacturers to hold down dealer prices, the decisions undercut Example 8 and the 1980 statement to the extent they indicate that a manufacturer cannot condition cooperative advertising payments on a dealer's agreement not to advertise prices *above* the suggested prices.

In *AAA Liquors, Inc. v. Joseph. E. Seagram & Sons*, 705 F.2d 1203 (10th Cir. 1982), *cert. denied*, 461 U.S. 927 (1983), Seagram wished to help its retailers in Denver meet strong price competition. The company therefore gave price discounts to its wholesalers and required that they be passed on to retailers. The Tenth Circuit held that this price constraint was neither *per se* illegal nor unreasonable.

Two other Circuits have followed the lead of the Tenth Circuit. In *Lewis Service Center, Inc. v. Mack Trucks, Inc.*, 714 F.2d 842 (1983), *Cert. denied*, 467 U.S. 1226 (1984), the Eighth Circuit found no antitrust violation where Mack Truck conditioned its sales assistance program on the maximum price charged by its dealers. The Seventh Circuit held in *Jack Walters & Sons Corp v. Morton Bldg., Inc.* 737 F.2d 6 (1984), *cert. denied*, 469 U.S. 1018 (1984), that a manufacturer could secure agreements from its dealers that they would not charge prices higher than those advertised by the manufacturer.

In contrast to these decisions applying the rule of reason, the only cases applying a *per se* approach to these types of restraints are two older district court opinions; neither clearly involved a pure cooperative advertising price restriction. In *United States v. Serta Assocs., Inc.*, 296 F. Supp. 1121 (N.D.Ill.

[2] S. Rep. No. 1502, 74th Cong., 2d Sess., at 8 (1936); H.R. Rep. No. 2287, 74th Cong., 2d Sess., at 16 (1936).

[3] 80 Cong. Rec. 9416 (1936).

[4] 80 Cong. Rec. 3116 (1936).

1968), *aff'd per curiam*, 393 U.S. 534 (1969), the court found a horizontal cartel which, among other things, imposed restrictions on all advertised prices, not just those in cooperative advertisements. The co-op price restraints were ancillary to this broader scheme. In *Mt. Vernon Sundat v. Nissan Motor Corp. in U.S.A.*, 1976–1 Trade Cas. (CCH) Para. 60,842 (E.D. Va. 1976), the court cited evidence that Nissan had strongly recommended that dealers adhere to its suggested prices. These efforts may well have constituted a vertical price fixing conspiracy under the law prevailing then. Consequently both cases involved cooperative advertising price restrictions that were either clearly or arguably ancillary to direct price fixing agreements.

Additionally, two consent decrees obtained by the Department of Justice and three consent order secured by the Commission took the position that the denial of cooperative advertising payments to dealers not using the manufacturer's suggested price constituted vertical price fixing. *See United States v. E.I. du Pont de Nemours & Co.*, 1980–81 Trade Cas., (CCH) Para. 63,570 (N.D. Ohio 1980); *United States v. Nissan Motor Corp. in U.S.A.*, 1973 Trade Cas. (CCH) Para. 74,333 (N.D. Cal. 1973); *Tingley Rubber Corp.*, 96 F.T.C. 340 (1980); *Totes, Inc.*, 96 F.T.C. 335 (1980); *Advertising Checking Bureau, Inc.*, 93 F.T.C. 4 (1979). As consent decrees, however, none of these orders amounted to a judicial determination of the issue.

In sum, there is little judicial support for the view that price restrictions on cooperative advertising, standing alone, are *per se* illegal. Moreover, there is considerable precedent to the contrary.

Availability and Notification

The proposed revisions in this category relate to the seller's responsibilities to notify all competing customers of its promotional programs (existing Guide 8). Provisions dealing with this notification responsibility are scattered in existing Guides 6, 8, and 10. The revisions combine them all as part of revised Guide 9, which sets forth the twin aspects of availability: (1) The functional availability of the promotion to all competing customers; and (2) the communication of its existence.

Existing Guide 8 indicates that the seller has essentially two notification responsibilities: (1) To implement a "procedure reasonably designed to inform all his competing customers of his promotional programs;" and (2) to "verify the effectiveness" of this procedure by (a) making "spot checks" at least every 90 days of "a representative cross section of his indirect-buying customers," and (b) altering notification procedures appropriately if a spot check indicates that some customers are not receiving notice.

The Commission staff proposes to modify Guide 8 by eliminating the 90-day spot check requirement. This requirement appears overly regulatory and insufficiently cost conscious. Checking a representative cross section of indirect customers every 90 days is likely to be expensive for many sellers and usually not warranted. A seller that follows revised Guide 9 will already be using procedures reasonably designed to inform competing customers of promotional programs. In such cases, the self-interest of sellers and customers (which are generally aware that sellers offer promotional allowances and which do not want to miss specific offers) should cause most buyers to receive notice.

The Commission staff has also recommended deleting existing Guides 6 ("Need for a plan") and 10 ("Need to understand terms") from the revised Guides. These two existing Guides seem generally redundant. For example, Subsection (b) of existing Guide 6 states that a seller should inform its competing customers of the terms of its promotions. It is not clear what this adds to existing Guide 8 which goes into some detail as to the seller's notification obligation. Similarly, Subsection (a) of existing Guide 6 merely restates the existing Guide 7 stricutre that a plan should be available on proportionally equal terms to all competing customers, as does Subsection (e), stating that a seller should not overpay customers for promotional services supplied. Existing Guide 10 adds to this reiteration by counseling that sellers should inform competing customers in understandable terms of their promotions, a concept implicit, if not explicit, in revised Guide 9. The Commission staff believes this repetition is not informative. For these reasons, the revisions eliminate existing Guides 6 and 10.

The revisions revise and renumber existing Guide 13 ("Wholesaler or third party performance of seller's obligations"). Revised Guide 10 now deals with the seller's use of wholesalers or other third parties for performance of the seller's obligations. The thrust of existing Guide 13 is that no matter how a seller contracts with a third party to carry out its duties under the law, the seller remains liable for any infractions. Revised Guide 10 makes this point and eliminates the regulatory detail of existing Guide 13.

Customer's Liability

Existing Guide 14, now renumbered as Guide 11, dealing with customer liability under section 5 of the FTC Act is substantially unchanged. The examples have been edited to emphasize the scienter requirement, that the customer "knows or should know" that allowances or services received are not available on proportionally equal terms to competitors. In addition, existing Guide 15, which deals with third-party liability under Section 5 of the Federal Trade Commission Act for furnishing a customer fictitious billing, is combined with this Guide.

Meeting Competition

Existing Guide 16, renumbered as revised Guide 12, briefly describes the meeting competition defense to sections 2(d) and (e). The proposed revisions would replace most of the existing paragraph with new language that reflects the Supreme Court's decision in *Falls City Industries, Inc.* v. *Vanco Beverage, Inc.*, 460 U.S. 428 (1983), and *Great Atlantic & Pacific Tea Co.* v. *F.T.C.*, 440 U.S. 69 (1979). For example, the proposed language would drop the existing Guide's emphasis on offers to a "particular customer" and state instead that the defense is applicable to area-wide offers. In *Falls City*, the Court declared:

> There is no evidence that Congress intended to limit the availability of [the meeting competition defense] to customer-specific responses. . . . Congress intended to allow reasonable pricing responses on an area-specific basis where competitive circumstances warrant them.

Id. at 448.

Similarly, existing Guide 16 implies that the defense is available only if the seller's promotional payments meet "equally high" payments by a competitor. Such a matching requirement, however, would conflict with the exculpation of the seller in *A&P*. There, the Court held that seller had a meeting competition defense even though his offer beat, rather than simply matched, the competing offer. Further, the last sentence of the existing Guide, although correct if read narrowly, may imply to some readers that the defense is unavailable even though the seller has a reasonable belief that it will lose the customer's business if it does not improve its offer. The revised Guide, which stresses the good faith requirements, should avoid this misreading.

List of Subjects in 16 CFR Part 240

Robinson-Patman Act, Promotional allowances and services.

By Direction of the Commission.

Donald S. Clark,

Secretary.

16 CFR Chapter I, Subchapter B is amended by revising Part 240 to read as follows:

PART 240—GUIDES FOR ADVERTISING ALLOWANCES AND OTHER MERCHANDISING PAYMENTS AND SERVICES

Sec.

Authority: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, 49 Stat. 1526; 15 U.S.C. 13, as amended.

§ 240.1 Purpose of the guides.

The primary purpose of these Guides is to provide assistance to businesses seeking to comply with sections 2 (d) and (e) of the Robinson-Patman Act (the "Act"). The Commission's interpretations are based on the language of the statute, the legislative history, administrative and court decisions, and an evaluation of the purposes of the relevant statutory provisions. Although the Commission has concluded that its interpretations are consistent with all controlling case law, the Commission has sought to provide guidance in some areas where no definitive guidance is provided by the case law.

§ 240.2 Applicability of the Law.

The substantive provisions of sections 2(d) and (e) apply only under certain circumstances.

(a) Section 2(d) applies only to:

(1) A seller of products;

(2) Engaged in interstate commerce:

(3) That either directly or through an intermediary;

(4) Pays a customer for promotional services or facilities provided by said customer;

(5) In connection with the *resale* (not the initial sale between the seller and the customer) of the seller's products;

(6) Where the customer is engaged in competition with one or more of the seller's other customers also engaged in the resale of the seller's products of like grade and quality.

(b) Section 2(e) applies only to:

(1) A seller of products;

(2) Engaged in interstate commerce;

(3) That either directly or through an intermediary;

(4) Furnishes promotional services or facilities to a customer;

(5) In connection with the *resale* (not the initial sale between the seller and the customer) of the seller's products;

(6) Where the customer is engaged in competition with one or more of the seller's other customers also engaged in the resale of the seller's products of like grade and quality.

Additionally, section 5 of the FTC Act may apply to buyers of products for resale engaged in interstate commerce, or to third parties, as outlined in § 240.11 of these Guides.

§ 240.3 Definition of Seller.

"Seller" includes any business (manufacturer, wholesaler, distributor, etc.) that sells products for resale, with or without further processing. For example, selling candy to a retailer is a sale for resale without processing. Selling corn syrup to a candy manufacturer is a sale for resale with processing.

§ 240.4 Definition of Customer.

A "customer" is any business that buys for resale directly from the seller, or the seller's agent or broker. In addition, a "customer" is any buyer of the seller's product for resale that purchases from or through a wholesaler or other intermediate reseller. The word "customer" which is used in Section 2(d) of the Act includes "purchaser" which is used in Section 2(e).

Note:—The Commission recognizes some exceptions to this general definition of "customer." For example, the purchaser of distressed merchandise would not be considered a "customer" simply on the basis of such purchase. Similarly, a retailer purchasing solely from other retailers, or making sporadic purchases, or one that does not regularly sell the seller's product, or that is a type of retail outlet not usually selling such products (e.g., a hardware store stocking a few isolated food items) will not be considered a "customer" of the seller unless the seller has been put on notice that such retailer is selling its product.

Example 1: A manufacturer sells to some retailers directly and to others through wholesalers. Retailer A purchases the manufacturer's product from a wholesaler and resells some of it to Retailer B. Retailer A is a customer of the manufacturer. Retailer B is not a customer unless the fact that it purchases the manufacturer's product is known to the manufacturer.

Example 2: A manufacturer sells directly to some independent retailers, to the headquarters of chains and of retailer-owned coooperatives, and to wholesalers. The manufacturer offers promotional services or allowances for promotional activity to be performed at the retail level. With respect to such services and allowances, the direct-buying independent retailers, the headquarters of the chains and retailer-owned cooperatives, and the wholesalers' independent retailer customers are customers of the manufacturer. Individual retail outlets of the chains and the memers of the retailer-owned cooperatives are not customers of the manufacturer.

Example 3: A seller offers to pay wholesalers to advertise the seller's product in the wholesalers' order books or in the wholesalers' price lists directed to retailers purchasing from the wholesalers. The wholesalers are customers but the retailers purchasing from the wholesalers and reached by the wholesalers' advertisements are not customers for purposes of this promotion.

§ 240.5 Definition of Competing Customers.

"Competing customers" are all businesses that compete in the resale of the seller's products of like grade and quality at the same functional level of distribution regardless of whether they purchase directly from the seller or through some intermediary.

Example 1: Manufacturer A, located in Wisconsin and distributing shoes nationally, sells shoes to three competing retailers that sell only in the Roanoke, Virginia area. Manufacturer A has no other customers selling in Roanoke or its vicinity. If Manufacturer A offers its promotion to one Roanoke customer, it should include all three, but it can limit it to them. The trade area should not be drawn arbitrarily so as to exclude competing retailers.

Example 2: A national seller has direct-buying retailing customers reselling exclusively within the Baltimore City trade area, and other customers within that area purchasing through wholesalers. The seller may lawfully engage in a promotional campaign confined to the Baltimore City trade area, provided it affords all of its retailing customers within the area the opportunity to participate, including those that purchase through wholesalers.

§ 240.6 Interstate Commerce.

This term has not been precisely defined in the statute. In general, the commerce requirement for sections 2(d) and (e) is the same as the commerce requirement for section 2(a). For a discrimination in price or promotional terms to be subject to the Act, at least one of the sales involved in a price discrimination, or shipments to at least one of the customers affected by the promotional discrimination, must cross a state line Sales or promotional offers

within the District of Columbia and most United States possessions are also covered by the Act.

§ 240.7 Services or Facilities.

These terms have not been exactly defined by the statute or in decisions. One requirement, however, is that the services or facilities be intended primarily to promote the resale of the seller's product by the customer. Services or facilities that relate primarily to the original sale are covered by section 2(a). The following list provides some examples—the list is not exhaustive—of promotional services and facilities covered by sections 2(d) and (e):

(a) Cooperative advertising;
(b) Handbills;
(c) Demonstrators and demonstrations;
(d) Catalogues;
(e) Storage cabinets;
(f) Dispaly materials;
(g) Prizes or merchandise for conducting promotional contests.

§ 240.8 Proportionally Equal Terms.

The promotional services and allowances should be made available to all competing customers on proportionally equal terms. This means that payments or services should be proportionalized on some basis that is fair to all customers who compete in the resale of the seller's products. No single way to proportionalize is prescribed by law. Any method that treats competing customers on proportionally equal terms may be used. Generally, this can best be done by basing the payments made or the services furnished on the dollar volume or on the quantity of goods purchased during a specified period. Other methods that are fair to all competing customers are also acceptable. When a seller offers more than one type of service, or payments for more than one type of service, all the services or payments should be offered on proportionally equal terms. The seller may do this by offering all the payments or services at the same rate per unit or amount purchased. Thus, a seller might offer promotional allowances of up to 12 cents a case purchased for expenditures on either newspaper advertising or handbills. Mathematical precision is not required for sellers to satisfy the standard of proportional equality. Nevertheless, sellers should have a reasonable basis for the method of proportionality they use. The seller should be prepared to show that it has not engaged in discrimination if it offers different services or allowances for promotions in different media or to different customers. If different types or groups of customers are offered different services or facilities (or different combinations or levels of services or facilities), a difference in participation rates across customer types or groups does not in itself imply that services or allowances are offered on proportionally unequal terms. A seller may not vary the rate at which—or limit the customers to whom—a particular service, or payments for a service, is offered, in order to reflect differences in the productivity of individual customers.

Example 1: A seller may offer to pay a specified part (e.g., 50 percent) of the cost of local advertising up to an amount equal to a specified percentage (e.g., 5 percent) of the dollar value of purchase during a specified period of time.

Example 2: A seller may place in reserve for each customer a specified amount of money for each unit purchased, and use it to reimburse these customers for the cost of advertising the seller's product.

Example 3: A seller should not select one or a few customers to receive special allowances (e.g., 5 percent of purchases) for promotions, while making allowances only on some lesser basis (e.g., 2 percent) to customers who compete with them.

Example 4: A seller should not provide an allowance (for services) on a basis that has rates graduated with the amount of goods purchased, as, for instance, 1 percent of the first $1,000 purchased per month, 2 percent of the second $1,000 per month, and 3 percent of all over that.

Example 5: A seller should not identify or feature one or a few customers in its own advertising without making the same service available on proportionally equal terms to customers competing with the identified customer or customers.

Example 6: A seller who makes employees available or arranges with a third party to furnish personnel for purposes of performing work for a customer should make the same offer available on proportionally equal terms to all other competing customers. In addition, the seller should offer usable and suitable alternatives of equivalent measurable cost to those competing customers for whom such services are not usable and suitable.

Example 7: A seller should not offer to pay a straight line rate for advertising if such payment results in a discrimination between competing customers; e.g., the offer of $1.00 per line for advertising in a newspaper that charges competing customers different amounts for the same advertising space. The straight line rate is an acceptable method for allocating advertising funds, if the seller offers small retailers that pay more than the lowest newspaper rate an alternative that enables them to obtain the same percentage of their advertising cost as large retailers. If the $1.00 per line allowance is based on 50 percent of the newspaper's lowest contract rate of $2.00 per line, for example, the seller should offer to pay 50 percent of the newspaper advertising cost of smaller retailers that establish, by invoice or otherwise, that they paid more than that contract rate.

§ 204.9 Availability to All Competing Customers.

(a) Functional availability. (1) The seller must take reasonable steps to ensure that services and facilities are usable in a practical sense by all competing customers. This may require offering alternative terms and conditions under which customers can participate. When a seller provides alternatives in order to meet the availability requirement, it must take reasonable steps to ensure that the alternatives are proportionally equal, but it is not required to offer all alternatives to all competing customers.

(2) When a seller offers to competing customers alternative services or allowances that are proportionally equal and at least one such offer is usable in a practical sense by all competing customers, and refrains from taking steps to prevent customers from participating, it has satisfied its obligation to make services and allowances "functionally available" to all customers. Therefore, the failure of any customer to participate in the program does not place the seller in violation of the Act.

Example 1: A manufacturer offers a plan for cooperative advertising on radio, TV, or in newspapers of general circulation. Because the purchases of some of the manufacturer's customers are too small this offer is not usable in a practical sense by them. The manufacturer should offer them alternative(s) on proportionally equal terms that are usable in a practical sense by them.

Example 2: A seller furnishes demonstrators to large department store customers. The seller should provide alternatives usable in a practical sense on proportionally equal terms to those competing customers who cannot use demonstrators. The alternatives may be services usable in a practical sense that are furnished by the seller, or payments by the seller to customers for their advertising or promotion of the seller's product.

Example 3: A seller offers short term displays of varying sizes, including some which are usable by each of its competing customers in a practical business sense. The seller requires uniform, reasonable certification of performance by each customer. Because they are reluctant to process the required paper work, some customers do not participate. This fact does not place the seller in violation of the functional availability requirement and it is under no obligation to provide additional alternatives.

(b) Notice of available services and allowances. The seller has an obligation to take steps reasonably designed to provide notice to competing customers of the availability of promotional services and allowances. Such notification should include enough

details of the offer in time to enable customers to make an informed judgment whether to participate. When some competing customers do not purchase directly from the seller, the seller must take steps reasonably designed to provide notice to such indirect customers. Acceptable notification may vary. The following is a non-exhaustive list of acceptable methods of notification:

(1) When a seller deals directly with competing customers, by providing direct notice to them;

(2) When a promotion consists of providing retailers with display materials, by including the materials within the product shipping container;

(3) By including brochures describing the details of the offer in shipping containers;

(4) By providing information on shipping containers or product packages of the availability and essential features of an offer, identifying a specific source for further information;

(5) By placing at reasonable intervals in trade publications of general and widespread distribution announcements of the availability and essential features of promotional offers, identifying a specific source for further information; and

(6) If the competing customers belong to an identifiable group on a specific mailing list, by providing relevant information of promotional offers to customers on that list. For example, if a product is sold lawfully only under government license (alcoholic beverages, etc.), the seller may inform only its customers holding licenses.

(c) A seller may contract with intermediaries or other third parties to provide notice. See § 240.10.

Example 1: A seller has a plan for the retail promotion of its products in Philadelphia. Some of its retailing customers purchase directly and it offers the plan to them. Other Philadelphia retailers purchase the seller's products through wholesalers. The seller may use the wholesalers to reach the retailing customers that buy through them, either by having the wholesalers notify those retailers, or by using the wholesalers' customer lists for direct notification by the seller.

Example 2: A seller that sells on a direct basis to some retailers in an area, and to other retailers in the area through wholesalers, has a plan for the promotion of its products at the retail level. If the seller directly notifies competing direct purchasing retailers, and competing retailers purchasing through the wholesalers, the seller is not required to notify its wholesalers.

Example 3: A seller regularly promotes its products at the retail level and during the year has various special promotional offers. The seller's competing customers include large direct-purchasing retailers and smaller retailers that purchase through wholesalers. The promotions offered can best be used by the smaller retailers if the funds to which they are entitled are pooled and used by the wholesalers on their behalf (newspaper advertisements, for example). If retailers purchasing through a wholesaler designate that wholesaler as their agent for receiving notice of, collecting, and using promotional allowances for them, the seller may assume that notice of, and payment under, a promotional plan to such wholesaler constitutes notice and payment to the retailer. The seller must have a reasonable basis for concluding that the retailers have designated the wholesaler as their agent.

§ 240.10 Wholesaler or Third Party Performance of Seller's Obligations.

A seller may contract with intermediaries, such as wholesalers, distributors, or other third parties, for them to perform all or part of the seller's obligations under Sections 2 (d) and (e). The use of intermediaries does not relieve a seller of its responsibility to comply with the law. Therefore, in contracting with an intermediary, a seller should ensure that its obligations under the law are in fact fulfilled.

§ 240.11 Customer's and Third Party Liability.

(a) Sections 2 (d) and (e) apply to sellers and not to customers. However, a customer who knows, or should know, that it is receiving a discriminatory price through services or allowances not made available on proportionally equal terms to its competitors engaged in the resale of a seller's product may be proceeded against by the Commission under Section 5 of the Federal Trade Commission Act. Liability for knowingly receiving such a discrimination may result whether the discrimination takes place directly through payments or services, or indirectly through deductions from purchase invoices or other similar means.

Example 1: A customer should not induce or receive advertising allowances for special promotion of the seller's products in connection with the customer's anniversary sale or new store opening when the customer knows or should know that such allowances, or suitable alternatives, are not available on proportionally equal terms to all other customers competing with him in the distribution of the seller's products.

Example 2: A customer, an experienced buyer, is offered an allowance of 25 percent of his purchase volume by a seller for cooperative advertising to be paid for 100 percent by the seller. The customer knows, or should know, that most cooperative advertising programs in the industry allow payments of from 3 to 7 percent of purchases, and require 50–50 sharing by the seller and the customer. The customer would be on notice to inquire of the seller and to take such other affirmative steps as would satisfy a reasonable and prudent businessman that such allowances are affirmatively offered and otherwise made available by such seller on proportionally equal terms to all of its other customers competing with the customer in the distribution of the seller's products.

Example 3: Frequently the employees of sellers or third parties such as brokers perform in-store services for their grocery retailer customers such as stocking of shelves, building of displays and checking or rotating inventory, etc. A customer operating a retail grocery business should not induce or receive such services when the customer knows or should know that such services (or usable and suitable alternative services) are not available on proportionally equal terms to all other customers competing with it in the distribution of the seller's products.

Example 4: Where a customer has entered into a contract, understanding, or arrangement for the purchase of advertising with a newspaper or other advertising medium which provides for a deterred rebate or other reduction in the price of the advertising, the customer should advise any seller from whom reimbursement for the advertising is claimed that the claimed rate of reimbursement is subject to a deferred rebate or other reduction in price. In the event that any rebate or adjustment in the price is received, the customer should refund to the seller the amount of any excess payment or allowance.

Example 5: A customer should not induce or receive an allowance in excess of that offered in the seller's advertising plan by billing the seller at "vendor rates" or for any other amount in excess of that authorized in the seller's promotional program.

(b) Third parties, notably advertising media, might also violate section 5 of the Federal Trade Commission Act through double or fictitious rates or billing. An advertising medium, such as a newspaper, broadcast station, or printer of catalogs, that publishes a rate schedule containing fictitious rates (or rates that are not reasonably expected to be aplicable to a representative number of advertisers), or that furnishes a customer with an invoice that does not reflect the customer's actual net advertising cost (or that does not clearly state the applicable discounts and rebates) may violate Section 5 of the customer uses such deceptive schedule or invoice for a claim for an advertising allowance, payment or credit greater than that to which it would be entitled under the seller's promotional offering.

Example 1: A newspaper has a "national" rate and a lower "local rate". A retailer places an advertisement with the newspaper at the local rate for a product sold by a supplier, from which the retailer will seek reimbursement under the supplier's cooperative advertising plan. The newspaper should not send the retailer two bills, one at the national rate and another at the local rate actually charged.

Example 2: A newspaper has several published rates. A large retailer has in the past earned the lowest rate available. The

newspaper should not submit invoices to the retailer showing a high rate by agreement between them unless the invoice discloses that the retailer may receive a rebate and states the amount (or approximate amount) of the rebate, if known, and if not known, the amount of rebate the retailer could reasonably anticipate.

Example 3: A radio station has a flat rate for spot announcements, subject to volume discounts. A retailer buys enough spots to qualify for the discounts. The station should not submit an invoice to the retailer that does not show either the actual net cost or the discount rate.

Example 4: An advertising agent buys a large volume of newspaper advertising space at a low, unpublished negotiated rate. Retailers then buy the space from the agent at a rate lower than they could buy it from the newspaper. The agent should not furnish the retailers invoices showing a rate higher than the retailers actually paid it.

§ 240.12 Meeting Competition.

A seller charged with discrimination in violation of sections 2(d) or (e) may defend its actions by showing that particular payments were made or services furnished in good faith to meet the payments or services offered or supplied by a competing seller. This defense is applicable to payments or services offered to particular types of customers or media on an area-wide basis, to new as well as old customers, and to discriminations caused by a decrease as well as an increase in the payments or services offered. A seller must reasonably believe that its offers are necessary to meet competitors' offers.

§ 240.13 Cost Justification.

It is no defense to a charge of unlawful discrimination in the payment of an allowance or the furnishing of a service for a seller to show that such payment or service could be justified through savings in the cost of manufacture, sale or delivery.

Concurring Statement of Chairman Daniel Oliver Proposed Revisions to the Guide for Advertising Allowances

I concur in the publication of proposed revisions to the Guides for Advertising Allowances and Services. The Guides are intended to assist businesses in complying with sections 2(d) and 2(e) of the Clayton Act, 15 U.S.C 13(d), (e), as amended by the Robinson-Patman Act. They should therefore portray the requirements of those sections as accurately as possible. Adoption by the Commission of the proposed revisions to the Guides would help substantially in that regard.

Our efforts here should be guided by the pronouncements of the Supreme Court. The Court has admonished that The Robinson-Patman Act should be construed so as to ensure its coherence with "the broader antitrust policies that have been laid down by Congress." [1]

The Commission has more recently characterized the Act as a "protectionist, non-efficiency oriented" statute, at least as it has been interpreted in the past.[2] In my view, we should make every effort to ensure that the Act is used only to prohibit conduct that actually injures competition and reduces consumer welfare.

It is not easy to apply that principle to sections 2(d) and 2(e). As a general proposition, there is little economic justification for regulating seller offers of services and allowances—or buyer efforts to induce the provision of services and allowances—when neither sellers nor buyers possess substantial market power. Competitive conditions usually ensure that no seller will offer—and no buyer will be able to induce—systematic discrimination, or "proportionally unequal" treatment, in any economically meaningful sense. Unfortunately, sections 2(d) and 2(e) are *per se* prohibitons; no showing of competitive injury is needed to establish seller liability under either section. The American Bar Association has recommended requiring the same showing of competitive injury under sections 2(d) and 2(e) that is currently required to establish liability under section 2(a),[3] and I support that recommendation.

Unless and until that recommendation is enacted into law, however, the proposed revisions to the Guides offer the best hope of ensuring that sections 2(d) and 2(e) are interpreted—by the courts and by the Commission—in as economically sensible a manner as possible. I therefore strongly support their adoption. However, I believe that the proposed revisions do not go far enough. I think at least two other changes—in proposed §§ 240.11(a) and 240.8 of the Guides—should be made. I have detailed these proposals in this statement.

I. Eliminating the Per Se Illegality of Buyer Inducement

First, the Commission should eliminate the *per se* illegality of buyer inducement. Sections 2(d) and 2(e) apply only to sellers. The Commission has relied on section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, to extend the *per se* standard of seller liability to buyers as well, and the courts have sustained that extension.[4] But the fact that the courts have *permitted* the Commission to apply section 5 in this way does not mean that the Commission must or should do so. The Commission has determined that section 5 should not be used to prohibit most practices that do not expressly violate the Robinson-Patman Act unless they actually injure competition.[5] I think this principle should be used to jettison the concept of *per se* liability in buyer inducement cases. I therefore propose that the Commission modify proposed section 240.11(a) of the Guides to read as follows:

Alternate § 240.11 (a)

(a) Sections 2(d) and 2(e) apply to sellers and not to customers. However, under section 5 of the Federal Trade Commission Act, the Commission may proceed against a customer who knows, or should know, that it is receiving a discriminatory price through services or allowances not made available on proportionally equal terms to its competitors engaged in the resale of a seller's product, but only if the provision or receipt of the services or allowances at issue injures competition. Establishing injury to competition typically will require a showing that the customer possesses substantial market power. Liability for knowingly receiving such a discrimination may result whether the discrimination takes place directly through payments or services, or indirectly through deductions from purchase invoices or other similar means.

I would welcome public comment on this proposal.

II. Defining "Proportional Equality" in Terms of the Value of Services and Allowances to Sellers, and to Reflect Competitive Market Conditions

Second, the definition of "proportional equality" in the Guides should be modified so that it is not only consistent with the case law, but also as economically sensible as possible. Because the definition of proportional equality is central to the Guides, I particularly welcome the Commission's invitation for the public to comment on these possible changes in that definition:

(A) Defining proportional equality in terms of the amount of effective

---

[1] *United States v. United States Gypsum Co.*, 438 U.S. 422, 458 (1978), *quoting Automatic Canteen Co. v. FTC*, 346 U.S. 61, 74 (1953).

[2] *General Motors Corp.*, 103 F.T.C. 641, 694 (1984).

[3] *ABA Favors Competitive Injury Test for Advertising and Promotional Allowances*, 52 Antitrust and Trade Reg. Rep. 357 (Feb. 26, 1987).

[4] *See, e.g., Alterman Foods, Inc. v. FTC*, 497 F.2d 993, 996–97 (5th Cir. 1974); *Grand Union Co. v. FTC*, 300 F.2d 92, 99 (2d Cir. 1962).

[5] *General Motors Corp.*, 103 F.T.C. at 700–01.

promotional services that a seller receives per dollar of promotional expenditure.

(B) Permitting sellers to vary allowances and services with the identity of the customer, as well as the media used, provided that they have reliable evidence showing that such differences for different customers are justified by differences in the amount of effective promotional services that the customers provided.

(C) Using evidence about that competitive conditions of the buying and seller sides of the market in which promotional services and allowances are granted to help in determining whether the proportional equality requirement is satisfied.

I support all three of these proposals.[6] Sections 2 (d) and (e) require that promotional allowances and services be made available to all competing customers and on "proportionally equal" terms. In accordance with the case law, existing Guide 7 notes that "[n]o single way to proportionalize is prescribed by law." However, the 1972 amendments to the Guides nevertheless appear to require—and have widely been read to require—that the seller use cost *independent* of the effectiveness of the promotional services supplied or acquired as the sole basis for proportionalizing offers among customers.

Two approaches to cost have typically been used. Under the first, the seller must spend or supply an equal amount for promotional purposes per unit sold to each of its competing customers. Under the second approach, the seller must spend an amount that bears an equal proportion of each of its customers' costs of providing a promotional service. The Guides are currently ambiguous as to whether both cost approaches may be usd, but they have been interpreted by many as requiring reliance only on the second approach.

The primary problem with both approaches is that they do not focus expressly on the value to the seller of the promotional services provided. They do not permit the seller to vary its allowances or services to reflect the fact that more expensive services or allowances offered to one customer may be justified, because they are more effective in generating increased demand for the seller's product. By contrast, the "Alternate Section 240.8" that I propose below would define the term "effective promotional services" to refer to the effectiveness of the promotional services supplied to or provided by competing customers in generating increased demand for the seller's product.

For example, suppose a seller offers an allowance of $200 to customer A because A's use of the allowance for promotional activity in a particular medium is worth $200 to the seller (in terms of the number of potential customers reached), whereas a comparable allowance to B would be worth less than $200. The seller would prefer, without any intent to discriminate, to reduce its allowance by B unitl the quantity of effective promotional services acquired per dollar spent on A and B is the same. Different allowances to A and B may thus yield the seller the same amount of effective promotional services per dollar spent—rather than discrimination between A and B—beacuse the services the seller acquires or supplies per dollar spent on promotions are the same.

In these circumstances, promotional allowances will not be supplied efficiently if the seller is required to grant the same allowance to A and B, or if the seller is required to reimburse them in proportion to the expense each incurs to provide a given promotional service.[7] In the example above, if the seller must spend $200 on B in order to spend $200 on A, the seller will secure a lower quantity of effective promotional services per dollar spent on B than per dollar spent on A, and promotional expenditures will be allocated inefficiently. In effect, the seller would have to discriminate in favor of B. Similarly, if the seller were required to reimburse A and B in proportion to the expense each incurred to provide a given promotional service and the seller spent $200 on A, it would have to spend more than $200 on B. Again, the seller would secure a lower quantity of effective promotional services per dollar spent on B than per doffar spent on A, and in effect would be discriminating in favor of B.

These effects can be restated in a slightly different way. An allowance is the price paid by a seller for promotional services provided by customers. "Units" of services offered by customers to the seller will differ in both quality and cost, as a function of variations in customer size, location, costs, or access to different media. The seller will prefer to allocate allowances so that the price it pays per unit of comparable services remains constant. In this way, the seller will secure the same service for each dollar spent.

In the example above, requiring the seller to pay each customer $200 is comparable to what is often called the *seller's*-cost standard. Requiring the seller to pay each customer the customer's cost of providing the same service is comparable to what is often called the *customer's*-cost standard. Both may produce an inefficient supply and distribution of promotional allowances and services in various forms—and hence expose potential purchasers to the seller's product less efficiently—because different types or forms of such exposure may have different effects in increasing the demand for the seller's product.

Alternate § 240.8 I propose below would give sellers greater flexibility than the existing Guides by expanding the definition of proportional equality. The seller, within limits, would be permitted to account for the fact that a particular promotional expenditure may produce different increases in the seller's sales—or different numbers of consumers or potential consumers reached—as a function of which media, distributors, and retailers are used. Media would be defined broadly to include such things as displays, for which the number of consumers reached per dollar spent may differ significantly. Alternate § 240.8 would treat as proportionally equal those promotional expenditures that result in approximately the same seller cost per consumer or potential consumer reached, or per unit of additional sales generated. Promotional expenditures or allowances offered in such a manner are not likely to be discriminatory.

Permitting sellers greater flexibility of course does not mean that all of them will use it. Alternative Section 240.8 would continue to permit a seller to grant an allowance of a uniform amount per unit of product purchased by a customer. In many instances a seller may secure a fairly uniform service per unit of expense across media or customers, so that it will have no incentive to vary the allowance.

Giving sellers greater flexibility would be consistent with what one might expect in a competitive market. Competitive sellers have an incentive to seek out all profitable opportunities to provide promotional services or

[6] My discussion of these proposals is based in large part on the excellent work done by members of the Commission staff in connection with the Guides revision project.

[7] In *Boise Cascade*, 107 F.T.C. 76 (1986), *rev'd on other grounds*, 837 F.2d 1127 (D.C. Cir. 1988), the Commission pointed out that requiring discounts for allowances to be geared to customer cost creates an undesirable incentive: Even if discounts accurately reflected each customers's cost, under any variable discount system the less efficient firms with higher costs would received higher discounts—an economically unfortunate reversal of desired incentives. 107 F.T.C. at 212.

allowances, and to allocate them so that the price paid or expense incurred for a given quantity of effective service is the same. In short, proportional equality—as Alternate § 240.8 would define it—will exist and persist in competitive markets.

The definition of proportional equality that I propose in Alternate § 240.8 conforms with what is often called the "value" standard of proportional equality. That standard is in turn consistent with the legislative history of the Robinson Patman Act, and with the case law interpreting the concept of proportional equality. The legislative history indicates that the term "proportional equality" was intended to provide the measure by which a seller could provide promotional services or allowances to both its large and small customers on a basis which would not disproportionally favor large customers over small customers. Taken as a whole, the legislative history can be read as suggesting that Congress intended to permit "proportional equality" to be based on either (1) a uniform allowance or service expense per unit of sale or dollar volume purchased by the seller (the seller's-cost standard) or (2) a uniform allowance or service expense per unit of effective promotional service acquired (which I refer to here as the value standard). Although Alternate § 240.8 would define proportional equality in terms of the value standard, it would accommodate the seller's cost standard as well.

The few relevant cases in this area appear to establish the permissibility of the value standard approach. In *Lever Brothers Co.*, the Commission held that *either* the cost *or* the value standard could be used to measure proportional equality.[8] The Supreme Court apparently approved this approach in *FTC v. Simplicity Pattern Co.*, stating:

> We note * * * that the Commission has indicated a willingness to give a relatively broad scope to the standard of proportional equality under sections 2 (d) and (e).[9]

More recently, in *Colonial Stores Inc. v. FTC*, The Fifth Circuit Court of Appeals observed that *Simplicity Pattern* reaffirmed "the principle expressed in *Lever Brothers* that section 2(d) does not 'require a seller to pay at the same rate * * * for types of services which are of unequal cost or value.'"[10]

The court went on the note that the *Simplicity Pattern* approach

> would allow suppliers, as long as all customers were given *some* benefits of proportional value, to channel their promotional funds into the most fruitful directions—to obtain greater returns from cooperative advertising campaigns while at the same time insuring fair treatment for all competing customers.[11]

The court found this consistent with the Commission's *Lever Brothers* decision permitting.

> the supplier to formulate a promotional campaign maximizing the potency of the media of his choice—so long as *some* 'fair and reasonable' equivalent is provided for those competing rivals who could not otherwise participate. Nevertheless, the supplier's program need not ignore the relative desirability of particular promotional media and may scale reimbursement accordingly, thereby ensuring "proportionality" not only with respect to "customers' purchases" but also "their ability and equipment to render or furnish the services to be paid for".[12]

On balance, the value approach appears to be consistent with the case law. The authorization for that approach seems to flow directly from the logic of the *Lever Brothers* decision. The Commission held that under section 2(d), Lever Brothers could vary its allowances for different media based essentially on differences in the number of consumers or potential consumers reached per dollar spent. And as a recent treatise on the Robinson-Patman Act points out, there has been no judicial approval of the current Guides' apparent adoption of the cost standard as the sole means to proportionalize.[13] It therefore seems clear that sellers may rely on a value-based approach in complying with sections 2(d) and 2(e) of the Act.[14]

For similar reasons, Alternate § 240.8 would allow the introduction of evidence concerning the competitiveness of the relevant market to determine the presence of absence of proportional equality. In competitive markets, customers are necessarily treated on proportionally equal terms. Thus, evidence concerning competitive conditions is, from an economic perspective, the most relevant basis for evaluating proportionality. Unfortunately, in the past, evidence of the competitiveness of the relevant market probably would have been considered irrelevant. However, a more economically sensible approach appears to be consistent with the legislative history, is supported by the economic literature, and does not appear to be precluded by the case law.

The legislative history of the Robinson-Patman Act makes it clear that the Act was designed to prevent large and powerful companies from coercing favorable arrangements from suppliers.[15] As Respresentative Patman maintained:

> It is right up to you, whether you want these few large corporate concerns, that have the money, that have the power, to continue to coerce and intimidate the manufacturers to get the prices that they want; as to whether or not you say it is a good thing for them to go ahead and get these prices and destroy the independent merchant; or whether or not you should write into this law some provision that would protect the weak ones against the strong ones.[16]

More specifically, with respect to advertising allowances, Representative Patman argued:

> * * * Large manufacturers have been coerced into giving certain large mass buyers great reductions in prices under the guise of advertising allowances. This bill will not prohibit advertising allowances but it will prohibit advertising allowances to be used as a guise for price reductions and prohibit advertising allowances that are not given proportionally to all customers. In other words, manufacturers will have a right to select their customers but when selected they must deal with them equally and fairly.[17]

---

[8] *Lever Brothers Co.*, 50 F.T.C. 494, 511–12 (1953).

[9] *FTC v. Simplicity Pattern Co.*, 360 U.S. 55, 61 n. 4 (1959).

[10] *Colonial Stores, Inc. v. FTC*, 450 F.2d 733, 743 n. 23 (5th Cir. 1971). The court held, however, that this principle did not mean that a seller could make a grossly disproportionate offer to a single large customer and attempt to justify the disparity on the ground that the customer's service was uniquely valuable. The court stated that the statute was intended to prevent variatons in offers based on "the size and mercantile prowess of the individual payee." *Id.* at 744.

[11] *Id.* at 744 n. 25, *quoting* Rowe, *Price Discrimination Under the Robinson-Patman Act* 404 (1962) (emphasis in original).

[12] *Id.*, *quoting* Rowe, *supra*, at 409 (emphasis in original).

There is some board language in *Colonial Stores* that may be read to limit the ability of sellers to use the value standard. However, this language is dictum. The sellers in *Colonial Stores* made no effort whatsoever to provide services or allowances to competitors of Colonial Stores. *Id.* at 743 n.24. Thus, Alternate § 240.8 would not conflict with the *Colonial Stores* holding. A seller could not refuse to make services or allowances available to competitors, but it would have greater flexibility in determining proportional equlity.

[13] III E. Kintner & J. Bauer, *Federal Antitrust Law* 565–66 (1983).

[14] Of course, in many cases sellers may find it too costly to account for differences across customers or media in the quantity of effective promotional services acquired per dollar spent. The differences may be small, and to measure them is itself costly, so Alternative Section 240.8 would permit sellers to continue to supply promotional services or allowances on a seller's-cost basis.

[15] *See, e.g.*, House Hearing on Bills to Amend the Clayton Act, 74th Cong., 1st Sess. 217 (1935).

[16] House Hearing on Bills to Amend the Clayton Act, 74th Cong. 2d Sess., at 398 (1936); *accord, e.g.*, Remarks of John E. Miller, 74th Cong. 2d Sess. (1936), 80 Cong. Rec. 6622–23.

[17] Remarks of Rep. Wright Patman, 74th Cong., 2d Sess. (1936), 80 Cong. Rec. 7759.

Later in his treaties on the Act, Representative Patman confirmed:

> * * * Price discriminations that are practiced frequently or regularly, and at will, with devastating effects, can only be employed by a seller who has market power approaching Monopoly control over prices in the markets in which he operates.[18]

Thus, it seems clear that the Act primarily was intended to prevent the use of market power to grant or obtain discriminatory arrangements. In a competitive market, where sellers or buyers do not possess substantial market power, no economically significant price discrimination is likely to exist, much less persist, for any appreciable period of time.

The federal courts have recognized that the perceived problem of large buyers exercising coercive market power played a major role in the passage of the Act. For example, the Supreme Court has stated:

> The Robinson-Patman Act was passed in response to the problem perceived in the increased market power and coercive practices of chain stores and other big buyers that threatened the existence of small independent retailers.[19]

Finally economic analysis supports the proposition that disproportionally favorable promotional services and allowances cannot be conveyed or secured without substantial market power. For example, as Judge Posner has written:

> The second economic objection to price discrimination is that it is a symptom of—and more important, a condition fostering—monopoly or cartel pricing at the seller level. If a product is being sold at the same price to two different purchasers, though the costs of sale are different, or at different prices though the costs of sale are the same, this implies that the price that is higher relative to cost is yielding a profit in the economic sense * * *.
>
> * * * * *
>
> If one asks *how* a firm is able to obtain persistent profits in the economic sense, the normal reply is that the firm has a monopoly, inasmuch as competition would compress price to cost in the long run * * *. [T]he creation of monopoly may enable the monopolist to obtain * * * monopoly profits * * * by reducing output below the competitive level * * *.
>
> Thus, the existence of price discrimination is evidence that the seller or sellers engaged in the discrimination have—and are exercising—monopoly power.[20]

In short, price discrimination among customers requires the possession of substantial market power. This power may reside in sellers alone, who may decide to discriminate among customers, or in buyers who may, under certain circumstances, secure terms that are more favorable than those accorded to other customers. The Robinson-Patman Act apparently was intended to prevent the coercive use of market power, something that will not systematically occur or persist in a competitive market. Therefore, evaluating the state of competition in a market in order to determine whether promotional allowances and services are being provided on a proportionally unequal basis seems fully justified. Moreover, it would make analysis under sections 2(d) and (e) more consistent with the other antitrust laws.

For the foregoing reasons, I propose that the commission modify proposed § 240.8 of the Guides to read as follows:

Alternate § 240.8 Proportionally Equal Terms

The Act requires that promotional services and allowances be made available to competing customers on proportionally equal terms. In the view of the commission, proportional equality is achieved if the amount of effective promotional services received per dollar of promotional expenditure by the seller is the same across competing customers. Although the quantity of effective promotional services is ultimately determined by the sales generated by a promotion, it may be estimated in terms of the number of potential consumers expected to be reached by a promotion, the number of potential consumers expected to respond to a promotion, or other factors reasonably believed to affect sales generated by a promotion. The seller may estimate the quantity of effective promotional services acquired or provided per dollar spent over a period of time sufficient to reveal patterns of effectiveness.

This standard of proportional equality would be approached in any market in which sellers use promotional services and allowances as a means of promoting the resale of their products through promotional activity, rather than as a form of disguised price discrimination. In such markets, each seller would, over time, have the incentive to seek out all profitable opportunities to provide promotional services or allowances, and to expand their use so that the allowances paid or expenses incurred for the same quantity of effective promotional services are equal, with the result that customers will be treated on proportionally equal terms. The result might be different in markets in which sellers have substantial market power and use promotional services and allowances as a disguised form of price discrimination.

Mathematical precision is not required for sellers to satisfy the standard of proportional equality, in part because the quantity of effective promotional services acquired from or supplied to each customer per dollar spent by a seller cannot be measured exactly. Nevertheless, sellers should have a reasonable basis for their provision of promotional services or allowances. One acceptable method of maintaining proportional equality is for the seller to treat each customer's purchase volume as a proxy for an equally effective amount of promotional services, and to make uniform payments or provide uniform services per dollar or per unit of goods purchased during a specified period of time. In addition, if a seller has a reasonable basis for concluding that it derives greater effective promotional services from expenditures in certain media or by allowances to certain customers or customer classes relative to others, it may make larger payments for these media or to these customers or customer classes if in doing so the amount of effective promotional services supplied or acquired per dollar spent remains substantially equal across all customers or classes of customers. The seller should be prepared to show that it has not engaged in discrimination if it offers different services or allowances for promotions in different media or to different customers. That is, the seller must be prepared to show that such differences are justified by differences in the amount of effective promotional services being acquired or provided. The seller may base such a showing on predictive data such as marketing studies, or on other reliable evidence.

Evidence regarding whether the relevant market is competitive would help in determining whether the proportional equality requirement is satisfied. In particular, evidence that a seller lacks substantial market power usually demonstrates that the seller has not engaged in economic discrimination, unless coerced by a buyer with substantial market power. Similarly, if the buying side of a market is competitive, this usually demonstrates that the customer involved does not possess the substantial market power needed to coerce proportionally unequal services or allowances.

If different types or groups of customers are offered different services or facilities (or different combinations or

---

[18] W. Patman, *Complete Guide to the Robinson-Patman Act* 3 (2d ed. 1963).

[19] *Great Atlantic & Pacific Tea Co. v. FTC*, 440 U.S. 69, 75–76 (1979).

[20] Posner, *The Robinson-Patman Act: Federal Regulation of Price Differences*, American Enterprise Institute for Public Policy Research (1976) at 4–5 (emphasis in original).

levels thereof), a difference in participation rates across customer types or groups does not in itself imply that services or allowances are offered on proportionally unequal terms.

Example 1: A seller may offer to pay a specified part (say 50%) of the cost of local advertising up to an amount equal to a specified percentage (say 5%) of the dollar value of purchases during a specified period of time.

Example 2: A seller may place in reserve for each customer a specified amount of money for each unit purchased, and use it to reimburse these customers for the cost of advertising the seller's product.

Example 3: Reliable evidence available to a seller indicates that a three-inch advertisement in Magazine A will reach 5,000 readers while the same-sized advertisement in Magazine B will reach 2,500 readers. The seller can maintain proportional equality by offering to reimburse customers $5.00 for this advertisement in Magazine A reaching 5,000 readers and $2.50 for the advertisement in Magazine B reaching 2,500 readers.

Example 4: Reliable evidence available to a seller demonstrates that every dollar spent on promotional allowances for newspaper advertising reaches 500 people while every dollar spent on handbill advertising reaches 200 people. If the seller offers to pay 100% of the cost of customers' newspaper advertising, it can maintain proportional equality by offering to pay customers 40% of the cost of handbill advertising.

Example 5: Assume the same facts as in Example 4, except that the seller has reliable evidence demonstrating that persons reached by handbills are twice as likely to purchase the seller's product as those reached by newspapers. If the seller offers to pay 100% of the cost of newspaper advertising, it can maintain proportional equality by offering to pay 80% of the cost of handbills.

Example 6: Reliable evidence available to a seller demonstrates that every $10 spent on promotional services in a given medium for Buyer A yields $15 in additional sales revenue for the seller, that every $10 spent on promotional services in the same medium for Buyer B yields $10 in additional sales revenue for the seller, and that every $10 spent on promotional services in the same medium for Buyer C yields $7.50 in additional sales revenue for the seller. The seller can maintain proportional equality in payments for promotional services by making a percentage contribution to Buyer A that is one and one half times that made to Buyer B and twice that to Buyer C.

Example 7: Customer A offers a seller space for a display reaching 1,000 potential consumers and Customer B offers space for a comparable display reaching 500 potential consumers. The price charged by Customer B is one-half that charged by Customer A. The seller's acceptance of these two offers would comply with the proportional equality requirement.

Example 8: A seller offers each customer promotional allowances at the rate of one dollar for each unit of its product purchased during the period of the promotion over and above the quantity normally purchased during such period by that customer. The seller treats the additional purchase volume as the return on promotional activity by each customer, and bases his allowance for promotional services for each retailer on the quantity of the additional purchases. Thus, if Buyer A purchases an additional 100 units, Buyer B an additional 50 units, and Buyer C an additional 25 units, the seller maintains proportional equality by allowing $100 to Buyer A, $50 to Buyer B, and $25 to Buyer C.

I look forward to public comment on these two proposals, as well as on the other proposals the Commission has published for comments.

[FR Doc. 88-24731 Filed 10-25-88; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-494, RM-6412]

Radio Broadcasting Services; Clarinda, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by G.O. Radio Ltd. proposing the substitution of Channel 291C2 for Channel 292A at Clarinda, Iowa, and the modification of its license for Station KQIS-FM to specify operation on the higher powered channel. Channel 291C2 can be allotted to Clarinda in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.3 kilometers (5.8 miles) east to avoid a short-spacing to unused but applied for Channel 290A at Omaha, Nebraska. The coordinates for this allotment are North Latitude 40-42-42 and West Longitude 94-55-55. Competing expressions of interest in use of the channel at Clarinda will not be considered. See § 1.420(g) of the Commission's Rules.

DATES: Comments must be filed on or before December 12, 1988, and reply comments on or before December 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Glenn Olson, President, G.O. Radio Ltd., Box 550, Webster City, Iowa 50595 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-494, adopted September 28, 1988, and released October 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-24699 Filed 10-25-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[Docket No. 88-493, RM-6431; RM-6445]

Radio Broadcasting Services; West Point and Blair, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on two mutually exclusive petitions for rule making. Kelly Communications proposes the substitution of Channel 300C1 for Channel 300A at West Point, Nebraska, and the modification of its construction permit for Station KWPN-FM to specify the higher powered channel. LDH Communications, Inc. proposes the substitution of Channel 299A for Channel 292A at Blair, Nebraska, and the modification of its license for Station KBWH-FM to specify the new Class A channel. West Point and Blair are

located approximately 52 kilometers apart. However, the Commission's Rules stipulate that first adjacent Class A and C1 allotments be separated by 129 kilometers. Channel 300C1 can be allotted to West Point in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in its construction permit. The coordinates for the West Point allotment are North Latitude 41–47–06 and West Longitude 96–40–39. Alternatively, Channel 299A can be allotted to Blair in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.6 kilometers (7.2 miles) southeast to avoid a short-spacing to Station KWPN–FM at West Point with the Class A facilities specified in its construction permit. The coordinates for the Blair allotment are North Latitude 41–29–27 and West Longitude 96–01–01.

DATES: Comments must be filed on or before December 12, 1988, and reply comments on or before December 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: B. Jay Baraff, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., Suite 203, Washington, DC 20036 (Counsel to Kelly Communications) and David Honig, Esq., 6032 Ocean Pines, Berlin, Maryland 21811 (Counsel to LDH Communications).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–493, adopted September 26, 1988, and released October 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–24700 Filed 10–25–88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88–491, RM–6371]

Radio Broadcasting Services; Vacaville, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Quick Broadcasting, Inc., license of Station KUIC(FM), Channel 237A, Vacaville, California, seeking the substitution of Channel 237B1 for Channel 237A and modification of its license accordingly. Reference coordinates utilized for this proposal are 38–27–30 and 121–58–22.

DATES: Comments must be filed on or before December 12, 1988, and reply comments on or before December 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Roger J. Metzler, Esq., Farrand, Cooper, Metzler & Bruiniers, 701 Sutter Street, 7th Flr., San Francisco, CA 94109.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–491, adopted September 28, 1988, and released October 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Steve Kaminer,

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

[FR Doc. 88–24701 Filed 10–25–88; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-No. 20]

Rail Abandonments; Avoidability of Property Tax Expense Under the Unit Method of Assessment

AGENCY: Interstate Commerce Commission.

ACTION: Extension of filing deadline.

SUMMARY: On October 13, 1988, the Board of Trade of the City of Chicago, IMC Fertilizer, Inc., the Georgia Public Service Commission and others requested a two-week extension of the October 17, 1988, deadline for filing comments on a proposal, served

September 15, 1988 (53 FR 36081, Sept. 16, 1988), to change the way property taxes are treated in abandonment proceedings. The extension is granted; the deadline for filing public comments is extended until October 31, 1988.

DATES: The new deadline for filing public comments is October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721)

Decided: October 19, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–24556 Filed 10–25–88; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 53, No. 207
Wednesday, October 26, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Committee on Administration of the Administrative Conference of the United States. The Committee has scheduled this meeting to consider the draft report by Philip Harter, and proposed recommendations, on protecting the confidentiality of settlement communications with mediators, and related business.

Date: Wednesday, November 9, 1988, 1:30 p.m.

Location: 2120 L Street NW., Suite 500, Washington, DC 20037.

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500 (202) 254–7020.

Jeffrey S. Lubbers,
Research Director.
October 21, 1988.
[FR Doc. 88–24820 Filed 10–25–88; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee; Guidelines Working Group; Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the U.S. Department of Agricultural (USDA), Science and Education, announces the following meeting of a working group of the Agriculture Biotechnology Research Advisory Committee (ABRAC).

The Guidelines Working Group will meet at the U.S. Department of Agriculture in Room 3109, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250 on December 2, 1988 from 9:00 a.m. to approximately 5:00 p.m. to discuss guidelines for agricultural biotechnology research.

This meeting is open to the public. Persons may participate in the meeting as time and space permit. The public may file written comments before or after the meeting with the contact person below.

Further information may be obtained from Dr. Alvin L. Young, Executive Secretary, Agricultural Biotechnology Research Advisory Committee, U.S. Department of Agriculture, Office of Agricultural Biotechnology, Room 321–A, Administration Building, 14th and Independence Avenue SW., Washington, DC 20250. Telephone (202) 447–9165.

Date: October 18, 1988.
Orville G. Bentley,
Assistant Secretary, Science and Education.
[FR Doc. 88–24720 Filed 10–25–88; 8:45 am]
BILLING CODE 3410–22–M

Forest Service

Management Plan for the White Salmon National Scenic River, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a environmental impact statement (EIS) and management plan for the lower White Salmon River, Klickitat County, Washington, designated a National Scenic River by the Columbia River Gorge National Scenic Area Act. The agency invites written comments and suggestions on the management of this river and the scope of this analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on this plan so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the management of this river should be received by December 9, 1988.

ADDRESS: Submit written comments and suggestions concerning the management of this river to Arthur W. DuFault, Manager, Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Hood River, Oregon 97031.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Stephen Mellor, Project Manager, Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Hood River, Oregon 97031, telephone (503) 386–2333.

SUPPLEMENTARY INFORMATION: The Columbia River Gorge National Scenic Area Act (Pub. L. 99–663, Nov. 17, 1986), designated a segment of the White Salmon River into the National Wild and Scenic River System. The EIS and management plan will address this river segment, as described in Pub. L. 99–663.

White Salmon, Washington: The segment from its confluence with Gilmer Creek, Washington, near the town of B Z Corner, Washington, to its confluence with Buck Creek, Washington; to be classified as a scenic river and to be administered by the Secretary of Agriculture.

James F. Torrence, Regional Forester, Pacific Northwest Region, Portland, Oregon, is the responsible official.

Public participation will be especially important at several points during the management plan process. The first point is the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and

assistance from Federal, State and local agencies, the Yakima Indian Nation, individuals and organizations who may be interested in or affected by the proposed action. This input will be used in the preparation of the draft EIS. In addition, the Forest Service is seeking comments on the boundary lines for the designated segment.

A series of informational workshops will be held during November, 1988, to inform the public of the planning process and to provide for public participation and involvement. Federal, State, and local agencies as well as the Yakima Indian Nation, user groups, and other organizations who may be interested in the plan will be invited to participate in scoping the issues that should be considered. In addition, a newsletter and response form is available from the Columbia River Gorge National Scenic Area for those that are unable to attend a workshop.

The Draft EIS and Management Plan are expected to be filed with the Environmental protection Agency (EPA), and available for public review by October 1989. At that time EPA will publish a notice of availability in the **Federal Register.**

The comment period on the Draft EIS and Management Plan will be 90 days from the date of the EPA notice of availability appears in the **Federal Register.** It is very important that those interested in the management plan participate at this time. To be most helpful, comments should be as specific as possible and may address the adequacy of the statement and plan and the merits of the alternatives discussed. In addition, Federal court decisions have established that reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC,* 435 U.S. 519, 553 (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 EIS, *Wisconsin Heritage, Inc. v. Harris,* 490 F. Supp. 1334, 1338 (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, comments will be analyzed and considered by the Forest Service in preparing the Final EIS and Management Plan. In the final, the Forest Service is required to respond to comments received (40 CFR 1503.4). The Final EIS is scheduled to be completed by the end of the fiscal year, 1990. The responsible official will consider the comments, responses, and consequences discussed in the EIS, applicable laws, regulations, and policies in making a decision regarding the management of the river. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Date: October 20, 1988.

James. F. Torrence,

Regional Forester.

[FR Doc. 88-24710 Filed 10-25-88; 8:45 am]

BILLING CODE 3410-11-M

Delegation of Authority To Issue and Terminate Certain Easements; Forest Supervisors, Northern Region

AGENCY: Forest Service, USDA.

ACTION: Notice; delegation of authority.

SUMMARY: The Regional Forester of the Northern Forest Service Region has delegated authority to all Forest Supervisors within the Region to issue and terminate, subject to the grantee's consent, easements to public road agencies, road cost-share cooperators and other qualifying landowners for the construction and use of roads under authority of the Forest Road and Trail Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532–38).

Similarly, authority has been delegated to certain Forest Supervisors within the Region to issue easements, reservations and stipulations for the construction and use of roads under authority of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1761–71). This delegation also includes authority to terminate easements with the grantee's consent.

These delegations have been issued in a Regional supplement to Forest Service Manual, Chapter 2730—Road and Trail Rights-of-Way Grants.

EFFECTIVE DATE: This delegation became effective on October 14, 1988.

FOR FURTHER INFORMATION CONTACT: Oran Barr, (406) 329-3600.

John M. Hughes,

Deputy Regional Forester.

Date: October 14, 1988.

[FR Doc. 88-24723 Filed 10-25-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Case No. OEE-1-88]

Order Renewing Temporary Denial of Export Privileges; Wilfried Lange

In the Matter of: Wilfried Lange, individually and doing business as Purchasing Pool Co., AM Stelg 3,8913 Schondorf, Federal Republic of Germany, Respondents.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 788.19 of the Export Administration Regulations, 15 CFR Parts 768–799 (the Regulations),[1] issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982 and Supp. III 1985), as amended by Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988) (the Act), has asked the Assistant Secretary for Export Enforcement[2] to renew an order temporarily denying all United States export privileges to Wilfried Lange, individually and doing business as Purchasing Pool Company (hereinafter collectively referred to as respondents). The initial order was issued on April 20, 1988 (53 FR 15253, April 28, 1988). It was renewed effective June 20, 1988 (53 FR 23294, June 21, 1988), and was renewed again on August 19, 1988 (53 FR 32639, August 26, 1988).

In its renewal request of September 28, 1988, the Department states that, as a result of an ongoing investigation, it continues to have reason to believe that, on numerous occasions since the end of 1985, respondents have reexported, without the required reexport authorizations from the Department, U.S.-origin computers which are controlled for reasons of national security from West Germany to Austria, Yugoslavia and Hungary. The Department is presently trying to obtain documents that will further substantiate its belief.

The Department also believes that, in connection with its investigation into respondents' trade-related activities, respondents have provided the

[1] Effective October 1, 1988, the Export Administration Regulations were redesignated as 15 CFR Parts 768–799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each Part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations may be found in 15 CFR Parts 368–399 (1988).

[2] In accordance with Department Organization Order 50–1, dated March 23, 1988, the Assistant Secretary for Export Enforcement is now the Department official who issues temporary denial orders.

Department with false and misleading information. Specifically, based on additional documentation the Department has obtained since it made its initial request, the Department has reason to believe that respondents have provided it with false invoices in an effort to hide the fact that they have reexported certain controlled U.S.-origin commodities from West Germany without the required reexport authorizations.

The Department further states that its investigation continues to give it reason to believe that a contract for two U.S.-origin computers which are controlled for reasons of national security presently exists between respondents and a Czechoslovakian foreign trading firm, that respondents intend to fulfill the contract in question and that they are likely to do so without complying with the Regulations.

The Department states that, viewed as a whole, the above-described events concerning respondents' past activities demonstrate that respondents are involved in a scheme to obtain controlled U.S.-origin commodities, lawfully or otherwise, take prossession of them in West Germany and then reexport them, oftentimes to proscribed destinations, without obtaining the required reexport authorizations. Accordingly, the Department believes that respondents' activities show a pattern of disregard for the Act and the Regulations.

The Department continues to believe that respondent's past activities establish that the violations of the Act and the Regulations which they are suspected of having committed and which the Department is presently investigating were deliberate and covert and are likely to occur again unless appropriate action is taken to reduce the likelihood that respondents can continue to acquire U.S.-origin goods either inside or outside of the United States.

Furthermore, the Department continues to believe that, in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations, a temporary denial order naming Wilfried Lange and Purchasing Pool Company is necessary to give notice to companies in the United States and abroad that they should cease dealing with these parties in transactions involving U.S.-origin goods.

Therefore, based on the showing made by the Department in its request for renewal, which respondents have not opposed, I find that an order temporarily denying export privileges to the respondents is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with the respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby ordered:

1. all outstanding validated export licenses in which either respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Wilfried Lange and Purchasing Pool Company, both with an address at AM Stelg 3, 8913 Schondorf, West Germany,[3] their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which either respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with either respondent or any related party, or whereby either respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity and technical data exported in whole or in part, or to be exported by, to, or for either respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity and technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 788.19(e) of the Regulations, either respondent may, at any time, appeal this temporary denial order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order shall remain in effect for 60 days.

VII. In accordance with the provisions of § 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Either respondent may oppose a request to renew this temporary denial order by filing a written submission with the

[3] On previous temporary denial orders in this matter, the address of Lange and Purchasing Pool Company has been listed as Grasslfinger Str. 61, 8038 Grobenzell, West Germany.

The Department believes that Lange is no longer at that address. The Department has recently obtained this new address.

Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on each respondent and this order shall be published in the **Federal Register**.

Effective Date: October 18, 1988.

Lee N. Mercer,

Deputy Under Secretary for the Bureau of Export Administration.

[FR Doc. 88-24687 Filed 10-25-88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-427-098]

Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 23, 1988, the Department of Commerce published the preliminary results of its antidumping duty administrative review on anhydrous sodium metasilicate from France. The review covers one exporter of this merchandise to the United States and the period January 1, 1987 through December 31, 1987.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Marquita Steadman or Phyllis Derrick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 32089) the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate from France (46 FR 1667, January 7, 1981). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of anhydrous sodium metasilicate, a crystalline silicate (Na_2SiO_3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, beach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. Anhydrous sodium metasilicate is currently classifiable under item number 421.3400 of the *Tariff Schedules of the United States Annotated* (TSUSA) and item numbers 2839.11.00 and 2839.19.00 of the *Harmonized Tariff Schedule* (HTS). As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description of the products under investigation remains dispositive.

The review covers one exporter of French anhydrous sodium metasilicate to the United States, Rhone Poulenc, and the period January 1, 1987 through December 31, 1987.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review and we determine that a dumping margin of 60.00 percent exists for Rhone Poulenc for the period January 1, 1987 through December 31, 1987.

The Department will instruct the Customs Service to assess antidumping duties at that rate on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department will require a cash deposit of estimated antidumping duties of 60.00 percent for Rhone Poulenc. For any future shipments from the remaining known exporters not covered in this review, a cash deposit of 60.00 percent shall be required as published in the final results of the last administrative review (53 FR 9785, March 25, 1988).

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1987 and who is unrelated to any reviewed firm, or to any previously reviewed firm, a cash deposit of 60.00 percent shall be required. These deposit requirements are effective for all shipments of French anhydrous sodium metasilicate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review, and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.53a of the Commerce Regulations (19 CFR 353.53a).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: October 19, 1988.

[FR Doc. 88-24768 Filed 10-25-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-016]

Ferrite Cores (of the Type Used in Consumer Electronic Products) From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of anitidumping duty administrative review.

SUMMARY: In response to a request by one respondent, the Department of Commerce has conducted an administrative review of the antidumping finding on ferrite cores (of the type used in consumer electronic products) from Japan. The review covers one manufacturer/exporter of this merchandise to the United States and the period March 1, 1987 through February 29, 1988. The review indicates the existence of dumping margins for the firm during the period.

Since the firm did not respond to the Department's questionnaire, we used the best information available, which was the margin from the original fair value investigation.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5222/5255.

SUPPLEMENTARY INFORMATION:

Background

On July 16, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 26714) the final results of its last administrative review of the antidumping finding on ferrite cores (of

the types used in consumer electronic products) from Japan (36 FR 4877, March 13, 1971). One respondent requested in accordance with section 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published the notice of initiation on April 27, 1988 (53 FR 15084). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. Tariff schedules will be fully converted to this Harmonized Tariff System ("HTS"). Until that time, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

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

Imports covered by the review are magnetically soft ferrite magnets which are usually wound with wire. The merchandise is magnetized with the induction of electric current and is of the type commonly used as components in consumer electronic products such as household television receivers, projection television sets, radios, stereos and high fidelity radio systems, automobile radios, electronic home computers, etc. Ferrite cores are currently clasifiable under item 535.1240 of the TSUSA. This product is currently classifiable under HTS item number 8504.90.00.

The review covers one manufacturer/exporter of Japanese ferrite cores (of the type used in consumer electronic products) to the United States and the period March 1, 1987 through February 29, 1988. Since the firm failed to respond to the Department's antidumping questionnaire, we used the best information available for appraisement and cash deposit purposes for the firm, which is the margin from the fair value investigation.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists for the peroid March 1, 1987 through February 29, 1988:

Manufacturer/exporter	Margin (percent)
Taiyo Yuden Co., Ltd.	28

Interested parties may request disclosure and/or an administrative protective order within 5 days after the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested will be held 35 days after the date of publication or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed no later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement intructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for all shipments of Japanese ferrite cores (of the type used in consumer electronic products) by this firm. For any shipments of this merchandise from the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for those firms.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after February 29, 1988 and who is unrelated to the reviewed firm, a cash deposit of 1.08 percent shall be required. This cash deposit rate is based on the highest rate found in the last review for a manufacturer with shipments (52 26714).

These cash deposit requirements are effective for all shipments of Japanese ferrite cores (of the type used in consumer electronic products) entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.53a of the Commerce Regulations (19 CFR 353.53a).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: October 19, 1988.

[FR Doc. 88-24769 Filed 10-25-88; 8:45 am]

BILLING CODE 3510-DS-M

[Application No. 88-00011]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Abdullah Diversified Marketing, Inc. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Export management services, including but not limited to consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, as they relate to the export of all products and services.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, ADMI is certified to:

1. Provide export management services to producers in the United States on a nonexclusive and individual basis.

2. Develop and help implement in-house export procedures for producers in the United States on a nonexclusive and individual basis.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: October 20, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-24741 Filed 10-25-88; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application #88-00013.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to the CISA Export Trade Group, Inc. (CISA ETG). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementig Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

Metalcasting equipment and supplies (including consumable supplies), construction machinery, agricultural equipment, fabricated metal products, instruments, and electrical goods.

Related Services

Metalcasting services; engineering, construction, architectural and surveying services related to Products and to turnkey contracts that substantially incorporate Products, including, but not limited to, the construction of foundaries and other industrial plants; servicing and testing of Products; and training with respect to Products, including, but not limited to, their use and servicing.

Export Trade Facilitation Services (as They Relate to the Export of Products and Related Services

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; services related to compliance with customs requirements; transportation; trade documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; and liaison with U.S. and foreign government agencies, trade associations, and banking institutions.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members (in addition to Applicant)

Applied Industrial Materials Corporation of Mundelein, IL, and its controlling entity Aimcor Holdings, Inc. of Mundelein, IL; Asbury Cargons, Inc. of Asbury, NJ; Beardsley & Piper Division of Chicago, IL, and its controlling entity Pettibone Corporation of Des Plaines, IL; Carrier Vibrating Equipment, Inc. of Louisville, KY; C-E Cast Equipment of Cleveland, OH, and its controlling entity Combustion Engineering, Inc. of Stamford, CT; The Centrifugal Casting Machine Company of Tulsa, OK; Dependable Foundry Equipment Co., Inc./Redford-Carver Foundry Products of Sherwood, OR, and its controlling entity Tromley Industrial Holdings, Inc. of Portland, OR; General Kinematics Corporation of Barrigton, IL; George Fischer Foundry Systems, Inc. of Holly, MI, and its controlling entity Georg Fischer, Ltd. of Switzerland; Georgia-Pacific Resins, Inc. of Newark, OH, and its controlling entity Georgia-Pacific Corporation of Atlanta, GA; Graphite Sales, Inc. of Chagrin Falls, OH; The Herman Corporation of Zelienople, PA; Hunter Automated Machinery Corporation of Schaumburg, IL; Lester B. Knight & Associates, Inc. of Chicago, IL; Metaullics Systems Division, Standard Oil Engineered Materials Company of Solon, OH, and its controlling entities BP America of Cleveland, OH, and The British Petroleum Company p.l.c. of London, UK; Roberts Corporation of Lansing, MI, and its controlling entity Cross & Trecker Corporation of Bloomfield Hills, MI; Superior Graphite Company of Chicago, IL; Wedron Silica Company of Wedron, IL; The Wheelabrator Corporation of Peachtree City, GA, and its controlling entity Wheelabrator Technologies, Inc. of Danvers, MA; and Whiting Corporation of Harvey, IL.

Export Trade Activities and Methods of Operation

1. CISA ETG on behalf of its Members may:

a. Act as a clearinghouse in receiving sales leads and orders for Products and

Related Services that may be required by the metalcasting industry in the Export Markets;

b. Aid in the preparation of bids and contracts in the Export Markets, including making arrangements for barter trade;

c. Assist member companies in setting up joint bids for export projects by making distribution to member companies of bid requirements, bidding dates, and purchase specifications as received from Export Markets; and

d. Provide its Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products and Related Services to Export Market. This may be accomplished by CISA ETG itself, or by agreement with its Members or other parties.

2. CISA ETG and/or its Members may:

a. Engage in joint bidding or other joint selling arrangements, icluding barter arrangements, for Products and Related Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Related Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to standardization of Products and Related Services for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Related Services;

e. Solicit non-member Suppliers to sell their Products and Related Services or offer their Export Trade Facilitation Services through the certified activities of CISA ETG and/or its Members;

f. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

g. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and

h. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Related Service requirements of special export customers or Export Markets.

3. CISA ETG and one or more of its Members may meet to exchange and discuss the following types of information:

a. Information about sales and marketing efforts for Export Markets, activities and opportunities for sales of Products and Related Services in the Export Markets, selling strategies for Export Markets, pricing in Export Markets, projected demands in Export Markets, customary terms of sale in Export Markets, prices and availability of Products and Related Services from competitors for sales in Export Markets, and specifications for Products and Related Services by customers in Export Markets;

b. Information about the export prices, terms, quality, quantity, source, and delivery dates of Products and Related Services available from Members for export or from non-members for use in barter transactions;

c. Information about terms and conditions of contracts for sales (including barter transactions) in Export Markets to be considered and/or bid on by CISA ETG and its Members;

d. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

e. Information about expenses specific to exporting to and within Export Markets, including without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

f. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

g. Information about CISA ETG's or its Members' export operations, including without limitation, sales and distribution networks established by CISA ETG or its Members in Export Markets, and prior export sales by Members (including export price information).

4. CISA ETG and/or its Members may enter into agreements wherein CISA ETG and/or one or more Members agree to act in certain countries or markets as the Members exclusive or non-exclusive Export Intermediary for Products or Related Services in that country or market. In such agreements, (i) CISA ETG or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they wiil export for sale in the relevant country or market only through CISA ETG or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. CISA ETG, when acting as an Export Intermediary, will make its services available to any Member on non-discriminatory terms.

A copy of each certificate will be kept in the International Trade Adminstration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: October 20, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-24707 Filed 10-25-88; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of termination of revocation proceedings for Export Trade Certificate of Review No. 84-00011.

SUMMARY: The Department of Commerce issued an export trade certificate of review of Watsand International Limited (Watsand). The certificate holder failed to file a timely annual report as required by law and the Department initiated revocation proceedings. Watsand filed an annual report prior to the effective date of revocation. The Department has accepted the annual report and terminated the proceedings to revoke the certificate.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates or review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985). Pursuant to the authority of the Act, a certificate of review was issued to Watsand on May 25, 1984 (49 FR 22847, June 1, 1984).

A certificate holder is required by law (15 USC 4018, 15 CFR 325.14(a)) to submit to the Department of Commerce annual reports relating to activities covered by its certificate. Failure to submit a complete annual report may be the basis for revocation (15 CFR 325.14(c)).

Watsand failed to submit its annual report within the time required by applicable regulations (15 CFR 325.14(b)). As a result, the Department initiated proceedings to revoke

Watsand's certificate (53 FR 36086, September 16, 1988).

Prior to the effective date of the revocation the Department received an annual report from Watsand. The Department has determined that the annual report is acceptable and has terminated the revocation proceedings. Accordingly, the certificate of review issued to Watsand remains in full force and effect.

Date: October 19, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-24708 Filed 10-25-88; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: NMFS, Southwest Fisheries Center (P77 #32)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, California 92038-0271.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: An unspecified number of the following marine mammals will be taken in addition to other species not listed as endangered:

Spotted dolphin (*Stenella attenuata*)
Spinner dolphin (*Stenella longirostris*)
Common dolphin (*Delphinus delphis*)
Striped dolphin (*Stenella coeruleoalba*)
Bottlenose dolphin (*Tursiops sp.*)
Rough-toothed dolphin (*Steno bredanensis*)
Fraser's dolphin (*Lagenodelphis hosei*)
Pygmy killer whale (*Feresa attenuata*)
Melon-headed whale (Peponocephala electra)
Risso's dolphin (*Grampus griseus*)

4. Type of Take: To collect specimen materials from the above animals taken incidentally to tuna purse-seine fishing.

5. Location of Activity: Eastern Tropical Pacific Ocean.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Date: October 18, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-24777 Filed 10-25-88; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES

Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the Commission on Executive, Legislative and Judicial Salaries will hold an open public hearing on November 10 and 11, 1988 from 9:30 a.m. to 4:30 p.m. The meeting on the 10th will be held in room 385 of the Russell Senate Office Building at Delaware and Constitution Avenue NW., Washington, DC. The meeting on the 11th will be held in Hearing Room A, at the Interstate Commerce Commission Building, 12th and Constitution Avenue NW., Washington, DC.

The purpose of the meeting is to hear testimony from current and former representatives of the three branches of government to elicit their comments and gather necessary information relevant to the mission of the Commission. Testimony on the 10th will be primarily limited to issues surrounding the Executive and Congressional branches. Testimony on the 11th will focus on the Judicial branch.

For further information, please contact the Commission's office, 736 Jackson Place NW., Washington, DC 20415, Telephone 275-8031.

Polly L. Gault,

Executive Director.

[FR Doc. 88-24948 Filed 10-25-88; 12:31 pm]

BILLING CODE 6325-01

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Charges for Certain Cotton Textile Products in Category 369-S Exported From Pakistan

October 21, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting import charges and re-opening a limit.

EFFECTIVE DATE: October 28, 1988.

Authority: Executive Order 1651 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: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6498. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: Transshipment charges amounting to 185,510 pounds and overshipment charges amounting to 284,611 pounds were made to the current limit for Category 369-S (shop towels). The Governments of the United States and Pakistan agreed that the sum of these charges (470,121 pounds) will be charged to the limits established for Category 369-S over a four-year period, beginning in 1988. Transshipments and overshipments to remain charged against the 1988 agreement year amount to 117,531 pounds. The remainder of the transshipment and overshipment charges will be charged in equal amounts of 117,530 pounds to the limits established for Category 369-S from 1989 through 1991. Consequently, 352,590 pounds are being deducted from the current charges for Category 369-S, re-opening the limit.

A description of the textile and apparel 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 51, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 21, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended, between the Governments of the United States and Pakistan, I request that effective on October 28, 1988, you deduct 352,590 pounds from the charges made to the limit established in the directive of December 30, 1987 for Category 369–S [1] for the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

This letter will be published in the **Federal Register.**

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–24739 Filed 10–25–88; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense 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).

Title, Applicable Form, and Applicable OMB Control Number: Supplemental Application for Employment with the Department of Defense Dependents Schools; SD Form 776; and OMB Control Number 0704–0052.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 30 minutes.

Frequency of Responses: On Occasion.

Number of Respondents: 5,500.

Annual Burden Hours: 2,750

Annual Responses: 5,500.

Needs and uses: Information collection provides brief personal, professional, and academic data for use in screening prospective teachers/educators for employment with the Department Dependents Schools (DoDDS).

Affected Public: Individuals or households.

Respondent's Obligation: Required to obtain or retain a benefit; Mandatory.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 21, 1988.

[FR Doc. 88–24714 Filed 10–25–88; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Intelligence Agency Advisory Board; Meeting

AGENCY: Defense Intelligence Agency Advisory Board, DoD.

ACTION: Notice of closed Meeting.

SUMMARY: Pursuant to the provisions of Subsecton (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATE: 4–14 December 1988, 9:00 a.m. to 5:00 p.m. each day.

ADDRESS:
Yokota Japan (4–7 December 1988)
Seoul Korea (7–11 December 1988)
Honolulu Hawaii (11–14 December 1988)

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelied, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the disussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–24715 Filed 10–25–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Floodplain Involvement Notification, Expansion of the Live Firing Range, Sandia Canyon, Los Alamos National Laboratory, NM

AGENCY: U.S. Department of Energy.

ACTION: Floodplain Involvement Notification.

SUMMARY: The Department of Energy (DOE) proposes to expand the existing Live Firing Range located in Sandia Canyon at Los Alamos National Laboratory. Pursuant to the regulations of 10 CFR Part 1022, DOE's "Compliance with Floodplains/Wetlands Environmental Review Requirements", the DOE has determined this action would involve activities within a floodplain area; therefore, the following notice is submitted for public review and comments.

The Project is an expansion to an existing 20-year old firing range within Sandia Canyon. The expansion of the present firing range will be a naturally landscaped firing course within the canyon bottom and in the floodplain of Sandia Canyon. Buildings and firing course will be upgraded within the present range. Structures within the expansion area will be built to avoid stream channels and frequently flooded areas, with the exception of a few spent ammunition backstops. The project will not necessitate removal of vegetation within the locations designated as floodplain.

The proposed construction project is isolated from other laboratory facilities and will not affect lives or property. The construction will not affect the natural or beneficial value of this floodplain.

Maps and further information are available from DOE's Albuquerque Operations Office at the address provided below.

[1] In Category 369–S, only TSUSA number 366.2840.

DATE: Any comments or suggestions are due November 10, 1988.

ADDRESS: All correspondence should refer to the project by title. Address comments or requests to: John G. Themelis, Director, Environment and Health Division, Albuquerque Operations Office, U.S. Department of Energy, P.O. Box 5400, Albuquerque, New Mexico 87115, (505) 846-4851.

FOR FURTHER INFORMATION CONTACT: Harold E. Valencia, Area Manager, Los Alamos Area Office, U.S. Department of Energy, Los Alamos, New Mexico 87544, (505) 667-5105.

Issued at Washington, DC, this 13th day of October

W.I. Barker,

Acting Assistant Secretary for Defense Programs.

[FR Doc. 88-24779 Filed 10-25-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Final Consent Order with Kaiser International Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final Action or Proposed Consent Order.

SUMMARY: The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted as final the Consent Order with Kaiser International Corp. ("Kaiser"), successor in interest the Kaiser Aluminum International Corp., excuted on September 2, 1988 and published for comment in 53 FR 35107 on September 9, 1988.

As required by 10 CFR 205.199J, DOE provided a period of thirty days following publication of the Notice of Proposed Consent Order for the submission of comments. The ERA received no comments in response to this Notice. Accordingly, ERA has determined that the Consent Order should be made final without modification. The Consent Order becomes effective as a Final Order of the DOE on the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Office of Enforcement Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 3H-017, RG-32, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586-4387.

Copies of the Consent Order may be obtained free of charge by written request to "Kaiser Consent Order Request" at the above address or by calling Dorothy Hamid at the above telephone number. Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: On September 9, 1988, DOE published notice in the Federal Register, Vol. 53 at page 35107, announcing the execution of a Proposed Consent Order between Kaiser and DOE. In compliance with the DOE regulations, that Notice, and a Press Release issued on September 9, 1988, summarized the proposed Consent Order and the relevant facts.

In a Proposed Remedial Order ("PRO") issued to Kaiser Aluminum International Corp. on May 3, 1983, the Economic Regulatory Administration (ERA) charged that, during the period May, 1978, through December, 1980, the firm violated, *inter alia*, the anti-layering regulation at 10 CFR 212.186 by charging prices in excess of the acquisition cost without providing any service or function traditionally and historically associated with the resale of crude oil. The PRO was upheld in a Remedial Order issued by DOE's Office of Hearing and Appeals on November 16, 1986, requiring Kaiser to make restitution to DOE of $2.40 million plus interest. Kaiser's appeal of the Remedial Order is pending before the Federal Energy Regulatory Commission.

The Consent Order resolves these matters and all other civil and administrative claims or causes of action regarding Kaiser's compliance with and obligations under the federal petroleum price and allocation regulations. As consideration, Kaiser has agreed to pay DOE $1.95 million within 30 days of the effective date of the Consent Order. ERA will direct that all amounts paid by Kaiser pursuant to the Consent Order be deposited into an interest-bearing escrow account for ultimate distribution pursuant to Special Refund Procedures under 10 CFR Part 205, Subpart V, and DOE's Modified Statement of Restitutionary Policy at 51 FR 27899 (August 4, 1986).

As noted, no comments were received in response to the Notice of the Proposed Consent Order. Accordingly, ERA has determined to adopt the Proposed Consent Order without modification as a final order of the DOE, pursuant to 10 CFR 205.199J. The Consent Order become effective upon publication of this Notice.

Issued in Washington, DC, on October 18, 1988.

Milton C. Lorenz,

Chief Counsel, Office of Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 88-24778 Filed 10-25-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-204-000, et al.]

South Carolina Generating Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 20, 1988.

Take notice that the following filings have been made with the Commission:

1. South Carolina Generating Company

[Docket No. ER85-204-000]

Take notice that on October 11, 1988, South Carolina Generating Company (GENCO) tendered for filing, pursuant to Opinion Nos. 280 and 280-A, additional papers to complete its compliance filing of June 6, 1988. GENCO has filed alternative forms for Schedule 8, pages 5 and 6, of the billing format which incorporate the rate of return on common equity of 12.83% and the Federal income tax rate of 46% approved by the Commission for service as of the date the Unit Power Sales Agreement became effective.

Comment date: November 3, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Power & Light Company

[Docket No. ER88-618-000]

Take notice that on September 20, 1988, Puget Sound Power & Light Company (Puget) tendered for filing pursuant to 18 CFR 35.30(c), Appendix 1 to the Residential Purchase and Sale Agreement between Puget and Bonneville Power Administration (BPA). Puget has also filed the following documents:

1. The Energy Cost Adjustment Clause (ECAC) Average System Cost (ASC) adjustment demonstrated on Schedule 4 of Appendix 1 to the Residential Purchase and Exchange Agreement, Contract No. DE-MS79-81BP90604 (Agreement), between Puget and BPA reflecting Puget's ASC schedules.

2. The cover letter and supplemental supporting schedule sent to BPA.

3. BPA report dated September 7, 1988, pertaining to the ASC filing.

Comment date: October 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas Power and Light Company

[Docket No. ER89–10–000]

Take notice that on October 13, 1988, Kansas Power and Light Company (KPL) tendered for filing, Transmission Agreements dated June 1, 1978, with Kansas Gas and Electric Company, Centel Corporation-Western Power Division and Missouri Public Service Company. KPL states that under these agreements KPL transmits each Co-Owner's power and energy from the Jeffrey Energy Center, over its transmission facilities, to transmission interconnections with each Co-Owner.

Comment date: November 3, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER88–569–000]

Take notice that on October 14, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing the following document:

"Amendment No. 1 to Offer Of Settlement Submitted By Complianant Sacramento Municipal Utility District" (*Amendment No. 1*).

Amendment No. 1 amends certain provisions contained in the Dispute Settlement, 1988 Amendment and Power Sale Agreement which were filed by PG&E in Docket No. ER88–569–000.

Copies of this amended filing were served upon SMUD and the California Public Utilities Commission.

Comment date: November 3, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Georgia Power Company

[Docket No. EC89–2–000]

Take notice that on October 11, 1988, Georgia Power Company (GPC) tendered for filing an application for an Order authorizing the sale of approximately 6.26 miles of 115 Kv transmission line to the City of Chattanooga, Tennessee, acting through its Electric Power Board (Chattanooga).

GPC state that the proposed sale is of that portion of the East Dalton-Ooltewah transmission line located in Tennessee. The line is intended to be integrated into the sub-transmission system and to permit Chattanooga to supply bulk power to two 46/12 kv distribution substations and complete a loop feed to another 46/12 kv distribution substation.

Comment date: November 3, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Montaup Electric Company

[Docket No. ER88–585–000]

Take notice that on October 12, 1988, Montaup Electric Company (Montaup) tendered for filing a supplemental filing to answer questions by the Staff concerning the cost of service supporting this filing, as follows:

The Staff has asked Montaup for the useful life of the Unit. The useful life is thirty-seven years.

The Staff has asked how depreciation dollars were derived. The Unit depreciation rate is 2.70% based on a thirty-seven year life. The general plan depreciation rate is 5.46%. Common property is a combination of production plant and general plant equipment. Both depreciation rates are used to determine depreciation dollars for common property. Total yearly depreciation dollars ($785,000) reflect the 2.70% rate on the Unit plus the combination of both rates on common property.

The Staff has asked how property taxes, A&G and O&M were allocated to the Unit. The FERC Form 1 Report provides the totals for Somerset Station. The methodology by which property taxes, A&G and O&M are allocated are shown on the attached Figures 1–3. Twenty-five percent of the Jet MW were used so that the Jets were not allocated a disproportionate share of the expenses.

The Staff has asked if any fuel related expense was included in O&M. There is no fuel related expense in the O&M figures.

The Staff has asked how common property was allocated to the Unit. The allocations were made according to varius percentages, shown in the supporting data provided with the Company's supplemental filing.

Comment date: November 3, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Utah Power & Light Company

[Docket No. ER84–571–007 (Phase II), ER85–486–003 and ER86–300–003]

Take notice that on October 12, 1988, Utah Power & Light Company, pursuant to Opinion No. 308 issued on July 29, 1988, tendered for filing the following:

(1) Cost of Service Study based on a 46 percent federal income tax rate and a rate of return of 12.43 percent through June 30, 1987.

(2) Cost of Service Study based on a 34 percent federal income tax rate from July 1, 1987 through July 31, 1988.

(3) Cost of Service Study based on a 34 percent federal income tax rate and a rate of return of 12.77 percent to be effective August 1, 1988.

(4) Summary of Cost of Service Studies and Supporting Workpapers.

(5) System Average Wheeling Cost.

(6) Calculation of Wheeling Rates for Provo, Deseret, and WAPA under previous tax laws and the Tax Reform Act and based on rates of return of 12.43% and 12.77%.

(7) Amendments to rate schedules that consist of changes to existing contracts.

Comment date: November 3, 1988, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24681 Filed 10–25–88; 8:45 am]

BILLING CODE 6717–01–M

Office of the Secretary

[Project No. 2973–004]

Fall River Rural Electric Cooperative; Availability of Environmental Assessment

October 21, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Island Park Dam Hydroelectric Project on The Henry's Fork River in Fremont County Idaho, and has prepared Environmental Assessment (EA) for the proposed project. In the EA, the Commission staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action

significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24683 Filed 10-25-88; 8:45am]

BILING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-41-000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP89-41-000]

October 20, 1988.

Take notice that on October 11, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-41-000, an application pursuant to section 7(b) of the Natural Gas Act, which requested permission and approval to partially abandon its Rate Schedule ODL-1 natural gas sales service to Northwest Natural Gas Company (Northwest Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that by letter dated September 22, 1988, Northwest Natural exercised its unlimited conversion option under the Commission's July 28, 1988, order in Docket No. CP86-578-015 by nominating revised levels of firm sales and firm transportation service to be effective on October 1, 1988. Specifically, Northwest states that Northwest Natural requested, effective October 1, 1988, that all but 60,000 therms per day of its ODL-1 sales contract demand be converted to firm transportation. To accommodate this request, Northwest and Northwest Natural entered into a new ODL-1 service agreement dated September 29, 1988, it is stated. Northwest further states that the October 1, 1988, service agreement supersedes the October 1, 1982, service agreement and reduces Northwest Natural's firm sales contract demand to 60,000 therms per day effective October 1, 1988. It is further stated that the September 29, 1988, transportation agreement supersedes the August 24, 1988, transportation agreement, effective October 1, 1988, and provides for service at a firm contract demand level of 2,800,440 therms (280,044 MMBtu's) per day under Rate Schedule TF-1 in Volume No. 1-A of Northwest's FERC Gas Tariff. Northwest states that service under this transportation agreement will be provided pursuant to Subpart B of the Commission's Regulations.

Northwest requests permission and approval to abandon an additional 2,371,370 therms per day of its firm ODL-1 sales obligations to Northwest Natural consistent with Northwest Natural's conversion of that additional volume to firm transportation. Northwest states that the remaining authorized maximum volume level for ODL-1, service to Northwest Natural will be 60,000 therms (6,000 MMBtu's) per day. This proposed abandonment of 2,371,370 therms per day of ODL-1 service, in conjunction with the 429,070 therms per day proposed to be abandoned in the amended application pending at Docket No. CP88.624-001, equates to the total of 2,800,440 therms per day which Northwest Natrual has converted to firm transportation effective October 1, 1988, it is stated.

Northwest requests that the proposed abandonment be made effective October 1, 1988, the effective date of the new firm ODL service agreement and transportation agreement.

Comment date: November 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP88-6-001]

October 19, 1988.

Take notice that on October 18, 1988, United Gas Pipe Line Company (United), Post Office box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-6-001 a petition to amend the order a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act in Docket No. CP88-6-000, by authorizing United to implement an experimental program under which United would make available to others its firm transportation rights in third party pipelines and its contract storage service leased from ANR Storage Company (ANR Storage), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

United states that it currently holds firm transportation rights in several third party interstate pipeline systems and firm contract storage rights in one off-system storage field (Firm Rights). United further states that these arrangements were entered into to enhance its operational flexibility and that these contracts between United and third party interstate pipelines and the storage company (Transporting Pipelines) are of a long-term nature and generally require United to pay a monthly demand charge regardless of the quantity of gas transported or stored for United.

United asserts that this application would permit it, during an experimental period, to make available to all others (Shippers) United's Firm Rights on a nondiscriminatory basis. United requests that the Commission do the following:

(1) Amend United's existing blanket transportation certificate issued pursuant to Section 284.221 of the Regulations to authorize United to make available to others its firm transportation rights and its firm contract storage rights in third party systems as listed in the appendix hereto.

(2) Declare that individual transporting pipelines need not request and receive Commission authority to allow their capacity to be brokered and need not accept an open access blanket certificate under Part 284 of the Regulations in order for United to broker its Firm Rights.

(3) Declare that a Shipper shall have the right to rebroker its rights in the United system as well as the Firm Rights for which its contracts to the extent such Shipper is and remains responsible for the costs and fees attributable to both the United system capacity and the Firm Rights that it re-brokers; further, the contractual provisions entered into between United and the Shipper shall remain in full force and effect regardless of the extent to which the United capacity or Firm Rights may be re-brokered.

(4) Declare that Shippers shall have the right to utilize United's Firm Rights either separately from or in conjunction with transportation through United's own facilities.

(5) Declare that United may offer its Firm Rights on either a firm or interruptible basis.

(6) Authorize maximum rates for Firm Rights brokered on a firm basis to be equivalent to the as-billed rates charged United by the Transporting Pipeline and authorize maximum rates for the Firm Rights brokered on an interruptible basis to be set at a rate equivalent to the 100 percent load factor of the rates billed United by the Trnasporting Pipeline.

(7) Authorize minimum rates for the Firm Rights brokered on a firm or interruptible basis to be equal to the variable portion (commodity portion) of the rates billed United by the Transporting Pipeline or one cent if no commodity rate is applicable to such

service and authorize United to provide discounts down to the minimum rate.

(8) Provide that as of the date United accepts the certificate amendment requested herein, United shall revise its base tariff rates to remove from its cost of service an amount equal to 50 percent of the as-filed total of its Account No. 858 costs and its ANR Storage and related costs and the remaining 50 percent shall be allocated to United's jurisdictional sales and transportation customers on the same basis as such costs are allocated in United's most current rate filing (RP88–92).

(9) Authorize United to retain all revenues received from the brokering of its Firm Rights during the term of the program.

(10) Provide that United's sales and transportation customers, as well as indirect customers of such sales and transportation customers, who accept the rate reduction provided herein would be required to forego the right to challenge or litigate any issue regarding United's Account No. 858 costs or its ANR Storage and related costs, including the level or allocation of such costs, and the revenues generated by the brokering of United Firm Rights in any United rate proceeding during the term of this experiment so long as United retains the same cost crediting and revenue treatment reflected in this application.

(11) Require United's sales and transportation customers to notify United in writing 30 days from the date this program is implemented as to whether they accept the rate reduction, cost allocation and revenue treatment or whether they elect to litigate these issues.

(12) Provide that any Shipper desiring to avail itself of United's Firm Rights be required to comply with the operational requirements and other terms and conditions set forth in United's tariff and the tariff of the Transporting Pipeline.

(13) Authorize the service for a term of three years, with authorization to abandon at the earlier of the end of the three-year period or the termination date of any particular transaction between United and a Transporting Pipeline.

United states that the proposal would result in immediate rate reductions, facilitate United's transition to an open access trnasporter, result in increased utilization of pipeline capacity and would provide the Commission with data which will be useful in evaluating other capacity brokering proposals.

Comment date: November 3, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

DOCKET NO. CP88–6–001

[Appendix]

Company	Contract No.	Docket No.
ANR Pipeline Co.	T2–21–102	CP78–545
ANR Pipeline Co.	T2–21–108	CP79–129
ANR Pipeline Co.	T2–21–149	CP80–164
ANR Storage Co.	T2–21–168	CP78–432
Columbia Gulf Transmission Corp.	T2–21–298	CP83–232
Columbia Gulf Transmission Corp.	T2–21–313	CP84–196
High Island Offshore System	T2–21–085	CP75–104
Michigan Consolidated Gas Co.	T2–21–094	CP78–433
Natural Gas Pipeline Co. of America	T2–21–005	CP81–120
Natural Gas Pipeline Co. of America	T2–21–242	CP82–50
Northern Border	T2–21–297	CP79–400
Northern Natural Gas Co.	T2–21–341	ST88–3071
Panhandle Eastern Pipe Line Co.	T2–21–101	CP79–78
Sea Robin Pipeline Col.	T2–21–019	CP78–262 CP76–418
Sea Robin Pipeline Co.	T2–21–020	CP76–428
Sea Robin Pipeline Co.	T2–21–211	CP77–410
Southern Natural Gas Co.	T2–21–021	CP75–19
Southern Natural Gas Co.	T2–21–088	CP79–374
Southern Natural Gas Co.	T2–21–167	CP80–509
Stingray Gas Pipeline	T2–21–022	CP79–589
Tennessee Gas Pipeline	T2–21–098	CP78–545
Transcontinental Gas Pipeline Corp.	T2–21–027	CP76–122
Transcontinental Gas Pipeline Corp.	T2–21–067	CP78–296
Transcontinental Gas Pipeline Corp.	T2–21–093	CP78–466
Transcontinental Gas Pipeline Corp.	T2–21–104	CP79–178
Transcontinental Gas Pipeline Corp.	T2–21–148	CP80–17
Transcontinental Gas Pipeline Corp.	T2–21–173	CP81–93
Transcontinental Gas Pipeline Corp.	T2–21–263	CP83–81
Trunkline Gas Co.	T2–21–136	CP80–31
Trunkline Gas Co.	T2–21–190	CP81–26
UT Offshore System	UT–OST–3	CP76–118

3. Great Lakes Gas Transmission Company

[Docket No. CP81–225–005]

October 20, 1988.

Take notice that on October 11, 1988, Great Lakes Gas Transmission Company (Petitioner) 2100 Buhl Building, Detroit, Michigan, 48226, filed in Docket No. CP81–225–005 a petition to further amend the order issued in Docket No. CP81–225–000 pursuant to section 7(c) of the Natural Gas Act to authorize the continued transportation and exchange of the increased volumes of natural gas for Northern Minnesota Utilities, a Division of Utilicorp United Inc. (NMU) (formerly Inter-City Gas Corporation), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by Commission order issued May 8, 1981, it was authorized to transport, during the summer period, up to 2,026 Mcf of gas per day and a total volume of 405,200 Mcf for NMU from a receipt point near Cloquet, Minnesota and redeliver thermally equivalent volumes to ANR Storage Company (ANR) for the account of NMU. During the winter period Petitioner states that it was authorized to receive up to 8,000 Mcf of gas per day from ANR and, by displacement, redeliver thermally equivalent volumes to NMU at Cloquet or two other redelivery points near Grand Rapids and Thief River Falls, Minnesota. The authorization was for an initial term ending March 31, 1991, it is stated. Petitioner states that by amendment dated December 2, 1987, it was authorized to transport and exchange increased volumes of 3,292 Mcf per day and a total volume of 658,450 Mcf during the summer period and 13,000 Mcf per day during the winter period conditioned to a term ending one year from the date of the order (December 2, 1988) or until Petitioner accepts a blanket certificate pursuant to Part 284 of the Commission's Regulations.

Petitioner asserts that NMU has advised it that the continuation of the increased transportation and exchange volumes will enable NMU to more economically meet the needs of its customers and to meet its peak winter demands.

Comment date: October 31, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. CNG Transmission Corporation

[Docket No. CP87–5–002, *et al.* CP87–312–001 CP87–313–001 CP87–314–001 CP88–197–002 CP88–388–002]

October 20, 1988.

Take notice that on October 3, 1988, CNG Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP87–5–002, *et al.* an application pursuant to section 7(c) of the Natural Gas Act, requesting authorization to (1) provide seasonal sales of natural gas to six distribution companies, known as the Associated PennEast Customer Group (APEC), (2) provide long-term firm storage service for certain natural gas distribution companies in the Northeast, and (3) construct and operate various facilities needed to render the seasonal sales and storage services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that this application implements Applicant's participation in the *Stipulation and Agreement* (APEC Settlement) filed on August 15, 1988 by APEC in Docket No. CP87–451–000, *et al.* The APEC Settlement severs certain proposed services and related facilities by several pipelines from the Open Season proceeding for processing as discrete projects. The Commission's Order dated September 16, 1988 in Docket No. CP87–451–009, *et al.* (44 FERC ¶ 61,340), directed the sponsors of the APEC Settlement to submit, within 15 days, revised applications modified to reflect changes in facilities and services resulting from the severance of the projects.

Applicant proposes to provide seasonal sales of up to 215,000 dt equivalent per day on a firm, long-term basis, to six local distribution companies, collectively referred to as APEC. Applicant submits that APEC consists of the Brooklyn Union Gas Company (Brooklyn Union), Elizabethtown Gas Company (Elizabethtown), Long Island Lighting Company (LILCO), New Jersey Natural Gas Company (New Jersey Natural), Public Service Electric and Gas Company (New Jersey Natural), Public Service Electric and Gas Company (PSE&G) and South Jersey Gas Company (South Jersey). Applicant proposes to render seasonal sales to the APEC customers as follows:

Buyers	Total seasonal sales (dt/day equivalent)	Delivered via Transco (dt/day equivalent)	Delivered via TETCO (dt/day equivalent)
Brooklyn Union	50,000	45,000	5,000
Elizabethtown	10,000	5,000	5,000
LILCO	35,000	35,000	0
New Jersey Natural	45,000	10,000	35,000
PSE&G	65,000	65,000	0
South Jersey	10,000	10,000	0
Total	215,000	170,000	45,000

Applicant indicates that, pursuant to the APEC Settlement, 170,000 dt equivalent per day would be delivered by Applicant to Transcontinental Gas Pipe Line Corporation (Transco) at the Leidy interconnection between Applicant and Transco in Clinton County, Pennsylvania. Applicant further indicates that Transco would transport the gas on a firm basis from its Leidy line into its system in the New York/New Jersey market area, for delivery at interconnections between Transco and each of the APEC customers. Applicant states that 45,000 dt equivalent per day of seasonal sales would be delivered by Applicant to Texas Eastern Transmission Corporation (Texas Eastern) at Compressor Station 23, near Chambersburg, in Franklin County, Pennsylvania, which is the termination point of Applicant's prospective joint ownership with Texas Eastern in the "Capacity Restoration Project". Applicant further states that Texas Eastern would transport these volumes from Chambersburg to the APEC customers.

Applicant proposes to sell gas to South Jersey under the rate specified in its SCQ Rate Schedule, FERC Gas Tariff, Original Volume No. 1. Applicant indicates that the rate for the remaining APEC customers would be the same rate which the Commission determined to be appropriate in the July 27, 1988 Order, authorizing Applicant to perform a seasonal sales services in Docket Nos. CP87–4–000, *et al.* and CP87–5–000. Applicant proposes to sell 205,000 dt per day of the 215,000 dt per day to the APEC customers at a one-part rate equal to the rate specified in Applicant's Rate Schedule CD, as contained in Applicant's effective FERC Gas Tariff Volume No. 1, calculated at a 27% load factor.

Applicant submits that the gas to be sold to the APEC customers would come from Applicant's general system supply. Applicant further submits that Applicant and the APEC customers are presently in the process of finalizing new precedent agreements. Applicant states that it would supplement this application with the newly executed precedent and sales agreements when they are available for filing.

Applicant states that its prior application in Docket No. CP87–5–000 involved a sale to PennEast Gas Services Company (PennEast) of 145,000 dt per day of gas for its system supply for the second phase of PennEast's seasonal sales. Applicant further states that it requests to amend this application (1) to reflect the restructuring of the second phase of the seasonal sales whereby Applicant makes the sales directly to the APEC customer and (2) to increase the maximum quantity for the APEC customers from 145,000 to 215,000 dt per day.

Applicant proposes to provide a firm storage service to the APEC customers and other natural gas distributors, as contemplated in the APEC Settlement, under a new proposed Rate Schedule GSS–II, to be part of Applicant's FERC Gas Tariff. Specifically, Applicant proposes to provide a Phase I storage service consisting of 10,000,000 dt equivalent of storage capacity and 100,000 dt equivalent per day of storage withdrawal capability, to be sold directly to the following distributor customers in the following amounts:

Buyer	Aggregate maximum storage quantity (dt)	Aggregate maximum daily withdrawal quantity (dt/d)
Phase I—Commencing April 1, 1989	Commencing 4/1/89	Commencing 11/15/89
Bristol & Warren Gas Company	73,800	736
Central Hudson Gas & Electric Corp	400,000	4,000
Colonial Gas Company	187,600	1,876
Long Island Lighting Company	1,500,000	15,000
Town of Middleborough, Massachusetts	14,100	141
New Jersey Natural Gas Company	500,000	5,000
Northeast Energy Associates and North Jersey Energy Associates	2,500,000	25,000
PennFuel Gas, Inc.	200,000	2,000
The Pequot Gas Company	11,300	113
Public Service Electric & Gas Company	4,500,000	45,000
South County Gas Company	22,500	225
Valley Gas Company	90,700	907
Total	10,000,000	100,000

It is indicated that these volumes would be received for storage by Applicant at Leidy and, after withdrawal, delivered to Texas Eastern at Chambersburg, in Franklin County, Pennsylvania (where Applicant's prospective joint ownership with Texas Eastern of the CRP line ends) for subsequent redelivery to the customers be Texas Eastern.

Applicant indicates that, in order for storage gas to be available for withdrawal in the winter of 1989, injections of gas into storage should begin in April of 1989.

Applicant further submits that Applicant and the APEC customers are presently in the process of finalizing new precedent agreements for the restructured storage services. Applicant states that it would supplement this application with the newly executed precedent and storage agreements when they are available for filing.

Applicant states that it proposes to adopt the PennEast proposals in Docket Nos. CP87–312–000, CP88–197–000, and CP88–388–000 in order that Applicant may provide these storage services under the new GSS–II Rate Schedule directly to the customers and to reflect the changes in the customer's maximum

storage and withdrawal quantities described herein.

Applicant further states that its application in Docket No. CP87–313–000 would be unnecessary (and would be withdrawn by Applicant) if the Commission certificates the entire APEC Project.

Applicant indicates that the parties to the APEC Settlement have agreed that Phase II and Phase III (now GSS–II) of the PSS storage service in Docket No. CP87–312–000 would be processed discreetly outside of the Open Season proceeding, but only Phase I of the storage services would require certification for the 1989–90 winter season. Applicant further indicates that a critical element of the APEC Settlement is that the costs of Phase II and Phase III of the GSS–II storage service would be accorded rolled-in treatment with the costs of Phase I. Applicant requests that the Commission approve the new proposed Rate Schedule GSS–II for sales of storage services in Phases I through III to these customers, with the understanding that all costs be included in the calculation of the GSS–II rate.

In order to provide the additional seasonal sales service of 215,000 dt per day, Applicant requests authorization to construct and operate the following facilities:

(1) 7.6 miles of 30-inch pipeline to be known as Line No. TL–474, which would begin at Applicant's J.B. Tonkin Compressor Station, near the town of Murrysville, in Westmoreland County, Pennsylvania, and end at Applicant's Kiski Gate Junction, in Westmoreland County, Pennsylvania, near the town of Apollo, in Armstrong County, Pennsylvania;

(2) A new 12,600 horsepower (HP) compressor station, to be known as the Ardell Compressor Station, located in Elk County, Pennsylvania.

(3) A new 5,900 HP compressor station, to be known as the Crayne Compressor Station, located near the town of Waynesburg, in Greene County, Pennsylvania;

(4) A new 4,390 HP compressor station, to be known as the L.L. Tonkin Compressor Station, located near the town of West Union, in Doddridge County, West Virginia; and

(5) Additional measurement equipment at Applicant's Leidy Measurement and Regulation (M&R) Station.

Applicant estimates the cost of the proposed facilities for the additional 215,000 dt per day to be $32,553,583, not including filing fees. Applicant states that these facilities must be in place by November 1989.

In order to provide the proposed GSS–II storage service, Applicant proposes to construct and operate the following facilities:

(1) Drill and connect 10 new storage injection/withdrawal wells at Applicant's existing Greenlick Storage Pool;

(2) Install 1,100 HP compressor station near Applicant's existing Sharon Storage Pool to be known as State Line Compressor Station;

(3) Inject 500 MMcf equivalent of Base Gas at Sharon Storage Pool;

(4) Replace 14 existing well lines at Sharon Storage Pool; and

(5) Rework 3 existing storage wells at Sharon Storage Pool.

Applicant states that the proposed facilities were also requested by Applicant in Docket No. CP87–314–000, with the exception of the proposed 1,100 HP compressor station near Applicant's Sharon Storage Pool. Applicant indicates that a recent change in air emission standards in the State of Pennsylvania necessitates that Applicant install one 1,100 HP, clean burning compressor engine, instead of two 600 HP compressor engines, as originally proposed in Docket No. CP87–314–000. Applicant states that it requests to amend its application in Docket No. CP87–314–000 to reflect the change in compressor equipment.

Applicant estimates that the cost of the proposed facilities for the Phase I storage facilities would be $29,337,547.

Applicant states that, by joint application with Texas Eastern in Docket No. CP87–92–003, Applicant requests approval of its investment in and ownership of an undivided interest (approximately 28%) in Texas Eastern's Capacity Restoration Project which would provide Applicant 225,000 dt equivalent per day of capacity in the CRP line from Texas Eastern's Compressor Station 21–A, located near Connellsville, in Fayette County, Pennsylvania, to a interconnection with Applicant's existing Line No. PL–1 pipeline at Texas Eastern's Compressor Station 23, located at or near Chambersburg, in Franklin County, Pennsylvania. Applicant further states that it would use 145,000 dt equivalent per day of its CRP firm capacity to move gas for the APEC services to Chambersburg for delivery to Texas Eastern for further transportation to the APEC customers and would use the remaining 80,000 dt equivalent per day to move gas into its Line No. PL–1 for services for Washington Gas Light Company and Baltimore Gas and Electric Company proposed in Docket No. CP88–128–000. Applicant indicates that it would no longer need the transportation service proposed by Texas Eastern to move the 80,000 dt per day currently pending in Docket No. CP88–179–000.

Applicant estimates that the cost of its interest in the CRP to be $38,200,000, with $24,600,000 applicable to the services proposed in this application.

Comment date: November 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Texas Eastern Transmission Corporation and CNG Transportation Corporation

[Docket Nos. CP87–5–003, *et al.*, CP87–92–003, CP87–312–002, CP88–197–001, CP88–388–001]

October 20, 1988.

Take notice that on October 3, 1988, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 2521, Houston, Texas 77252, and CNG Transmission Corporation, 445 West Main Street, Clarksburg, West Virginia 26301, jointly referred to as Applicants, filed in Docket Nos. CP87–5–003, *et al.* an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act, requesting a Certificate of Public Convenience and Necessity (1) authorizing Texas Eastern to render in interstate commerce additional firm transportation service pursuant to Rate Schedule FTS–4, (2) authorizing Texas Eastern to render in interstate commerce a new firm transportation service pursuant to proposed Rate Schedule FTS–5, (3) authorizing the construction, ownership and operation of pipeline facilities by Texas Eastern, (4) authorizing the construction and operation by Texas Eastern of certain pipeline facilities to be jointly owned by Texas Eastern and CNG, (5) granting Texas Eastern authorization to replace existing facilities, and (6) authorizing the addition of a point of delivery to CNG in Zone C under Texas Eastern's DCQ and I Rate Schedules, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that this application is being file in compliance with the Commission's September 16, 1988 Order in Docket No. CP87–451–009, *et al.* (44 FERC ¶61,340), which severed from the Open Season proceeding and provides for processing as discrete projects several pipelines' proposed services and facilities relating to implementation of a *Stipulation and Agreement* (APEC Settlement) filed on August 15, 1988 by the Associated PennEast Customer Group (APEC) in Docket No. CP87–451–000, *et al.* In the September 16, 1988 Order, the Commission directed the sponsors of the APEC Settlement to

submit, within 15 days, revised applications modified to reflect changes in facilities and services resulting from the severance of the projects.

Applicants state that the instant filing is only one of several applications to be filed by various parties to provide facilities or services contemplated in the APEC Settlement. Applicants also state that while they strongly support the APEC proposal, the application herein is not intended, nor should it be construed as a replacement of the Second Amended Application in Docket No. CP87–92–002. Applicants state that, in the event the APEC Settlement is not approved, the Second Amended Application in Docket No. CP87–92–002 would be amended separately to reflect the restructured ownership of the "fence-to-fence" portion of Texas Eastern's Capacity Restoration Pipeline.

Applicants indicate that, as a result of the Commission's Order Issuing Certificates, issued on July 27, 1988 (44 FERC ¶61,152), Applicants have revised the structure of several PennEast Gas Services Company's (PennEast) projects related to the APEC Settlement services in order to comport with the policy set forth in that order. Applicants request that, for purposes of this APEC Settlement related filing, CNG be added as an Applicant party in the subject proceeding.

Applicants propose new facilities ownership structure which would provide for a joint undivided ownership by Applicants, as "Tenants in Common", of a segment of the 36-inch Capacity Restoration replacement pipeline between Texas Eastern's Compressor Station 21–A and CNG's existing PL–1 pipeline interconnection at Texas Eastern's Compressor Station 23. It is indicated that this arrangement would provide Texas Eastern with capacity rights of 554,282 dt equivalent per day, which would be sufficient to replace capacity lost due to the removal of pipe in the Capacity Restoration Program. Also, it is indicated that the arrangement would provide CNG with capacity rights totalling 225,000 dt equivalent per day in this segment of the pipeline which would be utilized by CNG to provide services as follows:

	Dt/day equivalent
Sales to APEC customers	45,000
Storage service to APEC customers and others	100,000
2d phase to sale to Washington Gas Light Co. & Baltimore Gas & Electric Co.	80,000
Total	225,000

Applicants state that the proposed restructuring addresses and resolves certain concerns indicated by the Commission in its July 27, 1988 Order. Applicants further state that they are *not* proposing the issuance of a certificate to a new jurisdictional company and that Applicants have developed a structure which serves the needs of the APEC customers by enabling the unbundling of PennEast sales, storage and transportation services. It is indicated that the joint undivided ownership of this segment of pipeline provides CNG with an extension of its existing PL–1 line into Western Pennsylvania. Applicants state that CNG would have the right to utilize its capacity in the segment in the normal course of business. Applicants submit that the proposed facility ownership structure would provide an opportunity for the Applicants to share investment costs in the indicated segment of the restored pipeline.

Applicants indicate that they are currently negotiating a construction, joint ownership, operation and maintenance agreement which, upon execution, would be submitted as a supplement to Exhibit M.

Applicants request authorization for Texas Eastern to add Compressor Station 21–A as a Point of Delivery to CNG under Texas Eastern's Rate Schedule DCQ and Rate Schedule I, or pursuant to Rate Schedule CD–1 in the event prior to the approval of this application Texeas Eastern enters into new service agreements under Rate Schedule CD–1 as currently contemplated in Docket No. RP85–177 *et al.* It is indicated that this Zone C Point of Delivery would have delivery capacity of at least 225,000 dt equivalent, provided the sum of the aggregate maximum daily delivery obligation (AMDDO) at measuring stations 082, 051 and Compressor Station 21–A would not exceed the sum of current AMDDO for measuring stations 082 and 051.

Applicants request the following authorization:

(1) For Texas Eastern to render long term, firm transportation service pursuant to Rate Schedule FTS–4 as follows:

	Maximum daily transportation quantity (dt/day equivalent)
The Brooklyn Union Gas Co	5,000
New Jersey Natural Gas Co	35,000
Elizabethtown Gas Co	5,000
Total	45,000

(2) For Texas Eastern to render long term, firm transportation service pursuant to proposed Rate Schedule FTS–5 as follows:

	Maximum daily transportation quantity (dt/day equivalent)
Bristol & Warren Gas Co	813
Central Hudson Gas & Electric Co	4,000
Colonial Gas Co	2,067
Intercontinental Energy Corp. (IEC) and Public Service Electric & Gas Co.(PSE&G)	24,508
Long Island Lighting Co	15,000
Town of Middleborough, MA	155
New Jersey Natural Gas Co	5,000
Penn Fuel Gas, Inc	2,000
The Pequot Gas Co	125
Public Service Electric & Gas Co	45,084
South County Gas Co	248
Valley Gas Co	1,000
Total	100,000

(3) For Texas Eastern to construct, own and operate pipeline facilities located in Ohio, West Virginia, Pennsylvania and New Jersey.

(4) For Texas Eastern to construct and operate certain pipeline facilities to be jointly owned by Texas Eastern and CNG located in Pennsylvania.

Applicants state that, for the period ending April 1991, PSE&G would have the right to use and obligation to pay all charges in connection with the 24,508 dt equivalent per day. Applicants further state that PSE&G would be the shipper on such days as the mean temperature at Newark, New Jersey is forecast to be 22 degrees F or colder, and IEC would be the shipper on all other days.

Applicants state that the volumes to be transported by Texas Eastern under Rate Schedule FTS–4 were originally proposed to be sold and transported by PennEast as part of Phase II of Rate Schedule SS–1 service. It is indicated that as part of the unbundled PennEast SS–1 service, CNG would be filing an application to render a seasonable sales service to the APEC customers. It is further indicated that CNG would utilize its capacity in the jointly owned pipeline and would make the sales deliveries to Texas Eastern, for the account of the APEC customers, at Compressor Station 23. Applicants state that, from this point, Texas Eastern would render the related

unbundled transportation service in accordance with existing Rate Schedule FTS–4. Applicants further state that this service would commence upon the later of completion of facilities or November 15, 1989.

Applicants submit that Texas Eastern would charge a rate for the additional FTS–4 services which rolls in the cost of service from the Phase I of Rate Schedule FTS–4 service authorized by the Commission in the July 27, 1988 Order.

Applicants state that executed precedent agreements between Texas Eastern and these APEC customers would be filed as a supplement Exhibit I.

Applicants state that the volumes to be transported by Texas Eastern under Rate Schedule FTS–5 were originally proposed as a component of a storage service by PennEast under Rate Schedule PSS. It is indicated that as part of the unbundled PennEast PSS storage service, CNG would be filing an application to render a storage service to the APEC customers and certain other customers pursuant to a new Rate Schedule GSS–II. It is further indicated that CNG would utilize its capacity in the jointly owned pipeline and would make the sales deliveries to Texas Eastern, for the account of these customers, at Compressor Station 23 for transportation under Rate Schedule FTS–5.

Applicants indicate that, upon the later of November 15, 1989 or the completion of all necessary facilities, transportation service under the proposed Rate Schedule FTS–5 would consist of the transportation of gas for the account of Buyer received by Texas Eastern from Buyer for delivery to CNG and the transportation of gas for the account of Buyer received by Texas Eastern from CNG for delivery to or for the account of Buyer. Applicants further indicate that Texas Eastern would receive gas for transportation under Rate Schedule FTS–5 from CNG at Texas Eastern's Compressor Station 23 and would deliver gas to CNG for the account of Buyer at Texas Eastern's Compressor Station 23 or at meter station 082 at the Oakford storage facility. Applicants state that Texas Eastern would deliver gas received from CNG to points of delivery with Buyer, or in the case of the Algonquin Gas Transmission Company (Algonquin) customers' volumes, to Algonquin at measuring station 087 near Lambertville, Pennsylvania. Further, Applicants state that Texas Eastern would receive the gas from the APEC customers for storage injunction at their existing Texas Eastern delivery points by displacement of quantities otherwise delivered and would redeliver such quantities to meter station 082 at the Oakford storage facility or at the interconnection of CNG's PL–1 line near Texas Eastern's Compressor Station 23.

Applicants submit that the cost of service associated with the new incremental facilities required to render the FTS–5 service would be borne by the APEC customers receiving the FTS–5 service. Applicants further submit that, for all gas transported, Texas Eastern would charge a demand rate of $5.8549 per dt and an authorized daily over run rate of $0.1925 per dt.

It is indicated that during the interim period beginning on the day of commencement of deliveries under FTS–5 and prior to the in-service date of facilities for firm service, the customers may tender gas for transmission for the sole purpose of delivering gas to CNG for injection into storage for the customers' account and customers would pay the interim rate of $0.1230 per dt.

Applicants state that executed precedent agreements between Texas Eastern and the Participants in this transportation service would be filed as a supplement to this application.

Applicants request authorization for Texas Eastern to construct and operate the following facilities which were contemplated in the APEC Offer of Settlement:

1989

(1) 232.54 miles of 36-inch pipeline between Compressor Stations 18 and 19 and between Holbrook Compressor Station and Compressor Station 25 in various counties in the States of Ohio, West Virginia and Pennsylvania.

(2) 5.50 miles of 42-inch pipeline traversing Somerset County, New Jersey.

(3) Aerodynamic assembly changeouts at Texas Eastern's Compressor Station 23 (Chambersburg, Pennsylvania) in Franklin County, Pennsylvania.

(4) Modify an existing interconnection between Texas Eastern and Elizabethtown Gas Company designated as M&R station # 1075 located in Middlesex County, New Jersey.

(5) Removal of 215.0 miles of 20-inch and 24-inch pipeline from Compressor Station 21–A to Compressor Station 25 located in various counties of Pennsylvania.

(6) Related M&R station reconnections and hydrostatic testing of 20-inch pipe segments remaining in service in 1989.

1990

(7) 36.18 miles of 36-inch pipeline between Compressor Station 18 and Compressor Station 19, between Compressor Station 19 and Berne Compressor Station and between Berne Compressor Station and Holbrook Compressor Station in various counties in Ohio and West Virginia.

(8) Install 5.61 miles of 20-inch pipeline in between Compressor Station 19 and M&R 004 in Monroe County, Ohio.

(9) Install 1.41 miles of 8-inch pipeline in Greene County, Pennsylvania.

(10) Place in idle service 344.73 miles of 20-inch and 24-inch pipeline from Compressor Station 16 to Compressor Station 21–A in various counties in Ohio and Pennsylvania.

(11) Install 3 units to provide additional compression of 26,000 HP at station sites located west of Compressor Station 21–A and relocate one 6,000 HP unit from Compressor Station 20 to Berne Compressor Station.

(12) Modifications to unit and station piping and resizing of cylinders at sites located west of Compressor Station 21–A.

(13) Hydrostatic testing of 20, 24 and 26-inch pipeline between Compressor Station 17 and Compressor Station 19.

It is indicated that, in response to a Commission Staff data request of December 17, 1987, Texas Eastern proposed an interim construction plan, now referred to as the "fence-to-fence" proposal, whereby Texas Eastern would delay construction on compressor station sites at and east of Compressor Station 21–A until appropriate environmental clearances were obtained. It is further indicated that the "fence-to-fence" proposal would be a two-year construction project that offers an environmentally acceptable solution to expediting the process of replacing Texas Eastern's 20 and 14-inch bare pipelines. Applicants state that in the first year 17.53 miles of 36-inch pipeline would be installed west of Compressor Station 21–A to offset the capacity reduction due to continued operation of the bare pipe at reduced pressures. Applicants further state that east of Compressor Station 21–A, the 20-inch pipeline from Compressor Station 21–A to Compressor Station 24–A and the 24-inch pipeline from Compressor Station 24–A to Compressor Station 25 would be removed and replaced, between compressor stations only, with a new 36-inch pipeline. Applicants indicated that the existing 24-inch pipeline between Compressor Station 21–A and Compressor Station 24–A would remain

in service at a reduced operating pressure.

Applicants state that in the second year, construction of pipeline facilities west of Compressor Station 21–A would be required to place all bare pipe west of Compressor Station 21–A (24-inch from suction of Compressor Station 17 to Compressor Station 18, both 20-inch and 24-inch from Compressor Station 18 to Compressor Station 21–A) into idle service. Applicants submit that no additional capacity beyond the capacity restoration of 554,787 dt equivalent per day is created by the facilities constructed west of Compressor Station 21–A. Applicants further submit that the proposed "fence-to-fence" facilities in this application would provide a daily delivery capacity of 779,282 dt equivalent per day.

Applicants state that the facilities for which authorization is requested are only a portion of the facilities presently on file in Texas Eastern's Docket No. CP87–92–02. Applicants state that the facilities requested are the facilities contemplated in the APEC Offer of Settlement and which are identical to the "fence-to-fence" facilities. Applicants estimate the cost of the proposed facilities to be $455,699,000.

Comment date: November 10, 1988, in accordance with Standard Paragraph F at the end of the notice.

6. Northwest Pipeline Corporation

[Docket No. CP89–54–000]

October 21, 1988.

Take notice that on October 13, 1988, Northwest Pipeline Corporation, (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108 filed in Docket No. CP89–54–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Kimball Energy Corporation (Kimball), under its blanket authorization issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for Kimball, a producer of natural gas, pursuant to a transportation agreement dated February 10, 1988, as amended May 1, 1988, July 22, 1988, and August 4, 1988, under its Rate Schedule TI–1. The term of the transportation agreement is from February 10, 1988, until December 31, 1995, subject to termination by either party during the primary or extended term upon five business days written notice to the other party Northwest proposes to transport on a peak day up to 150,000 MMBtu; on an average day up to 3,300 MMBtu; and on an annual basis 1,200,000 MMBtu for Kimball. Northwest proposes to receive the subject gas from various exiting points of receipt located in Sweetwater and Lincoln Counties, Wyoming, La Plata County, Colorado, and Whatcom County, Washington for delivery to points located in Benton County, Washington, Sweetwater County, Wyoming, La Plata County, Colorado and Rio Arriba County, New Mexico. It is stated that Kimball has entered into sales contracts with San Diego Gas & Electric Company and Southern California Gas Company, local distribution companies. Northwest avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.233(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on September 2, 1988, as reported in Docket No. ST89–31–000.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24757 Filed 10–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 10330–001, et al.]

Cross Hydro, Inc., et al.; Surrender of Preliminary Permits and Exemptions

October 21, 1988.

Take notice that the following preliminary permits/exemptions have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Cross Hydro, Inc.

[Project No. 10330–001]

Take notice that the Cross Hydro, Inc., permittee for the Cross Creek Hydro Project No. 10330, to be located on Cross Creek in Johnson and Sheridan Counties, Wyoming, has requested that its preliminary permits be terminated. The preliminary permit was issued on August 28, 1987, and would have expired on July 31, 1990.

The permittee filed the request on August 10, 1988.

2. Tuolumne County, California

[Project No. 9406–001—California]

Take notice that Tuolumne County, California, exemptee for the Phoenix Lake Bypass Project No. 9406, has requested that its exemption be terminated. The exemption was issued on August 6, 1986, and the project would have been located on the Phonenix Lake bypass ditch in Tuolumne County, California. No construction of the hydroelectric project works has been initiated.

The exemptee filed the request on September 26, 1988.

Standard Paragraph

I. The preliminary permit/exemption shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24682 Filed 10–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 10137–001, et al.]

Monroe Hydro Associates, et al.; Surrender of Preliminary Permits and Exemptions

October 21, 1988.

Take notice that the following preliminary permits/exemptions have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Monroe Hydro Associates

[Project No. 10137–001]

Take notice that Monroe Hydro Associates, permittee for the proposed Monroe Hydro Project No. 10137, has requested that its preliminary permit be terminated. The permit was issued on February 9, 1987, and would have expired on January 31, 1990. The project would have been located on the Salt Creek, in Monroe County, Indiana. The permittee states that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed a request on September 26, 1988.

2. Kinetic Energy Company

[Project No. 10318–001—Michigan]

Take notice that Kinetic Energy Company, permittee for the proposed Carp River Project No. 10318, has requested that its preliminary permit be terminated. The permit was issued on March 25, 1987, and would have expired on February 28, 1990. The project would have been located on the Carp River, Marquette County, Michigan.

The permittee filed a request on September 21, 1988.

3. Harden Hydro Associates

[Project No. 10136–001—Indiana]

Take notice that Harden Hydro Associates, permittee for the proposed Harden Hydro Project No. 10136, has requested that its preliminary permit be terminated. The permit was issued on March 2, 1987, and would have expired on February 28, 1990. The project would have been located on the Big Racoon River, in Parke County, Indiana. The permittee states that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed a request on September 26, 1988.

4. Patoka Hydro Associates

[Project No. 10138–001—Indiana]

Take notice that Patoka Hydro Associates, permittee for the proposed Patoka Hydro Project No. 10138, has requested that its preliminary permit be terminated. The permit was issued on February 9, 1987, and would have expired on January 31, 1990. The project would have been located on the Salt Creek, in Dubois County, Indiana. The permittee states that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed a request on September 26, 1988.

5. Huntington Hydro Associates

[Project No. 10134–001—Indiana]

Take notice that Huntington Hydro Associates, permittee for the proposed Huntington Hydro Project No. 10134, has requested that its preliminary permit be terminated. The permit was issued on February 9, 1987, and would have expired on January 31, 1990. The project would have been located on the Wabash River, in Huntington County, Indiana. The permittee states that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed a request on September 26, 1988.

6. George H. and Eleanor Hage

[Project No. 9436–001—California]

Take notice that George H. and Eleanor Hage, Permittee for the Al Smith Power Project located on Al Smith Creek in Shasta County, California have requested that the preliminary permit be terminated. The preliminary permit was issued on March 24, 1986, and would have expired on March 24, 1986. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed a request on August 30, 1988.

7. Salamonie Hydro Associates

[Project No. 10135–001—Indiana]

Take notice that Salamonie Hydro Associates, permittee for the proposed Salamonie Hydro Project No. 10135, has requested that its preliminary permit be terminated. The permit was issued on February 5, 1987, and would have expired on January 31, 1990. The project would have been located on the Salamonie River, in Wabash County, Indiana. The permittee states that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed a request on September 26, 1988.

Standard Paragraph

I. The preliminary permit/exemption shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24758 Filed 10–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1473—Montana]

Montana Power Co.; Intent Not To File an Application for a New License

October 21, 1988.

Take notice that on April 27, 1988, Montana Power Company, the existing licensee for the Flint Creek Hydroelectric Project No. 1473, filed a notice of intent *not* to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 1473 was issued effective July 1, 1938, and expired June 30, 1988.

The project is located on Flint Creek in Deer Lodge and Granite Counties, Montana. The principal works of the

Flint Creek Project include a 330-foot-long, 44-foot-high earth dam with a spillway at elevation 6,429.5 feet m.s.l.; a reservoir of 2,850 acres; a 6,300-foot-long penstock with a surge tank; a powerhouse with an installed capacity of 1,100 kW; a tailrace returning flow to Flint Creek; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at 40 East Broadway, Butte, Montana 59701, telephone (406) 723-5421.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24684 Filed 10-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1473—Montana]

Montana Power Co.; Notice Soliciting Applications for a License

October 21, 1988.

Take notice that on April 27, 1988, Montana Power Company, the licensee for the Flint Creek Hydroelectric Project No. 1473, filed a notice of intent *not* to file an application for a new license. The original license for Project No. 1473 was issued effective July 1, 1938, and expired June 30, 1988. The project is now being operated under an annual license.

The project is located on Flint Creek in Deer Lodge and Granite Counties, Montana. The principal works of the Flint Creek Project include a 330-foot-long, 44-foot-high earth dam with a spillway at elevation 6,429.5 feet m.s.l.; a reservoir of 2,850 acres; a 6,300-foot-long penstock with a surge tank; a powerhouse with an installed capacity of 1,100 kW; a tailrace returning flow to Flint Creek; a transmission line connection; and appurtenant facilities.

The Commission is soliciting applications from potential applicants, other than the existing licensee, who are interested in obtaining a license for the Flint Creek Project. All potential applicants interested in preparing a license application, should file a letter of intent with the Commission within 90 days from the date of this public notice. Potential applicants must then file their applications for license with the Commission within 18 months from the date on which their letters of intent are due to be filed with the Commission.

For further information concerning license applications for this project, please see Docket No. RM87-33-000, Notice of Proposed Rulemaking, issued May 24, 1988. Copies of the above Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Pursuant to section15(b)(2) of the Federal Power Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). The above information as described in the rule is now available at Montana Power Company, 40 East Broadway, Butte, Montana 59701, telephone (406) 723-5421.

Potential applicants should be aware that the Commission has prepared regulations in Docket No. RM87-33-000 governing the disposition of a project for which no timely application is filed. Given the nature of these proposed regulations, the Commission can not say with certainty that a license application will be governed under section 4(e) or section 15 of the Federal Power Act. Applicants must comply with § 4.38 of the Commission's regulations in preparing their license applications.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24685 Filed 10-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1403—California]

Pacific Gas and Electric Co.; Intent To File an Application for a New License

October 21, 1988.

Take notice that on August 5, 1987, Pacific Gas and Electric Company, the existing licensee for the Narrows Hydroelectric Project No. 1403, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 1403 was issued effective August 1, 1941, and expires July 31, 1991.

The project is located on the Yuba River in Nevada County, California and occupies lands of the U.S. Army Corps of Engineers. The principal works of the Narrows Project include a tunnel; a penstock; a powerhouse with an installed capacity of 10.2 MW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 77 Beale Street, Room 1391, San Francisco, CA 94106, Attn: Mr. Steve D. Christ, telephone (415) 972-2629.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 30, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24686 Filed 10-25-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-44517; FRL-3468-1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on trichlorobenzene (CAS No. 87-61-6), biphenyl (CAS No. 92-52-4), vinyl fluoride (CAS No. 75-02-5) and 3,4-dichlorobenzotrifluoride (CAS No. 328-84-7), submitted pursuant to final test rules and a consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing

consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for trichlorobenzene was submitted to EPA by the Chemical Manufacturers Association on behalf of the test sponsor, the Standard Chlorine Chemical Company, pursuant to a test rule at 40 CFR 799.1053. It was received by EPA on September 30, 1988. The submission describes acute toxicity of 1,2,3-trichlorobenzene to Gammarids (*Gammarus fasciatus*) under flow-through conditions. Environmental effects testing is required by this test rule.

Trichlorobenzens are used in organic intermediates, solvents, dye carriers, transformer and dielectric fluids.

Test data for biphenyl was submitted to EPA by the Monsanto Company, pursuant to a test rule at 40 CFR 799.925. It was received by EPA on October 6, 1988. The submission is a final report on biphenyl: Environmental fate in an anaerobic sewage lagoon sediment/water system. Chemical fate testing is required by this test rule.

Biphenyl is used primarily to produce dye carriers, heat transfer fluids and alkylated biphenyls.

Test data for vinyl flouride was submitted to EPA by the Chemical Manufacturers Association on behalf of the test sponsor, E.I. du Pont de Nemours and Co., pursuant to a test rule for fluoroalkenes at 40 CFR 799.1700. It was received by EPA on October 7, 1988. The submission describes a dominant lethal mutation study of vinyl fluoride in rats. Mutagenic effects testing is required by this test rule.

Fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

Test data for 3,4-dichlorobenzotrifluoride (DCBTF) was submitted to EPA by Occidental Chemical Corporation, pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on October 13, 1988. The submission describes an acute gammarid toxicity test.

Environmetal effects testing is required by this test rule. DCBTF is used as an herbicide intermediate.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to their completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44517). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: October 19, 1988.

Frank D. Kover,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-24736 Filed 10-25-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140106; FRL-3468-2]

Access to Confidential Business Information by AM-PRO Protective Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, AM-PRO Protective Agency (APA) of Columbia, SC for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Officer (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract No. 68-D8-0089, contractor APA, 6941 Trenholm Road, Columbia, SC will assist the Office of Administration and Resources Management's Facilities Management and Services Division in maintaining a system which controls door reader access to TSCA secured areas at EPA's National Computer Center in Research Triangle Park, NC.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract No. 68-D8-0089, APA will require access to CBI submitted to EPA under TSCA to perform successfully the duties specified under the contract. APA personnel will be given access to information submitted under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide APA access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA's Research Triangle Park facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1989.

APA personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: October 19, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-24737 Filed 10-25-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140104; FRL-3468-3]

Access to Confidential Business Information by Mathtech, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Mathtech, Incorporated (MAT) of Falls Church, VA for access to information which has been submitted to EPA under sections 4, 5, 6, 8, and 12 of the Toxic Substances Control Act (TSCA). Some of the informatioin may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In accordance with 40 CFR 2.306(j), EPA has determined that MAT will require access to CBI submitted to EPA under sections 4, 5, 6, 8, and 12 of TSCA to perform successfully work specified under their contract. EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, and 12 of TSCA that EPA may provide MAT access to these materials on a need-to-know basis.

Under contract no. 68-D8-0087, MAT, 5111 Leesburg Pike, Falls Church, VA, will assist the Office of Toxic Substances' Economics and Technology Division in their review of Premanufacture Notifications. MAT will also compile and analyze marketing and economic data collections on new chemicals. All access to TSCA CBI under this contract will take place at EPA Headquarters and MAT's facilities. Upon completing review of the CBI

materials, MAT will return all transferred materials to EPA.

Clearance of access to TSCA CBI under this contract is scheduled to expire on September 30, 1991.

MAT has been authorized for access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved the MAT security plan, has performed the required inspection of its facilities, and has found them to be in compliance with the requirements of the manual. MAT personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: October 19, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-24738 Filed 10-25-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3467-6]

Science Advisory Board; Executive Committee, Dioxin Panel; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Dioxin Panel of the Executive Committee of the Science Advisory Board will be held on November 29-30, 1988, at the Capitol Holiday Inn, 550 C Street SW., Washington, DC. The meeting will start at 8:30 a.m. on November 29th and adjourn no later than 3:30 p.m. on November 30th.

The meeting of the Dioxin Panel will review two documents developed by EPA's Office of Research and Development entitled "A Cancer Risk-Specific Dose Estimate for 2,3,7,8-TCDD (including Appendices)" and "Estimating Exposures to 2,3,7,8-TCDD".

An agenda for the workshop is available from Mary L. Winston, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382-2552. Background documents for Dioxin are available from: The Center for Research Information (CERI) 26 W. St. Clair Street, Cincinnati, OH 45268, (513) 569-7562. The meeting will be open to the public. Members of the public can make presentations to the Panel verbally on November 29th and in writing to be distributed at the meeting.

Any member of the public wishing to make a presentation must contact Dr. C. Richard Cothern, Executive Secretary to the Committee, by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A-101-F), 401 M Street SW., Washington, DC 20460 no later than c.o.b. on November 14, 1988. The Science Advisory Board expects that the public statements presented at its meeting will not be repetitive of previous submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Kathleen Conway,

Deputy Director, Science Advisory Board.

Date: October 11, 1988.

[FR Doc. 88-24735 Filed 10-25-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180791; FRL-3467-5]

Maryland Department of Agriculture, Receipt of Applications for Emergency Exemptions To Use (±)-2-[4,5-Dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUBJECT: EPA has received specific exemption requests from the Maryland Department of Agriculture (hereafter referred to as the "Applicant") to use the active ingredient (±)-2-[2,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (Pursuit™) to control broadleaf weeds on 3,000 acres of lima beans, 4,000 acres of snap beans, 6,000 acres on green peas in Maryland. Pursuit™ contains an unregistered active ingredient and, therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant these exemptions.

DATE: Comments must be received on or before November 10, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180791," should be submitted by mail to: Public Docket and Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

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

FOR FURTHER INFORMATION: By mail: Robert Forrest, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue specific exemptions to permit the use of an unregistered herbicide, (±)-2-[2,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (CAS 81335-77-5), manufactured as Pursuit,™, by American Cyanamid Company, on lima beans, snap beans, and green peas in Maryland. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

On June 10, 1988 the Administrator cancelled all labeled uses of the herbicide dinoseb on beans and peas. According to the Applicant, dinoseb was used to control annual broadleaf weeds on almost all the acreages of lima beans, snap beans, and green peas grown in Maryland. The Applicant states that other products that are labeled either do not control a broad spectrum of broadleaf weeds consistently or cannot be used in Maryland without causing crop injury.

The Applicant indicates that weeds in bean and pea fields reduce yields by competing with the crop and cause additional problems. Weeds reduce harvest efficiency and result in field abandonment when weed problems are severe. Weeds interfere with insecticide applications and may result in increased insect problems or additional insecticide applications.

Pursuit™ will be applied preplant or preemergence to the crop at a maximum

rate of 0.03125 pounds active ingredient per acre. A single application will be made sometime between March 1, and May 31, 1989 to approximately 4,000 acres of snap beans, 3,000 acres of lima beans, and 6,000 acres of green peas.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Maryland Department of Agriculture.

Date: October 17, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-24590 Filed 10-25-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-REP-I-ME-2]

Maine Ingestion Pathway Plan

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of Request for FEMA Review, Evaluation and Approval of State of Maine's Ingestion Pathway Plan for Seabrook Station.

SUMMARY: The State of Maine has formally submitted its radiological emergency response plan for responding to accidents at the Seabrook Nuclear Power Station and has requested FEMA's review, evaluation and approval of its State Plan. The State Plan submitted to FEMA includes emergency response plans for the State of Maine which is partially within the established ingestion exposure pathway emergency planning zone of the Seabrook Nuclear Power Station. The State Plan was submitted to FEMA in February 1987 and again submitted in October 1988 with amendments along with a formal request for FEMA's review, evaluation and approval of its State Plan.

ADDRESS: Copies of the Plan are available for review and copying at the FEMA Region I Office under 44 CFR 5.26, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests as set out in subpart C of 44 CFR, Part 5 (44 CFR 5.40, *et seq.*). Reproduction fees are 15 cents a page payable in advance. Public comments on the plan may be submitted to Mr. Henry Vickers, Regional Director, at the address below within 30 days of this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Mr. Henry Vickers, Regional Director, FEMA Region I, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

SUPPLEMENTARY INFORMATION: The policies and procedures for FEMA's review, evaluation and approval process on the adequacy of offsite plans and preparedness is established in 44 CFR 350. FEMA findings and determinations, made under this rule, are provided to the Nuclear Regulatory Commission (NRC) for its use in making Commission findings of the adequacy of offsite plans and preparedness and in making licensing decisions on authorizing full-power operation of commercial nuclear power plants.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 88-24765 Filed 10-25-88; 8:45 am]

BILLING CODE 6718-21-M

[FEMA-REP-I-NH-2]

New Hampshire Radiological Emergency Response Plan

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of Request for FEMA Review, Evaluation and Approval of New Hampshire State Radiological Emergency Plan for the Seabrook Nuclear Power Station.

SUMMARY: The State of New Hampshire has formally submitted its radiological emergency response plan for responding to accidents at the Seabrook Nuclear Power Station and has requested FEMA's review, evaluation and approval of its State Plan. The State Plan submitted to FEMA includes State and local emergency response plans for the State of New Hampshire and all local governments that are wholly or partially with the established plume exposure pathway emergency planning zone of New Hampshire for the Seabrook Nuclear Power Station. The State Plan was submitted to FEMA in December 1985 and again submitted in August 1988 with amendments along with a formal request for FEMA's review, evaluation and approval of its State Plan.

ADDRESS: Copies of the Plan are available for review and copying at the FEMA Region I Office under 44 CFR 5.26, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests as set out in subpart C of 44 CFR, Part 5 (44 CFR 5.40, et seq.). Reproduction fees are 15 cents a page payable in advance. Public comments on the plan may be submitted to Mr. Henry Vickers, Regional Director, at the address below within 30 days of this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Mr. Henry Vickers, Regional Director, FEMA Region I, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

SUPPLEMENTARY INFORMATION: The policies and procedures for FEMA's review, evaluation and approval process on the adequacy of offsite plans and preparedness is established in 44 CFR 350. FEMA findings and determinations, made under this rule, are provided to the Nuclear Regulatory Commission (NRC) for its use in making Commission findings of the adequacy of offsite plans and preparedness and in making licensing decisions on authorizing full-power operation of commercial nuclear power plants.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 88-24766 Filed 10-25-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 100488 AND 101788

Name of acquiring person, Name of acquired person, name of acquired entity	PMN No.	Date Terminated
Union Texas Petroleum Holdings, Inc., Texaco Inc., Texaco Producing Inc	88-2488	10/04/88
Delta plc., FL Industries Holdigns, Inc., FL Industries, Inc. Surprenant Divison	88-2620	10/04/88
KDR Associates, c/o Kohlberg Kravis Roberts $ Co., Macmillan, Inc., Macmillan, Inc	88-2652	10/04/88
Blue Cross and Blue Shield of Central New York, Inc., Plan Investment Fund, Inc., Plan Investment Fund, Inc	88-2665	10/04/88
DKM, Ltd., Thetford Corp., Thetford Corp	88-2668	10/04/88
Toyoda Automatic Loom Works, Ltd., Toyota Industrial Equipment Mfg., Inc. (joint venture), Toyota Industrial Equipment Mfg., Inc	88-2675	10/04/88
Kenetech Corp., Joel M. Canino (New CNF, Inc.), CNF Acquisition I, Inc., CNF Acquisition II, Inc	88-2692	10/04/88
Kenneth Schnitizer, a natural person, PHM Corp., ICM Mortgate Corporation	88-2699	10/04/88
Jostens, Inc., School Pictures, Inc., School Pictures, Inc	88-2626	10/05/88
Settsu Corp., Manufacturing Acquisition Associates, L.P., Uarco Incorporated	88-2617	10/06/88
The Clayton & Dubilier Private Equity Fund III Ltd. Ptn, Colgate-Palmolive Co., The Kendall Co.	88-2693	10/06/88
JMB Group Trust IV, American Telephone and Telegraph Company, Telephone Real Estate Equity Trust	88-2539	10/07/88
MWC Holdings, Inc., Joint Venture Corp., Joint Venture Corp	88-2590	10/07/88
Daniel J. Sullivan, The Vollrath Co., Vollrath Refrigeration, Inc	88-2591	10/07/88
Paul W. Lowden, Margaret Elardi, Pioneer Hotel & Gambling Hall, Inc	88-2616	10/07/88
Richard E. Rainwater, American Medical International, Inc., American Medical International, Inc	88-2634	10/07/88
Wyman-Gordan Co., Precision Founders, Inc., Precision Founders, Inc	88-2638	10/07/88
York Hannover Holding AG, McDermott International, Inc., McDermott International Trading (Germany) GmbH	88-2674	10/07/88
Vintage Petroleum, Inc., Donald C. Slawson, Canyon Oil & Gas Company	88-2690	10/07/88
JMB Income Properties, Ltd.-XIII, American Telephone and Telegraph C., Telephone Real Estate Equity Trust	88-2714	10/07/88
Warburg, Pincus Capital Company, L.P., LCCI Communications, Inc., LCI Communications, Inc	88-2728	10/07/88
Warburg, Pincus Capital Company, L.P., LCI Communications Holdings Co., LICI Communications Holdings Co	88-2729	10/07/88
Edward W. Wedbush, Morgan, Olmstead, Kennedy & Gardner Capital Corp., Morgan, Olmstead, Kennedy & Gardner Capital Corp	88-2731	10/07/88
Siemens Aktiengesellschaft, Newmont Mining Corp., Newmont Oil Co.	88-2733	10/07/88
Computer Associates International, Inc., American Information Technologies Corp., Applied Data Research, Inc	88-2615	10/11/88
Dumez S.A., L. Legrand Price, TFI Building Materials, Inc	88-2703	10/11/88
General Electric Co., Portec, Inc., Portec Lease Corp	88-2736	10/11/88
Lincoln National Corp., United HealthCare Corp., Peak Health Care, Inc	88-2739	10/11/88
Chock Full O'Nuts Corp., Jimbo's Jumbos, Inc., Jimbo's Jumbos, Inc	88-2745	10/11/88
General Investments Australia Limited, Forstmann & Company, Inc., General Investments America, Inc	88-2655	10/12/88
Derby International Corporation S.A., Huffy Corp., Raliegh Cycle Company of America	88-2680	10/12/88
PacifiCorp, UNC Inc., ICC Communications Corporation	88-2691	10/12/88
Mitsui Engineering and Shipbuilding Co., Ltd., Fruehauf Corp., Paceco	88-2694	10/12/88
The ARA Group, Inc., Del Web Corp., Del Webb Recreational Properties, Inc	88-2720	10/12/88
Adolph Coors, Jr. Trust, Graphic Packaging Corp., Graphic Packaging Corp	88-2722	10/12/88
Adolph Coors, Jr. Trust, Graphic Packaging Corp., Graphic Packaging Corp	88-2726	10/12/88
American Telephone and Telegraph Co., AT&T Automotive, Inc., AT&T Automotive, Inc	88-2738	10/12/88
Ford Motor Co., AT&T Automotive, Inc., AT&T Automotive, Inc	88-2740	10/12/88
Sandvik AB, TRW Inc., Mission Valve & Pump Co	88-2624	10/13/88
General Electric Co., Tiffany & Co., Tiffany & Co	88-2641	10/13/88
Jean Noel Bongrain, Wilson Foods Corp., Fischer Packing Co	88-2705	10/13/88
Wasserstein, Perella Partners, L.P., KDI Corp., KDI Corp	88-2719	10/13/88
Wasserstein, Pereila Partners, L.P., KDI Corp.,m KDI Corp	88-2721	10/13/88
GATX Corp., Union Pacific Corp., Calnev Pipe Line Co	88-2723	10/13/88
VMS Institutional Mortgage Fund, VMS Hotel Investment Fund, VMS Hotel Investment Fund	88-0014	10/13/88
VMS Institutional Mortgage Fund, VMS Short Term Income Trust, VMS Short Term Income Trust	89-0015	10/13/88
VMS Institutional Mortgage Fund, VMS Mortgate IOnvestors L.P. III, VMS Mortgage Investors L.P. III	89-0016	10/13/88
VMS Institutional Mortgage Fund, VMS Mortgage Investors L.P. II, VMS Mortgage Investors L.P. II	89-0017	10/13/88
VMS Institutional Mortgage Fund, VMS Mortgage Investors L.P., VMS Mortgage Investors L.P.	89-0018	10/13/88
Amstrad plc, Micron Technology, Inc., Micron Technology, Inc	89-0038	10/13/88
Noble Drilling Corp., The Royal Bank of Canada, Peter Bawden Drilling Ltd	88-2607	10/14/88
Bennett S. Le Bow, American Brands, Inc., American brands, Inc	88-2629	10/14/88
Kato Kagaku Co., Ltd., The Prudential Insurance Company of America, The Chicago Hotel Venture	88-2565	10/17/88
Kato Kagaku Co., Ltd., Wacker Stetson Joint Venture, The Chicago Hotel Venture	88-2566	10/17/88
The Nomura Securities Co., Ltd., Myron R. Rosenthal, GNP Holdings, Inc	88-2604	10/17/88
IDE Corp., Compagnie Generale d'Electricite, Alcatel Information Systems, Inc	88-2663	10/17/88
Yuichiro Inomata, Conrad Cafritz,One Washington Circle, Inc	88-2732	10/17/88
LSI Logic Corp., Intelligent Systems Operating, L.P., Video Seven Inc	89-0003	10/17/88
Gulf & Western Inc., Barclay's PLC, Barclays Bank of Delaware, N.A. and BarclaysAmerican	89-0005	10/17/88
The Nomura Securities Co., Ltd., Brian P. Monieson, GNP Holdings, Inc	89-0010	10/17/88
International Business Machines Corp., Horne Properties, Inc., Horne Properties, Inc	89-0011	10/17/88
KKR Associates, Mcmillan, Inc., Ceratin subsidiaries and assets of MAC	89-0012	10/17/88
Anders Wilhelmsen & Co., Royal Admiral Cruises Ltd., Royal Admiral Cruises Ltd	89-0025	10/17/88
900 Partners' Investments, Amfac, Inc., Amfac, Inc	89-0035	10/17/88
Citadel Holding Corp., Emil Fish, La Brea Branch Office	89-0043	10/17/88
Walter Meier Holding AG, Equipment Importers, Inc., Equipment Importers, Inc	89-0044	10/17/88
Munchener Ruckuersicherungs-Gesellschaft, Munich American Reassurance Co., Munich American Reassurance Co	89-0047	10/17/88
Munchener Ruckuersicherungs-Gesellschaft, Munich American Reinsurance Co., Munich American Reinsurance Co	89-0048	10/17/88
Integrated Resources, Inc., Mid-Continent Bottlers, Inc., Mid-Continent Bottlers, Inc	89-0049	10/17/88
Southeast Banking Corp., AmeriFirst Bank, AmeriFirst Bank	89-0054	10/17/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notificaiton Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88–24754 Filed 10–25–88; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88F–0317]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of disodium decanedioate as a component of lubricants that may contact food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–473–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4102) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of disodium decanedioate as a component of lubricants that may contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 20, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–24762 Filed 10–25–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88F–0339]

Eastman Kodak Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Eastman Kodak Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly(ethylene 2,6-naphthalene dicarboxylate) as a basic resin in articles or as a component of articles intended for single-use or repeated-use in contact with food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4110) has been filed by Eastman Kodak Co., Eastman Chemical Division, P.O. Box 511, Kingsport, TN 37662, proposing that Part 177—Indirect Food Additives: Polymers (21 CFR Part 177) be amended to provide for the safe use of poly(ethylene 2,6-naphthalene dicarboxylate) as a basic resin in articles or as a component of articles intended for single-use or repeated-use in contact with food.

The potential enviromental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 17, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–24763 Filed 10–25–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88F–0340]

Shell Oil Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Shell Oil Co. has filed a petition proposing that the food additive regulations be amended to provide for additional safe uses of poly-1-butene resins and butene/ethylene copolymers containing no more than 6 weight-percent ethylene as articles or components of articles intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4105) has been filed by the Shell Oil Co., One Shell Plaza, P.O. Box 4320, Houston, TX 77210, proposing that § 177.1570 *Poly-1-butene resins and butene/ethylene copolymers* (21 CFR 177.1570) be amended to provide for additional safe use of poly-1-butene resins and butene/ethylene copolymers containing no more than 6-weight-percent ethylene as articles or components of articles intended for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 17, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–24764 Filed 10–25–88; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Clinical Applications, Prevention and Treatment Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Applications, Prevention and Treatment Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on November 14, 1988, at the Guest Quarters, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting will be open to the public from 8:30 a.m. to 9 a.m. on November 14, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Clinical Applications, Prevention and Treatment Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. until adjournment on November 14. These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496–5717, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Hortencia M. Hornbeak, Executive Secretary, Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH, Westwood Building, Room 3A05, Bethesda, Maryland 20892, telephone (301–496–0123), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: October 21, 1988.

William F. Raub,

Deputy Director, National Institutes of Health

[FR Doc. 88–24888 Filed 10–25–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on November 4, 1988, Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland. The meeting will be open to public from 8:30 a.m. to 9 a.m. to discuss administrative details or other issues relating to the committee activities. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

The meeting will be closed to the public from 9 a.m. to adjournment in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning this meeting may be obtained from Dr. Melvin H. Gottlieb, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, Room 3A11, Bethesda, Maryland 20892, (301) 496–0754.

Mrs. Carole Frank, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, Room 4C27, Bethesda, Maryland 20892, 301–496–0803, will provide summaries of the meeting and roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health)

Dated: October 21, 1988.

William F. Raub,

Deputy Director, National Institutes of Health.

[FR Doc. 88–24887 Filed 10–25–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings of Subcommittee B and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of Subcommittee B and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public to discuss administrative details for approximately one hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Edith Wynkoop, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, Room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B.

Executive Secretary: Judith M. Podskalny, Westwood Building, Room 417A, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–7841.

Dates of Meeting: November 9–10, 1988.

Place of Meeting: Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: November 9, 7:30 p.m.—8:30 p.m.

Closed: November 9, 8:30 p.m. to recess. November 10, 8:00 a.m. to adjournment.

Name of Committee: National Diabetes and digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D.

Executive Secretary: William E. Elzinga, Westwood Building, Room 421, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–7546

Date of Meeting: November 18, 1988.
Place of Meeting: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: November 18, 8:30 a.m.—9:30 a.m.
Closed: November 18, 9:30 a.m. to adjournment.

Dated: October 21, 1988.

William F. Raub,

Deputy Director, National Institutes of Health

[FR Doc. 88-24889 Filed 10-25-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-88-1877; FR2572]

Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of application deadline for funds under the CDBG Program for Indian Tribes and Alaskan Native Villages for Fiscal Year 1989.

SUMMARY: This Notice sets the deadline dates for filing applications for funds under the Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages for Fiscal Year 1989. Applications are required in order to provide HUD with the information necessary to rate the proposed project(s) and to assure HUD that the necessary citizen participation has taken place.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy P. Gonnella, Office of Program Policy Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755-6092). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This Notice sets the deadline dates for submitting applications for the Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages. HUD will use the information furnished in these applications to rate the proposed project(s) and to assure the Department that there has been the necessary citizen participation. These dates apply only to applications submitted by Indian Tribes and Alaskan Native Villages for Fiscal Year 1989.

The field responsibility for the administration of the program is divided among the following offices: Region V Office of Indian Programs (OIP) in Chicago, responsible for all HUD Indian program activities within Regions I–V, plus the State of Iowa; Oklahoma City Office, responsible for all HUD Indian program activities in the States of Arkansas, Texas, Oklahoma, Kansas, Louisiana, and Missouri; Region VIII, OIP in Denver, responsible for all HUD Indian program activities in Region VIII, plus the State of Nebraska; Region IX, OIP in Phoenix, responsible for all HUD Indian program activities in Region IX, plus the State of New Mexico; Region X, OIP in Seattle, responsible for all HUD Indian program activities in Region X, with the exception of the State of Alaska; and the Anchorage Office, responsible for all HUD Indian and Alaskan Native program activities in the State of Alaska.

Applications will be accepted by HUD as of the publication date of this Notice.

FINAL DATES FOR SUBMISSION OF APPLICATIONS

Offices	Applications must be submitted no later than
Region V, OIP	Feb. 10, 1989.
Oklahoma City Office	Nov. 30, 1988.
Region VIII, OIP	Nov. 23, 1988.
Region IX, OIP	Feb. 24, 1989.
Region X, OIP	Jan. 10, 1989.
Anchorage Office	Jan. 31, 1989.

Applications must be received or postmarked no later than the closing date specified above. Applications received or postmarked after the deadline will not be considered.

Tribes and Villages submitting applications for this program must do so on HUD forms approved by the Office of Management and Budget under OMB Control Number 2506-0043. These forms request information which assures HUD that the necessary citizen participation has taken place. Forms will be provided by the appropriate HUD Field Offices.

Authority: Sec. 107, Housing and Community Development Act of 1974 (42 U.S.C. 5307); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 19, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

[FR Doc. 88-24732 Filed 10-25-88; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-830-09-4830-13]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection on information and related forms and explanatory material may be obtained by contacting the Bureau's clearance office at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau's Clearance Officer and to the Office of Management of Budget's Interior Department Desk Officer, Washington, DC 20503, telephone 202/395-7313.

Title: Application for Seasonal Employment.

OMB Approval Number: 1004-0150

Abstract: This form allow applicants to present information necessary for the Bureau of Land Management to judge their qualifications, rating and ranking for a seasonal position with the Bureau.

Bureau Form Number: 1400-104(302).

Frequency: Annually.

Description of Respondents: Individuals applying for seasonal employment with the Bureau of Land Management.

Estimated Completion Time: 25 minutes.

Annual Response: Approximately 10,000.

Annual Budget Hours: Estimated 4,500.

Bureau Clearance Officer: Rose M. Berezowsky, 202/653-8853.

Date: October 17, 1988.

Tom Allen,

Assistant Director, Management Services.

[FR Doc. 88-24688 Filed 10-25-88; 8:45 am]

BILLING CODE 4310-84-M

[Alaska AA-48649-I]

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48649-I has been received covering the following lands:

Copper River Meridian, Alaska

T. 13 N., R. 5 W.,
Sec. 17, NE¼NE¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from July 1, 1988, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48649–I as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1988, subject to the terms and conditions cited above.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

Dated: October 14, 1988.

[FR Doc. 88–24689 Filed 10–25–88; 8:45 am]

BILLING CODE 4310–JA–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance office at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20253, telephone (202) 395–7313.

Title: Exemption for Coal Extraction Incidental to Extraction of Other Minerals—30 CFR 702.

OMB Number: 1029–0089.

Abstract: This part implements the exemption in section 702(28) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95–87. It requires the regulatory authority to make a determination of exemption from the requirements of the Act for operators extracting less than 16⅔ tonnage of coal incidental to other minerals. This information will be used by the regulatory authority to make that determination.

Bureau Form Number: None.

Frequency: Annually.

Description of Respondents: Producers of Coal and other Minerals.

Estimated Completion Time: 1 hour.

Annual Responses: 1.

Annual Burden Hours: 1.

Bureau Clearance Officer: Nancy Ann Baka (202) 343–5981.

Date: October 11, 1988.

Andrew F. DeVito,

Acting Chief, Regulatory Development and Issues Management Office.

[FR Doc. 88–24752 Filed 10–25–88; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–388 (Final)]

Certain All-Terrain Vehicles from Japan

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–388 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether 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 Japan of certain all-terrain vehicles (ATVs),[1] provided for in item 692.10 of the Tariff Schedules of the United States (TSUS), that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Commerce has extended the investigation and will make its final determination on or before January 25, 1988, and the Commission will make its final injury determination by March 10, 1989 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207 as amended, 53 FR 33041 *et seq.* (August 29, 1988)), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: September 12, 1988.

FOR FURTHER INFORMATION CONTACT: Judith C. Zeck (202–252–1199), 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

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain all-terrain vehicles are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on February 9, 1988, by Polaris Industries L.P., Minneapolis MN. In respone to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 11351, April 6, 1988).

Participation in the Investigation

Persons wishing to participate in this investigation 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 twenty-one (21) days after the 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.

[1] The products covered by this investigation are certain ATVs, currently reported under item 692.1090 of the Tariff Schedules of the United States Annotated (TSUSA) and classifiable in subheading 8703.21.0000 of the Harmonized Tariff Schedule of the United States. Certain ATVs are motor vehicles designed for off-pavement use by one operator and no passengers and contain internal combustion engines of less than 1000cc cylinder capacity. The ATVs under investigation are non-amphibious, have three or four wheels, and weigh less than 600 pounds. They have a set designed to be straddled by the operator and handlebars for steering control.

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 this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), as amended, 53 FR 33041 *et seq.* (August 29, 1988) each document filed by a party to the investigation must be served on all other parties to the investigation (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), as amended, 53 FR 33041 *et seq.* (August 29, 1988)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. 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 by parties containing business proprietary information without a certificate of service indicating that it has been filed with all the parties that are authorized to receive such information under a protective order.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on January 13, 1989, and a public version will be issued thereafter pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 27, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 18, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on January 24, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 24, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a non-business-proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 2, 1989. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 2, 1989.

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 Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data 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 information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary 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) as amended, 53 FR 33041 *et seq.* (August 29, 1988)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than February 7, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 21, 1988.

[FR Doc. 88-24782 Filed 10-25-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-285]

Certain Chemiluminescent Compositions and Components Thereof and Methods of Using the Same; Commission Decision Not To Review an Initial Determination Amending the Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 3) issued by the presiding administrative law judge (ALJ) amending the notice of investigation in the above-captioned investigation.

ADDRESS: Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1108.

FOR FURTHER INFORMATION CONTACT: Thomas J. O'Connell, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1108. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On September 19, 1988, the presiding ALJ issued an ID amending the notice of investigation to reflect amendments to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) effected by the Omnibus

Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 stat. 1107). The notice of investigation was amended to delete references to the former requirements that the industry in the United States be efficiently and economically operated and that the effect or tendency of the alleged unfair acts is to destroy or substantially injure an industry in the United States.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and interim rule 210.53 (53 FR 33070, Aug. 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 17, 1988.

[FR Doc. 88–24783 Filed 10–25–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–283]

Certain Electronic Dart Games; Commission Decision Not To Review an Initial Determination Amending the Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 5) issued by the presiding administrative law judge (ALJ) amending the notice of investigation to the above-captioned investigation.

ADDRESS: Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Randi Field, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1099. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On September 22, 1988, the presiding ALJ issued an ID amending the notice of investigation to reflect amendments to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) effected by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 stat. 1107). The notice of investigation was amended to delete the reference to the former requirement that an industry in the United States be efficiently and economically operated and to delete the reference to the former requirement that complainant be required to prove that the effect or tendency of the alleged unfair act of patent infringement is to destroy or substantially injure an industry in the United States. No petitions for review or agency comments regarding the ID were received

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and interim rule § 210.53 (53 FR 33070, Aug. 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 21, 1988.

[FR Doc. 88–24784 Filed 10–25–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–283]

Certain Electronic Dart Games; Amendment of Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the notice of investigation in the above-captioned investigation has been amended in the manner described below.

ADDRESS: Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1575. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On September 22, 1988, the presiding administrative law judge issued an initial determination (ID) amending the notice of investigation and directing the Commission Secretary, in the absence of Commission review of the ID, to publish the amendment to the notice of investigation in the **Federal Register.** The Commission has determined not to review the ID. Accordingly, paragraph (1) of page 2 of the notice of investigation has been amended to read as follows:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the unlawful importation into the United States, after importation, of certain electronic dart games, by reason of alleged infringement of claims 1, 2, 6, 8, or 10 of U.S. Letters Patent 4,057,251 and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 21, 1988.

[FR Doc. 88–24785 Filed 10–25–88; 8:45 am]

BILLING CODE 7020–02–M

[332–263]

Competitive Conditions in the U.S. and World Markets for Fresh Cut Roses

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: October 21, 1988.

SUMMARY: As required by section 4509 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 Stat. 110, approved Aug. 23, 1988), the Commission has instituted investigation No. 332–263 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of reporting on (1) the competitive factors affecting the domestic rose-growing industry, including competition from imports; (2) the effect that the European Community's tariff rate for imported roses has on world trade of roses; and (3) the extent to which unfair trade practices and foreign barriers to trade are impeding the marketing abroad of domestically produced roses. The 1988 Act requires that the Commission report the results of its investigation within 240 days of enactment, or by April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Stephen D. Burket; Agriculture, Fisheries, and Forest Products Division; U.S. International Trade Commission; Washington, DC 20436; telephone (202) 252–1318.

Hearing: A public hearing in connection with the investigation will be held January 18, 1989, in Washington, DC. All persons will have the

opportunity to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than noon January 4, 1989.

Written Submissions: Interested persons are invited to submit written statements concerning the investigation, in lieu of, or in addition to, appearances at the public hearing. 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 the public. To be assured of consideration by the Commission, written statements should be received at the earliest practicable date, but not later than February 1, 1989. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252–1809.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 21, 1988.

[FR Doc. 88–24786 Filed 10–25–88; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31254]

Octoraro Railway, Inc.; Acquisition and Operation Exemption; Certain Rail Line of Southeastern Pennsylvania Transportation Authority

Octoraro Railway, Inc. (Octoraro) has filed a notice of exemption to acquire by purchase and to operate approximately 37 miles of rail line now owned by Southeastern Pennsylvania Transportation Authority (SEPTA) which extends from milepost 18 near Wawa, PA, to milepost 55 near Sylmar, PA. The transfer of this rail line to Octoraro is to be accomplished first by purchase of the line from SEPTA by Chester County, PA (Chester), and then, simultaneously, by Chester's sale of the line to Octoraro. The invovled transaction was to be consummated on or about October 5, 1988. Any comments must be filed with the Commission and served on John D. Heffner and Mary Todd Foldes, Gerst, Heffner, Foldes & Podgorsky, 1700 K Street NW., Suite 1107, Washington, DC 20006, and Octoraro Railway, Inc., attn. Albert J. Derr, Chrmn., P.O. Box 146, Kennett Square, PA 19348.

Octoraro has certified that no properties qualifying for inclusion in the National Register of Historic Places will be affected as a result of the involved transaction.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. 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 automatically stay the transaction.

Decided: October 4, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88–24221 Filed 10–25–88; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 477]

Modifications to General Purpose Costing System—GPCS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed policy.

SUMMARY: In accordance with recommendations of the Railroad Accounting Principles Board, the Commission proposes to adopt depreciation accounting, a deferred tax adjustment, and current cost of capital in developing general-purpose costs which are used in specific regulatory applications. These modifications are intended to improve the accuracy of the Commission's general purpose costing system. Additionally, the Commission proposes to adopt a transition methodology which will be used to re-cast the statutorily mandated jurisdictional threshold to reflect the impact of the proposed costing changes.

DATE: Comments will be due December 12, 1988.

ADDRESS: An original and 15 copies of comments should be sent to: Office of the Secretary Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Leslie J. Selzer (202) 275–7627; or William T. Bono (202) 275–7354, TDD for hearing impaired (202) 275–1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 275–7428. Assistance for the hearing impaired is available through TDD Services (202) 275–1721 or by pickup from Dynamic Concepts, Inc. in Room 2229, at Commission headquarters.

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

This decision is issued under authority of 49 U.S.C. 10321.

Decided: October 19, 1988.

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

Vice Chairman Andre dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88–24728 Filed 10–25–88; 8:45 am]

BILLING CODE 7035–01–M

[No. MC–F–19157]

Raynald R. Dupuis; Continuance in Control Exemption; Arrow Leasing, Inc.

ADDRESSES: Send pleadings, referring to No. MC–F–19157, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
and
Petitioners' representative: Charles H. Webb, 606 London House, 1001 Wilson Boulevard, Arlington, VA 2209.

Pleadings should refer to No. MC–F–19157.

Decided: October 19, 1988.

Under 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a)(5), the continuance in control by Raynald R. Dupuis, a noncarrier individual, of Arrow Leasing, Inc., which

is seeking an initial grant of operating authority in No. MC–209730 to operate as a motor common carrier of passengers.

This exemption will be effective on November 25, 1988. Petitions for reconsideration must be filed by November 15, 1988. Petitions for stay must be filed by November 7, 1988.

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

Noreta R. McGee,

Secretary.

[FR Doc. 88–24729 Filed 10–25–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–290 (Sub–No. 47X)]

Norfolk and Western Railway Co. and Wabash Railroad Co.; Discontinuance of Service and Abandonment Exemption in Gary, IN

Norfolk and Western Railway Company (NW) and Wabash Railroad Company (Wabash) (collectively, applicants) filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to discontinue service over and abandon, respectively, a 1.3-mile line of railroad between milepost 239 and milepost 240.3, in Gary, IN. Wabash owns the involved line and leases it to NW.

Applicants have 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 on the line either in 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 of 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 25, 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 November 7, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 15, 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 applicants' representative: Roger A. Peterson, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicants have filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) has issued an environmental assessment (EA). 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.

In the EA, SEE notes that the U.S. Fish and Wildlife Service has advised that the Indiana bat and the dune thistle are endangered species located in the area. The Indiana Department of Natural Resources has advised that on the west end of the line there is the State threatened yellow-crowned night heron that use the wetlands located there for feeding. Both agencies recommend that applicants use caution when removing rail and ballast near the wetlands.

Decided: October 17, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–24730 Filed 10–25–88; 8:45 am]

BILLING CODE 7035–01–M

---

[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.

[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).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Burns et al.

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree with Defendant Chittick in *United States v. Burns et al.*, Civil Action No. 88–94–L, has been lodged with the United States District Court for the District of New Hampshire. The suit is a cost recovery action brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99–499, 100 Stat. 1613 ("CERCLA"). The action seeks to recover costs incurred by the United States in response to the release or threat of release of hazardous substances from the former Urethane Molded Products Company manufacturing plant site ("UMP Site") and the former Polythane Company manufacturing plant site ("Polythane Site"), both of which are located in Gonic, New Hampshire.

The settling defendant is Claude Chittick, who is a defendant as to the UMP Site only. The United States alleges that Chittick is jointly and severally liable with defendant William Burns for the $61,320.14 in response costs incurred by the United States in connection with the UMP Site. The proposed Consent Decree requires Chittick to pay $30,000.00 to the United States for costs incurred by the United States in conducting investigatory and removal activities at the UMP Site. The proposed Consent Decree does not resolve the liability of the other defendants in this action.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Burns et al.*, D.J. Reference No. 90–11–3–314.

The proposed Consent Decree may be examined at the office of the United States Attorney, Room 439, Federal Building, 55 Pleasant Street, Concord, NH 03001; and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, Room 2203, John F. Kennedy Federal Building, Boston, Mass. 02203. A copy of the proposed Consent Decree may be obtained in person or by mail from the

Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please provide a check in the amount of $1.00 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-24724 Filed 10-25-88; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Justice Assistance

State Reinbursement Program for Incarcerated Mariel-Cubans

AGENCY: Bureau of Justice Assistance, Justice.

ACTION: Notice of issuance of solicitation for applications to reimburse states for expenses incurred by the incarceration of Mariel-Cubans.

SUMMARY: The Bureau of Justice Assistance (BJA) is administering a program to reimburse states for expenses incurred by the incarceration of certain Mariel-Cubans in state facilities.

ADDRESS: Bureau of Justice Assistance, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Louise Lucas, (202) 724-8374. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Bureau of Justice Assistance (BJA) is publishing a notice of issuance of solicitation to implement a State Reimbursement Program for Incarcerated Mariel-Cubans. The Department of Justice Appropriation Act for 1989 (Pub. L. 100-459) allocates up to $5 million for the purpose of making grants to states for their expenses for the incarceration of Mariel-Cubans in state facilities.

I. General Provisions

Statutory Authority:

The statutory authority is the Department of Justice Appropriations Act for 1989, Pub. L. 100-459.

Submission Date

The submission date for state applications is no later than February 1, 1989.

Eligible Applicants

All states are eligible to apply for and receive grants. *State* means any state of the United States and includes the District of Columbia and the Commonwealth of Puerto Rico.

Participating States

It is expected that the 38 states that participated last year may participate again this year, specifically, Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and Wisconsin. There may be the possibility of a few additional states participating also.

II. Allocations and Use of Funds

Fund Availability

The Act provides a total of $5 million for the purpose of making grants to states. The total amount of funds awarded will be on the basis that the certified number of incarcerated persons in a state bears to the total certified number of such incarcerated persons. The amount of reimbursement per prisoner, per annum, shall not exceed $12,000.

Fund Use

The intent of the public law is to reimburse the states for partial expenses incurred by reason of Mariel-Cubans having to be incarcerated in state facilities. A budget or expenditure plan is not required as the award will be solely for reimbursement. No match funds are required.

III. Application Content

(a) All state applicants *must* submit Standard Form 424 (Application for Federal Assistance), and a *certified listing* of incarcerated Mariel-Cuban prisoners. We request that inmates previously verified be *separated* from newly submitted inmates. For those previously verified, there is no need to resubmit Items 13 & 14 below. The certified listing will include information in the following sequence:

(1) Name (last name first).
(2) AKA (also known as).
(3) Alien Identification Number (e.g., A24456789).
(4) Inmate Number.
(5) Date of Birth.
(6) Incarceration Date.
(7) Probable earliest release date.
(8) Conviction Offense (Criminal Offense Code No. not acceptable).
(9) Conviction date.
(10) Last known address.
(11) State facility housing the prisoner.
(12) State facility address.
(13) I-247 Form—Immigration Detainer Notice (If INS has filed a Detainer on this prisoner, submit a copy).
(14) Fingerprint card.

Submission of Mariel-Cuban data in an alternative format *must* be approved by the BJA prior to submission of an application. Please contact Louise Lucas, BJA, 202/724-8374.

(b) The certified listing *MUST* be signed by the Governor or his authorized representatives.

(c) The period of incarceration for reimbursement purposes is October 1, 1988 to September 30, 1989. The computation of funds will be based on an aggregate total of certified prisoners incarcerated for a 12-month period (e.g., if two prisoners are incarcerated for six months during the period, the state will be reimbursed the full amount for one year.

(d) The Act is specific in that the prisoner must have been paroled into the United States by the Attorney General during the 1980 influx of Mariel-Cubans. This means those Cubans who *Entered Without Inspection* (EWI), earlier arrivals (pre-boatlift), and/or later arrivals (post-boatlift), cannot be included and, thus, no expenses will be reimbursed.

(e) State law will prevail when a determination is required as to what constitutes a state facility and/or a state prisoner.

IV. Review of State Applications

State applications must be submitted in the form and at the time prescribed.

(a) The application and certified listing will be reviewed by BJA and a cross-check verification of prisoners will be made by the Immigration and Naturalization Service of the U.S. Department of Justice. This review will be accomplished no later than April 1, 1989, and grants will be immediately made to states.

(b) Compliance with Executive Order 12372, "Intergovernmental Review of Federal Programs." This program is covered by Executive Order 12372 and Department of Justice implementing regulations 28 CFR Part 30. States must submit grant applications to the state's *Single Point of Contact*, if there is a *Single Point of Contact*, and if this program has been selected for coverage by the state process, at the same time applications are submitted to the Federal agency. State processes have 60 days starting from the application deadline to comment on applications. Applicants should contact their state "Single Point of Contact" as soon as possible to alert them to the prospective application and receive instructions regarding the process.

(c) The BJA will notify the applicant in writing of the specific reasons for the disapproval of the application amendment, in whole or in part.

V. Civil Rights Assurances

The applicant State must specifically assure that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-descrimination laws and regulations, including the following:

(a) Title VI of the Civil Rights Act of 1964;

(b) Section 809(c) of Justice Assistance Act of 1984;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975; and,

(f) The Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts, C, D, E, and G.

Any application for $500,000 or more shall be accompanied by a copy of the current Equal Employment Opportunity Program of the corrections department in accordance with the provisions of 28 CFR 42.301 *et seq.* State applicants that previously applied for and received funding under this initiative, and had an Office of Justice Programs' approval of their Equal Employment Opportunity Program, need only submit a statistical update of the previously approved program.

Charles P. Smith,

Director, Bureau of Justice Assistance.

[FR Doc. 88-29727 Filed 10-25-88; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Review Panel for the Job Training Partnership Act Presidential Awards; Meeting

The Review Panel for the Job Training Partnership Act (JTPA) Presidential Awards was renewed by Notice dated August 8, 1988, and published August 12, 1988, 53 FR 30482, to advise the Secretary of Labor on the selection of the Presidential Awards recipients.

Notice is hereby given of the meetings of the Review Panel for the JTPA Presidential Awards and its working groups during a two-week period to begin October 31, 1988.

Time and Place: 9:30 a.m., Room N5437–A Frances Perkins, Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210.

These meetings will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Panel will review and discuss personal information regarding the nominees, disclosure of which would constitute a clearly unwarranted invasion of privacy.

For further information, contact: Robert N. Colombo, Director, Office of Employment and Training Programs, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N–4703, Washington, DC 20210. Telephone: 202–535–0577.

Signed at Washington, DC, the 6th day of October, 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 88-24761 Filed 10-25-88; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Adcor Drilling et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are elgible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 7, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 7, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Wahington, DC, 20213.

Signed at Washington, DC this 11th day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition number	Articles produced
ADCOR Drilling (Workers)	Williston, ND	10/11/88	10/6/88	21,251	Oil & Gas.
Allied Products, Div. of Carrier (Workers)	Knoxville, TN	10/11/88	9/23/88	21,252	Air Conditioning.
Amerada Hess Corp, Northern Region (Workers)	Williston, ND	10/11/88	9/9/88	21,253	Oil & Gas.
Ashland Oil Co (Workers)	Beattyville, KY	10/11/88	9/28/88	21,254	Do.
Atlas Processing Co. (Workers)	Shreveport, LA	10/11/88	9/27/88	21,255	Lube & Fuel Stocks.
Ausimont (Company)	Elizabeth, NJ	10/11/88	9/28/88	21,256	Fluoropolymers.
Baker International (Workers)	Houston, TX	10/11/88	9/13/88	21,257	Oil & Gas.
Bell Helicopter (Workers)	Amarillo, TX	10/11/88	9/20/88	21,258	Helicopter Parts.
Bethela, Inc. (Workers)	Ripley, WVA	10/11/88	9/23/88	21,259	Oil & Gas
Bowen Tools, Inc. (Workers)	Williston, ND	10/11/88	9/15/88	21,260	Do.
Donald C. Slawson (Workers)	Amarillo, TX	10/11/88	9/26/88	21,261	Do.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition number	Articles produced
Donham Oil Tools Co., Inc. (Workers)	Katy, TX	10/11/88	9/26/88	21,262	Do.
Dyne Oil & Gas (Workers)	Borger, TX	10/11/88	9/29/88	21,263	Do.
E.Z. Construction, Co. (Workers)	Keene, ND	10/11/88	9/27/88	21,264	Do.
Elite Wireline, Inc. (Company)	Skiatook, OK	10/11/88	9/15/88	21,265	Do.
Electronic Data Systems (Company)	Fairfield, NJ	10/11/88	9/29/88	21,266	Computers.
Ernest E. Fey, Inc. (Workers)	W. New York, NJ	10/11/88	9/30/88	21,267	Men's Sweaters & Ladies' Skirts.
Great Lakes Enterprises Inc. (Workers)	Houston, TX	10/11/88	9/15/88	21,268	Oil & Gas.
Great West Operating Co., Inc. (Company)	Dallas, TX	10/11/88	9/28/88	21,269	Do.
Gregg Harriet Shirt Co. (Workers)	Exmore, VA	10/11/88	9/28/88	21,270	Men's & Boys' Shirts.
Halliburton Services Div. (Headquarters)	Duncan, OK	10/11/88	10/6/88	21,271	Oil & Gas.
Halliburton Services Division (Bakersfield)	Bakersfield, CA	10/11/88	10/6/88	21,272	Do.
Halliburton Services Division (Pittsburgh)	Pittsburgh, PA	10/11/88	10/6/88	21,273	Do.
Halliburton Services Division (Dallas)	Dallas, TX	10/11/88	10/6/88	21,274	Do.
Halliburton Services Div. (Midland)	Midland, TX	10/11/88	10/6/88	21,275	Do.
Halliburton Services Div. (Oklahoma City)	Oklahoma City, OK	10/11/88	10/6/88	21,276	Do.
Halliburton Services Div. (Shreveport)	Shreveport, LA	10/11/88	10/6/88	21,277	Do.
Halliburton Services Div. (Houston)	Houston, TX	10/11/88	10/6/88	21,278	Do.
Halliburton Service Div. (New Orleans)	New Orleans, LA	10/11/88	10/6/88	21,279	Do.
Halliburton Services Div. (Corpus Christi)	Corpus Christi, TX	10/11/88	10/6/88	21,280	Do.
Halliburton Services Div. (Wichita)	Wichita, KS	10/11/88	10/6/88	21,281	Do.
Halliburton Services Div. (Denver, CO)	Denver, CO	10/11/88	10/6/88	21,282	Do.
Halliburton Services Div. (Industrial Serv. Div.) (Duncan).	Duncan, OK	10/11/88	10/6/88	21,283	Do.
Hawthorne Oil & Gas (Workers)	Lafayette, LA	10/11/88	9/15/88	21,284	Do.
IMCO Services (Workers)	Houston, TX	10/11/88	9/30/88	21,285	Do.
Joe Melton Drilling Co. (Workers)	Midland, TX	10/11/88	9/29/88	21,286	Do.
L.D. Burns Drilling Co. (Workers)	Wichita Falls, TX	10/11/88	9/26/88	21,287	Do.
M-I Drilling Fluids (Workers)	Houston, TX	10/11/88	9/30/88	21,288	Do.
Magcobar Drilling Fluids (Workers)	Houston, TX	10/11/88	9/30/88	21,289	Do.
McVay Drilling Co. (Workers)	Hobbs, NM	10/11/88	9/23/88	21,290	Do.
Midwest Equipment Co. (Workers)	Odessa, TX	10/11/88	9/12/88	21,291	Do.
Melton Drilling Co. (Workers)	Midland, TX	10/11/88	9/29/88	21,292	Do.
Mustang Drilling Co. (Workers)	Great Bend, KS	10/11/88	9/21/88	21,293	Do.
Noble Drilling Corp. (Workers)	Tulsa, OK	10/11/88	9/19/88	21,294	Do.
Panther Drilling, Inc. (Company)	Dickinson, ND	10/11/88	9/25/88	21,295	Do.
Perdue Oilfield Services (Company)	Beattyville, KY	10/11/88	9/28/88	21,296	Do.
Petro Lewis Corp. (Workers)	Catarina, TX	10/11/88	9/22/88	21,297	Do.
Petroleum Information Corp. (Workers)	San Antonio, TX	10/11/88	9/22/88	21,298	Do.
Pine Valley Resources, Inc. (Company)	North East, PA	10/11/88	9/26/88	21,299	Do.
1Pitman Casing (Workers).	Williston, ND	10/11/88	9/12/88	21,300	Do.
Placid Oil Co. (Workers)	Houma, LA	10/11/88	9/23/88	21,301	Do.
Pool Well Serving Co. (Workers)	Reene, ND	10/11/88	9/27/88	21,302	Do.
Professional Geophysics, Inc. (Workers)	Houston, TX	10/11/88	9/15/88	21,303	Do.
Ram Drilling Co. (Company)	Browns, IL	10/11/88	9/26/88	21,304	Do.
Rebel Rentals, Inc. (Workers)	Youngsville, LA	10/11/88	9/26/88	21,305	Do.
Red Fork Drilling, Co. (Workers)	Seminole, OK	10/11/88	9/7/88	21,306	Do.
Republic Supply Co. (Workers)	Tioga, ND	10/11/88	9/26/88	21,307	Do.
Rocky Mountain Geophysics, Inc. (Company)	Denver, CO	10/11/88	9/25/88	21,308	Do.
Seibel & Sons, Inc. (Workers)	Ross, ND	10/11/88	9/22/88	21,309	Do.
Seismic Prospecting of Denver (Workers)	Englewood, CO	10/11/88	9/22/88	21,310	Do.
Slawson Drilling Co. (Workers)	Wichita, KS	10/11/88	9/14/88	21,311	Do.
Spartan Drilling and Workers Services, Inc. (Workers).	Sidney, MT	10/11/88	9/27/88	21,312	Do.
Stephens & Sons, Inc. (Company)	Corpus Christi, TX	10/11/88	9/15/88	21,313	Do.
Transamerican Natl Gas Corp (Workers)	Houston, TX	10/11/88	9/23/88	21,314	Do.
Transamerican Natl Gas Corp (Workers)	Laredo, TX	10/11/88	9/23/88	21,315	Do.
Teledyne Exploration Co. (Workers)	Houston, TX	10/11/88	9/21/88	21,316	Do.
Trainer Survey, Inc. (Workers)	Shreveport, LA	10/11/88	9/23/88	21,317	Do.
Uber Glove Co. (Workers)	Owatonna, MN	10/11/88	9/28/88	21,318	Gloves.
Whitesides Casing Crew, Inc. (Workers)	Laredo, TX	10/11/88	9/26/88	21,319	Oil & Gas.
Wilson Industries, Inc. (Workers)	Bay City, TX	10/11/88	9/30/88	21,320	Do.

[FR Doc. 88-24759 Filed 10-25-88; 8:45 am]
BILLING CODE 4810-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Amerada Hess et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II.

Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 7, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 7, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 17th day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition Number	Articles produced
Amerada Hess/Onshore Exploration (Company)	Houston, TX	10/17/88	9/28/88	21,321	Oil & Gas.
Amerada Hess/Onshore Admin. (Company)	Houston, TX	10/17/88	9/28/88	21,322	Do.
Amerada Hess/Onshore Exploration (Company)	Denver, CO	10/17/88	9/28/88	21,323	Do.
Atlas Wireline (Workers)	Victoria, TX	10/17/88	9/23/88	21,324	Do.
B&W Surveying & Mapping, Inc. (Company)	Midland, TX	10/17/88	9/27/88	21,325	Do.
Bethlehem Steel Corp. (USW)	Williamsport, PA	10/17/88	10/3/88	21,326	Steel Wire & Wire Rope.
Big Chief Drilling, Co. (Company)	Oklahoma City, OK	10/17/88	10/5/88	21,327	Oil & Gas.
Buford Drilling Co. (Workers)	Clodine, TX	10/17/88	10/3/88	21,328	Do.
Burris Drilling Co. (Workers)	Casper, WY	10/17/88	10/3/88	21,329	Do.
Burton/Hawks, Inc. (Workers)	Casper, WY	10/17/88	10/30/88	21,330	Do.
Catalina (Workers)	Los Angeles, CA	10/17/88	10/5/88	21,331	Sportswear & Swimwear.
Circle M. Construction (Workers)	Midland, TX	10/17/88	10/3/88	21,332	Pipeliners.
Comet Drilling Co. (Company)	Eunice, LA	10/17/88	10/5/88	21,333	Oil & Gas.
Connor Sales Co. Inc. (Workers)	Williston, ND	10/17/88	9/15/88	21,334	Do.
Denton Mills, Inc. (ACTWU)	Centerville, MI	10/17/88	9/27/88	21,335	Children's Sweaters.
Dowell/Schlumberger, Inc. (Workers)	Mt. Carmel, IL	10/17/88	10/3/88	21,336	Oil & Gas.
Duquesne Light Co. (UMWA)	Greensboro, PA	10/17/88	9/28/88	21,337	Coal.
E&I Drilling Co. (Workers)	Odessa, TX	10/17/88	10/3/88	21,338	Oil & Gas.
Ethly Corporation (Workers)	Baton Rouge, LA	10/17/88	9/26/88	21,339	Do.
Gates Molded Products (IAM)	Houston, TX	10/17/88	10/3/88	21,340	Gaskets & Rings
General Motors Corp. CPC Doraville (UAW)	Doraville, GA	10/17/88	10/4/88	21,341	Automotive Components.
General Motors Corp. BOC Lansing (UAW)	Lansing, MI	10/17/88	10/4/88	21,342	Automobile.
General Motors Corp. BOC Lansing Body Assembly (UAW).	Lansing, MI	10/17/88	10/4/88	21,343	Automotive Bodies.
General Motors Corp. New Departure Hyatt (UAW)	Bristol, CT	10/17/88	10/4/88	21,344	Automotive Components.
General Motors Corp. Fisher Guide (UAW)	Elyria, OH	10/17/88	10/4/88	21,345	Do.
General Motors Corp. Saginaw Div. (UAW)	Athens, AL	10/17/88	10/4/88	21,346	Do.
General Motors Corp. CPC Pontiac	Pontiac, MI	10/17/88	10/4/88	21,347	Do.
General Motors Corp. Hydramatic Div. (UAW)	Ypsilanti, MI	10/17/88	10/4/88	21,348	Do.
General Hose Products (Workers)	Fairfield, NJ	10/17/88	10/6/88	21,349	Hose & Coupling.
Grace Drilling Co. (Workers)	Odessa, TX	10/17/88	9/23/88	21,350	Oil & Gas.
Gruss Petroleum Mgmt., Inc. (Company)	Midland, TX	10/17/88	9/29/88	21,351	Do.
Halliburton Services Welex Div.: Headquarters	Houston, TX	10/17/88	10/6/88	21,352	Do.
Halliburton Services (Oklahoma City Div.)	Oklahoma City, OK	10/17/88	10/6/88	21,353	Do.
Halliburton Services (Midland Div.)	Midland, TX	10/17/88	10/6/88	21,354	Do.
Halliburton Services (Denver Div.)	Denver, CO	10/17/88	10/6/88	21,355	Do.
Halliburton Services (Houston Div.)	Houston, TX	10/17/88	10/6/88	21,356	Do.
Halliburton Services (Bakersfield Div.)	Backersfield, CA	10/17/88	10/6/88	21,357	Do.
Halliburton Services (New Orleans Div.)	New Orleans, LA	10/17/88	10/6/88	21,358	Do.
Halliburton Services Vann Systems Div. (Headquarters).	Houston TX	10/17/88	10/6/88	21,359	Do.
International Telecharge Inc. (Workers)	Dallas, TX	10/17/88	9/30/88	21,360	Long Distance Operators.
J.L. Offshore Drilling, Inc. (Company)	Houston, TX	10/17/88	10/3/88	21,361	Oil & Gas.
Jem Petroleum Corp. (Workers)	Englewood, CO	10/17/88	10/3/88	21,362	Do.
Kendall Drilling (Workers)	Evansville, IN	10/17/88	9/29/88	21,363	Do.
Kenting Drilling Serv. (Workers)	Williston, ND	10/17/88	10/1/88	21,364	Do.
L.H.R. Snyder, Inc. (Workers)	Grayville, IL	10/17/88	10/5/88	21,365	Do.
Loffland Brothers, Co. (Workers)	New Iberia, LA	10/17/88	9/30/88	21,366	Do.
Londontown Mfg. Co. (Workers)	Eldersburg, MD	10/17/88	10/3/88	21,367	Men's & Women's Rainwear.
M.R. Drilling Co. (Workers)	Monahans, TX	10/17/88	10/3/88	21,368	Oil & Gas.
Mestas Drilling, Inc. (Workers)	Sidney, MT	10/17/88	9/21/88	21,369	Do.
Midland Mud, Inc. (Workers)	Hays, KS	10/17/88	9/28/88	21,370	Do.
National Supply Co. (USW)	Gainesville, TX	10/17/88	10/5/88	21,371	Drilling Equipment.
New-Mex Construction Co (Workers)	Hobbs, NM	10/17/88	9/28/88	21,372	Road Construction.
NICOR Oil & Gas Corp. (Company)	Denver, CO	10/17/88	10/3/88	21,373	Oil & Gas.
North American Royalties, Inc.	Chattanooga, TN	10/17/88	10/3/88	21,374	Do.
North American Royalties, Inc.	Midland, TX	10/17/88	10/3/88	21,375	Do.
North American Royalties, Inc.	Lafayette, LA	10/17/88	10/3/88	21,376	Do.
North American Royalties, Inc.	Oklahoma City, OK	10/17/88	10/3/88	21,377	Do.
Pernie Bailey Drilling Co. (Workers)	Houston, TX	10/17/88	10/3/88	21,378	Do.
Placid Oil Co. (Workers)	Dallas, TX	10/17/88	9/30/88	21,379	Do.
Questor Drilling Co. (Workers)	Victoria, TX	10/17/88	9/19/88	21,380	Do.
R.L. Manning Drilling (Workers)	Mill, WY	10/17/88	9/22/88	21,381	Do.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition Number	Articles produced
Resources Investment Corp. (Company)	Denver, CO	10/17/88	10/4/88	21,382	Do.
Southwest Gas Systems, Inc. (Workers)	Houston, TX	10/17/88	10/3/88	21,383	Do.
Star Sportwear Mfg., (Workers)	Lynn, MA	10/17/88	10/3/88	21,384	Ladies' & Men's Rainwear.
Synder Completion Serv. Inc. (Workers)	Grayville, IL	10/17/88	10/5/88	21,385	Oil & Gas.
TXO Production Corp. (Workers)	Midland, TX	10/17/88	9/28/88	21,386	Do.
Teledyne Movible Offshore (Company)	Lafayette, LA	10/17/88	10/6/88	21,387	Do.
(The) Western Co. (Workers)	Victoria, TX	10/17/88	10/3/88	21,388	Do.
Tool Masters, Inc. (Company)	Houma, LA	10/17/88	10/1/88	21,389	Do.
Veritas Technical Serv. Inc. (Workers)	Houston, TX	10/17/88	10/2/88	21,390	Do.

Pension and Welfare Benefits Administration

[Application No. 7494-7495 et al.]

Proposed Exemptions; American Medical Association Pension Plan (the Pension Plan) and the American Medical Association Retirement and Saving Plan (the Savings Plan), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions 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).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, DC 20210.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). 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 requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

American Medical Association Pension Plan (the Pension Plan) and the American Medical Association Retirement and Savings Plan (the Savings Plan; Together, the Plans) Located in Chicago, Illinois

[Application Nos. D-7494 and D-7495]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406 and 407(a) 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 (F) of the Code shall not apply to the acquisition or sale by the Plans of shares of certain open-end investment companies registered under the Investment Company Act of 1940 (the AMA Mutual Funds) managed by AMA Advisers, Inc. (AMA Advisers), an affiliate of the American Medical Association (AMA), provided that the following conditions are met:

(a) The Plans do not pay any investment management, investment advisory or similar fee to AMA Advisers or any affiliated person. This condition does not preclude the payment of investment advisory fees by the AMA Mutual Funds to AMA Advisers under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940.

(b) The Plans do not pay a redemption fee in connection with the sale by the Plans to the AMA Mutual Funds of such shares unless (1) the redemption fee is paid only to the applicable AMA Mutual Fund, and (2) the existence of the redemption fee is disclosed in the AMA Mutual Fund prospectus in effect both at the time of the acquisition of the shares and at the time of the sale.

(c) The Plans do not pay a sales commission in connection with the acquisition or sale of the shares of the AMA Mutual Funds.

(d) All other dealings between the Plans and the AMA Mutual Funds, AMA Advisers, or any affiliated person, are on a basis no less favorable to the Plans than such dealings are with other shareholders of the AMA Mutual Funds.

Preamble

On April 8, 1977, the Department published a class exemption, Prohibited Transaction Exemption 77-3 (PTE 77-3,

42 FR 18734) which permits the acquisition or sale of shares of an open-end investment company registered under the Investment Company Act of 1940 by an employee benefit plan covering only employees of such investment company, employees of such investment adviser or principal underwriter for the investment company, or employees of any affiliated person (as defined in section 2(a)(3) of the Investment Company Act of 1940).

The applicant represents that PTE 77–3 would allow the Plans to purchase and sell shares of the AMA Mutual Funds if the Plans covered only employees of the AMA Advisers and its affiliates. However, the Plans do not come within the terms of PTE 77–3 because there are four organizations (the Organizations) that are not affiliated persons of AMA Advisers, as defined in section 2(a)(3) of the Investment Company Act of 1940, which have employees that are covered by the Plans. The Organizations share common objectives and activities with the AMA and receive financial support from the AMA. Thus, the Organizations are closely associated with the AMA. Accordingly, because the proposed transactions with the AMA Mutual Funds appear to parallel those transactions contemplated by PTE 77–3, but for the fact that there are employees of non-affiliated organizations covered by the Plans, the Department has determined that relief comparable to that afforded by PTE 77–3 may be appropriate.

Summary of Facts and Representations

1. The Pension Plan is a defined benefit pension plan which, as of January 1, 1988, had 945 participants and total assets of approximately $44,201,000. The Savings Plan is a profit-sharing plan with a cash or deferred compensation arrangement as described in section 401(k) of the Code, which had 897 participants and total assets of approximately $5,212,000, as of January 1, 1988. The trustees of the Plans (the Trustees) are the members of the Executive Committee of the AMA Board of Trustees.

2. The assets of the Pension Plan are currently managed by Oppenheimer Capital Corporation (Oppenheimer), an unrelated party, pursuant to a contract between Oppenheimer and the Trustees. The Savings Plan allows amounts contributed by participants to be invested, at the participant's election, in one or more of four investment funds—the Liquidity Fund, the Fixed Income Fund, the Equity Index Fund, and the Managed Equity Fund (together, the Existing Funds). The Liquidity Fund is invested in short-term, fixed income securities. The Managed Equity Fund is invested in a stock portfolio of large capitalization companies with stable earnings records. Both the Liquidity Fund and the Managed Equity Fund are managed by Oppenheimer. Oppenheimer also invests assets of the Pension Plan in the Managed Equity Fund to provide a larger pool of assets for investment and greater opportunities for diversification. Assets of the Fixed Income Fund are currently invested in the Investment Grade Bond Portfolio of the Vanguard Income Securities Fund, which is a registered, open-end investment company. The Equity Index Fund, which provides for investment in a stock portfolio that is representative of the companies comprising the Standard & Poors 500 Stock Index, is currently invested in the Vanguard Index Trust, which is also a registered, open-end investment company.

3. The AMA is an Illinois not-for-profit corporation which promotes the interests of the medical profession. The AMA has allowed the Plans to be adopted by the Organizations. The Organizations are the American Medical Association Auxiliary (the Auxiliary), the American Association of Senior Physicians (the AASP), the American Association of Medical Society Executives (the AAMSE), and the American Board of Medical Specialties (the ABMS). The applicant states that the reason the Organizations were allowed to adopt the Plans was to enable the Organizations to provide a better retirement plan for their employees than they otherwise could have provided on their own. In addition, because of the relationship between the AMA and the Organizations, some employees work for more than one of the Organizations during the course of their career. Therefore, the applicant states that having a single plan for all the Organizations prevents the employees from losing some of their retirement benefits due to changing employers.

The Auxiliary is an Illinois not-for-profit corporation whose membership is open to spouses of members of the AMA. Its major purposes include support of AMA programs and fundraising for the AMA Education and Research Foundation, a charitable foundation. The AMA provides the Auxiliary with office space in the AMA headquarters building in Chicago, Illinois, without charge. Over the past ten years, the Auxiliary has hired at least five employees who had previously been employed by the AMA.

The AASP is an Illinois not-for-profit corporation which was formed in 1975 to assist physicians in preparing for retirement. The AMA provided grants totaling approximately $45,000 to help establish the AASP and continues to provide it with office space without charge. Over the past three years, the AASP has hired at least two employees who had previously been employed by the AMA.

The AAMSE is a Missouri not-for-profit corporation which was formed to provide educational and other services designed to advance the profession of medical society management. Since 1977, the AAMSE's officers have been in Chicago, Illinois, in space provided without charge by the AMA. Over the past ten years, AAMSE has hired at least two employees who had previously been employed by the AMA. The AAMSE currently has 984 members, 173 of which are AMA employees whose dues are paid by the AMA. Since 1977, the AMA has provided grants which provide a significant portion of the AAMSE budget. The AAMSE Budget for the current fiscal year totals $305,000, of which $115,000 is provided by the AMA.

The ABMS is an Illinois not-for-profit corporation whose regular membership consists of 23 medical specialty boards which certify physicians as specialists in various areas of medical practice. The purpose of the ABMS is the improvement of medical care through the setting of professional standards and surveillance of medical qualifications. Its most important specific activity is the approval of new medical specialty boards, which is a joint activity of the ABMS and the AMA Council on Medical Education. The ABMS and AMA are also among the parent organizations of the Accreditation Council for Graduate Medical education, which accredits medical residency programs; the Accreditation Council for Continuing Medical Education, which accredits providers of continuing medical education programs; and the Council for Medical Affairs, which serves as a forum for its member organizations to discuss issues relevant to medical education. Thus, although the AMA is not a member of the ABMS, the two organizations have similar purposes and are involved in a number of the same educational and accreditation activities. Over the past ten years, the ABMS has hired at least three employees, including two former Executive Vice Presidents, who had previously been employed by the AMA.

However, the Auxiliary, the AASP, the AAMSE and the ABMS are not affiliates of the AMA or AMA Advisers, as defined in section 2(a)(3) of the Investment Company Act of 1940. The

applicant represents that since section 2(a)(3) defines affiliation between organizations in terms of the ownership of voting stock or the organization being under common control, the definition is not applicable to relationships between non-stock corporations, such as the AMA and the Organizations. Thus, the Organizations are not considered to be "affiliates" of the AMA, even though the Organizations have objectives which further the purposes of the AMA, are involved in a number of joint activities with the AMA, and often share office space with, and receive financial support from, the AMA.

4. AMA Advisers is a wholly-owned subsidiary of the American medical Investment Company, which is a wholly-owned subsidiary of AMA Services, Inc., a wholly-owned subsidiary of the AMA. AMA Advisers is a registered investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser for the AMA Mutual Funds—the AMA Growth Fund, Inc., the AMA Income Fund, Inc., the AMA Money Fund, Inc., the Medical Technology Fund, Inc., and the Emerging Medical Technology Fund Inc. The AMA Mutual Funds are all open-end mutual funds, registered under the Investment Company Act of 1940, which have a total of ten investment portfolios.

5. The applicant states that the use of the AMA Mutual Funds would be in the best interests of the Plans and their participants and beneficiaries.

First, the applicant represents that the AMA Mutual Funds would make available a wider range of investment alternatives for the Plans. In particular, the Savings Plan's participants would have a wider range of investment options available to them, which would allow them to choose a combination of investment funds that meets their specific investment objectives. In addition, the use of the AMA Mutual Funds would allow the assets of the Plans to be invested as part of a larger pool of capital, which would enhance the ability of the Plans to diversify their investments and provide additional protection against unexpected losses.

Second, the applicant represents that the participants of the Plans would be provided with more information about the available investment options with respect to the AMA Mutual Funds. In this regard, the applicant notes that two of the four Existing Funds are maintained solely for the Savings Plan and are exempt from registration under Federal securities laws. Thus, the applicant states that while participants are provided with general information regarding the investment objectives and management of these particular Existing Funds, the information available is not as extensive as that contained in an AMA Mutual Fund prospectus, or as in the quarterly and annual reports and other shareholder communications for the AMA Mutual Funds.

Finally, the applicant represents that the use of the AMA Mutal Funds would provide the participants of the Savings Plan with more frequent opportunities to change investment elections. The Saving Plan currently allows participants to change their investment elections as of the beginning of each calendar quarter. The applicant believes that more frequent participant elections would be desirable, but are not feasible with the Savings Plan's current accounting and participant recordkeeping systems. The applicant states that the accounting and recordkeeping systems maintained for AMA Mutual Funds would make more frequent investment elections possible. Such investment elections would also benefit investments made by the Pension Plan.

6. The applicant proposes that the Plans be allowed to acquire or sell shares of the AMA Mutual Funds, in accordance with the conditions set forth in paragraphs (a)–(d) of PTE 77–3 which are, for all intents and purposes, indentical to those conditions included in this proposed exemption. The Trustees represent that the proposed transactions will be monitored to ensure that these conditions are met. AMA Advisers receives an investment management fee from each of the AMA Mutual Funds, as described in the appropriate prospectus for each Fund. In addition, the AMA Mutual Funds also pay certain distribution expenses pursuant to Rule 12b–1 under the Investment Company Act of 1940 [1]

The applicant states that AMA Advisers would serve as an investment advisor to the Pension Plan without charge. However, AMA Advisers will not be an investment advisor for the Savings Plan. The applicant states further that if the proposed exemption is granted, Oppenheimer will no longer be an investment manager for the Plans and that the Plans' interests in the Existing Funds will be liquidated.

7. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (a) The acquisition and sale of shares of the AMA Mutual Funds parallel those transactions contemplated by PTE 77–33; (b) the Plans will pay no sales commissions or redemption fees to AMA Advisers with respect to the investments in the AMA Mutual Funds; (c) the Plans will be provided with more investment options and full disclosure of all relevant facts concerning the investments; and (d) the Pension Plan will not pay any fee to AMA Advisors as a result of AMA Advisors duties as an investment adviser for the Pension Plan.

FOR FURTHER INFORMATION CONTACT. Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Worrell Enterprises, Inc. Profit Sharing Saving Plan (the Plan) Located in Charlottesville, Virginia

[Application No. D–7523]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, 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) by the Plan to Worrell Enterprises, Inc. (the Employer), the Plan sponsor and a party in interest with respect to the Plan, of 158 rare coins (the Coins) for a sales price of $701,000; provided the terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 1,300 participants and total assets of $9,204,751 as of December 31, 1987. The Employer is engaged in the newspaper business and owns and operates approximately sixty daily and weekly newspapers nation-wide. The trustee of the Plan is Crestar Bank, N.A., (the Trustee). The Investment Committee (the Committee) is appointed by the Employer and is empowered under the Plan documents to direct the Trustee's investments. The Plan documents also provide for participant-directed investments. However, the applicant represents that there are no

[1] The proposed relief contained herein is limited to the purchase and sale by the Plans of shares of the AMA Mutual Funds. In this regard, no relief has been requested or provided in connection with the payment of distribution expenses pursuant to Rule 12b–1 under the Investment Company Act of 1940.

individually directed accounts in the Plan.[2]

2. In 1981, the Committee, then consisting of Dennis S. Rooker, John J. Badoud, Jr. and Thomas E. Worrell, Jr., decided to invest in the Coins. The Committee purchased the Coins between August, 1981 and March, 1986 for a total purchase price of $432,210 from Tallarico Rare Coins, Inc. (TRC), an unrelated party. The applicant represents that TRC and Thomas V. Tallarico of TRC issued a certificate of guarantee for each coin purchased by the Plan which stated that the sellers would repurchase any of the Coins at any time for an amount not less than the Plan's cost plus 50% of any increase in value over cost as determined by appraisal. The applicant further represents that Mr. Tallarico performed an appraisal of the Coins on at least an annual basis. On March 25, 1987, Mr. Tallarico appraised the Coins' December 31,1986 value at $701,000 (the 1986 Appraisal). The Coins represented 7.6% of the Plan's assets as of December 31, 19878.

The Committee discovered, after the 1986 Appraisal, that Mr. Tallarico and TRC were faced with severe financial trouble. Both had defaulted on a number of debts and were named as defendants in a fraud action brought by other customers. As a consequence of these discoveries, the Committee sought another appraisal of the Coins.

A subsequent appraisal of the Coins was perfomred on February 5, 1988 by a qualified independent appraiser, Edward Milas. Mr. Milas is President of Rare Coin Company of America and a past President of the Professional Numismatic Guild with more than 25 years professional experience. Mr. Milas determined the fair market value of the Coins to be $250,385. Mr. Milas' appraisal reflects a $450,615 loss to the Plan from the 1986 Appraisal value of the Coins, as well as a $181,825 loss from the Plan's purchase price.

3. As a result of the decrease in the Coin's value, the Plan and its participants and beneficiaries face severe difficulties. The Plan has suffered a substantial economic loss up to approximately 5% of the value of its assets due to the decrease in the Coins' value. In addition, Plan participant statements for the year ended February 28, 1987 were computed on the basis of the Coins' 1986 Valuation of $701,000. Consequently, Plan participant withdrawals were computed and disbursed on the same erroneous basis.

4. In order to avoid further economic loss and hardship to the Plan and to benefits participants and beneficiaries, the Employer now seeks an exemption to permit the cash Sale of the Coins by the Plan to the Employer for $701,000. The applicant represents that the subject exemption would benefit the Plan's participants because the Plan would be placed in a better position than it would have been in if the Coins had never been acquired by the Plan.[3] In addition, the applicant states that such a Sale will not exceed the requirements of section 415 of the Code and that the Plan will pay no fees or commissions in connection with the Sale.

5. In summary, the applicant represents that the transaction meets the statutory criteria of section 408(a) of the Act because: (a) The Sale will be a one-time transaction consummated for cash; (b) the fair market value of the Coins has been determined by a qualified independent appraiser; (c) the Plan will receive in excess of the fair market value of the Coins; (d) the Plan will dispose of assets which have declined in value; and (e) the Plan will pay no fees or commissions in connection with the Sale.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Mrs. Betsy Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Tudor Engineering Company Retirement Advantage Plan (the Plan) Located in San Francisco, California

[Application No. D–7630]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (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 case sale (the Sale) of a certain leasehold interest (the Leasehold) by the Plan to Tudor Engineerig Company (the Employer), which is the sponsoring employer party in interest with respect to the plan, provided that the consideration paid for the Leasehold is not less than the greater of either the sum of $130,000 or the fair market value of the Leasehold on the date of the Sale.

Summary of Facts and Representations

(1) The Plan is a profit sharing plan for salaried employees with 107 participants and total assets of $7,515,111, as of December 31, 1987. The Plan originated in 1960 and on July 1, 1987, was reinstated in the form of a Wells Fargo Bank, N.A. prototype profit sharing plan with features authorizing the Employer to make deferred-pay contributions based upon such percentage of the participants' covered compensation as the Employer may determine. Participants may elect to have all or a portion of the assets in their respective accounts invested in any or all of three different funds. The three funds are managed by Wells Fargo Bank, N.A., which is also the trustee of the Plan. One of the investments for the Plan is the Leasehold, which is invested

[2] In this regard, the Department notes that section 408(m) of the Code provides that the acquisition after December 31, 1981, by an individually directed account under a plan described in Code section 401(a) of a collectible (including any coin) shall be treated as a distribution from the account in an amount equal to the cost to the account of the collectible.

[3] The Department notes that the fiduciary responsibility provisions of the Act apply to the acquisition, holding and sale of the Coins. Section 404(a)(1)(B) of the Act requires that a fiduciary discharge his duties with respect to a plan solely in the interests of the participants and beneficiaries and with the care, skill, prudence, and dilligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like charcter and with like aims.

Accordingly, the plan fiduciary must act prudently with respect to the decision to enter into an investment as well as to the negotiation of the specific terms under which the investment will be held. The Department further emphasizes that it expects a plan fiduciary, prior to entering into an investment, to understand fully the nature of the investment and the risks associated with the manner of investment. In addition, such plan fiduciary must be capable of periodically monitoring the investment. Thus, in considering whether to enter into an investement, a fiduciary should take into account its ability to provide adequate oversight of the investment.

The Department also notes that, under section 405(a) of the Act, any plan fiduciary will have co-fiduciary liability for any breach of fiduciary responsibility of another plan fiduciary: (1) If he knowingly participates in or conceals such breach; (2) if by his failure to comply with section 404(a)(1), he enables another fiduciary to commit such a breach; or (3) if he has knowledge of the breach of another fiduciary and he fails to make a reasonable effort to remedy the breach.

in one of the three funds designated as the Fixed Income Fund.

(2) the Employer is a California corporation headquartered in San Francisco and engaged in civil engineering design, consulting, and planning. In the year 1968 the Employer acquired a leasehold interest in underlying ground, consisting of 22,428 square feet, on which was constructed a 94-unit leasehold condominium and which is located at 250 Ohua Avenue, Waikiki, Honolulu, Oahu, Hawaii. The suit underlying the condominium project is owned by the Estate of Valentine Spitzer Lewis (Helen M. Lewis and Rhoda V. Lewis, Executrices). This acquisition in 1968 constitutes the Leasehold which provides for ground rents until the year 2044. In 1973, the Employer assigned its interests in the Leasehold to the Plan as a funding contribution. The assignment provides that the Plan is responsible for collecting ground rents from the condominium owners and their respective portion of the expenses incurred from taxes, assessments, insurance premiums, and utility charges on the property and paying to the landowner/lessor a ground rent plus paying the expenses incurred by the property. The difference between the ground rents collected, less a four percent Hawaii State Gross Excise Tax, the ground rents paid to the landowner/lessor is the yield to the Plan from the Leasehold. Unitl 1999, the ground rents payable by the Plan to the landowner/lessor and the rents receivable by the Plan from the condominium owners are set pursuant to the 1968 lease. Beginnig in 1999, the rents for the final four ten-year periods and one five-year period are subject to adjustment in accordance with mutual agreements or appraisals; however, in no event shall the rents for any period be less than the rents for the immediately preceding period. Under the terms of the Leasehold to the Employer and its assignment to the Plan, the Employer retained responsibility as lessee to the landowner/lessor in the event of default by the Plan as sublessee.

(3) the Plan now proposes to sell the Leasehold to the Employer because it has been determined that problems with rent collections from the condominium owners make the Leasehold undersirable an no longer an appropriate asset for the Plan. The Plan intends to invest the proceeds from the Sale in the other funds maintained by Wells Fargo Bank, N.A. Because of the difficulties anticipated in finding a purchaser for the Leasehold, the Employer is willing to purchase the Leasehold from the Plan. The Sale is to be for cash in an amount not less than the greater of either the sum of $130,000 or the fair market value of the Leasehold on the date of the Sale as determined by a qualified, independent appraiser. No fees, commissions, or other costs are to be incurred by the Plan from the Sale. The Leasehold was appraised by a qualified, independent appraiser, Robert J. Vernon, MAI, CRE and Chairman of John Child & Company, Inc. of Honolulu, Hawaii. Mr. Vernon determined that the Leasehold had a fair market value of $130,000, as of January 1, 1988.

(4) In summary, the applicant represents that the proposed exemption satisfies the criteria for an exemption under section 408(a) of the Act because (a) the Sale will be a one-time transaction for cash with no expenses incurred by the Plan; (b) the Plan will sell the Leasehold at its fair market value as determined by a qualified, independent appraiser; (c) the Plan will receive a higher rate of return on the proceeds from the sale than it is receiving in rental income; and (d) investing the proceeds in more liquid investments with less expenses entailed will preserve and enhance the assets of the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Carpenters Joint Apprenticeship and Training Committee of Wilmington, Delaware, a/k/a Local Union No. 626, United Brotherhood of Carpenters and Joiners Apprenticeship Fund (the Plan) Located in Wilmington, Delaware

[Application No. D-7664]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to the proposed purchase by the Plan of a parcel of unimproved real property (the Tract), for the total cash consideration of $110,000, from the United Brotherhood of Carpenters and Joiners of America, AFL-CIO Local Union No. 626 of Wilmington, Delaware (the Union), a party in interest with respect to the Plan, provided the amount paid by the Plan for the Tract is not more than fair market value at the time the transaction is consummated.

Summary of Facts and Representations

1. The Plan is an employee welfare plan established and administered under the terms of section 302 of the Labor Management Relations Act of 1947, as amended. The Plan provides training in carpentry skills on a non-profit basis to participants in an apprenticeship school it operates. The geographic jurisdiction covered by the Plan is the State of Delaware. As of April 30, 1987, the Plan had total assets of $383,941. As of May 1, 1988, the Plan had 546 participants. The Plan is administered by a joint board of trustees (the Trustees) consisting of three employee or union Trustees and three employer or management Trustees. The Trustees make investment decisions for the Plan. The Union is a labor organization having its principal offices in New Castle, Delaware.

2. In 1965, the Union acquired a parcel of real property (the Real Property) located at 626 Wilmington Road, New Castle, Delaware. The Union purchased the Real Property from The Pompeii Restaurant, Inc., an unrelated party, for $30,000. The Real Property consists of approximately 6.72 acres of land. A portion of the Real Property is improved with a one story building that is occupied by the Union. There is also a parking facility on the land. At present, the Real Property is unencumbered by a mortgage.

3. In December 1987, the Plan began using, on a gratuitous basis, an unimproved, one acre portion of the Real Property as well as the Union's parking facility. The subject Tract is directly south of the existing one story structure and parking lot. The Tract was selected for the Plan because of its proximity to Union offices, Union personnel and to contributing employers. In addition, the applicants represent that the size and cost of renovation of other sites renders them less attractive in terms of cost benefit and convenience.

4. The Plan has begun constructing a $680,000 prefabricated building on the Tract. Although the building is expected to be occupied by September 1988, a substantial amount of interior work will remain for completion by the apprentices.[4] The building will be owned by the Plan and serve as a new apprenticeship school. The school will permit year-round training for Plan participants in all aspects of carpentry work. In order to construct the school, the Plan has obtained financing in the amount of $495,000 from unrelated

[4] In this proposed exemption the Department expresses no opinion as to whether the Plan's construction of a building on land owned by the Union violated any provision of Part 4 of Title I of the Act.

parties. After the school is completed, the Plan does not intend to lease any portion of the building to parties in interest.

5. To enable the Plan to establish a permanent location in which to conduct its operations, the Trustees request an administrative exemption that will permit the Plan to purchase the Tract from the Union. The proposed sales price will be based upon the fair market value of the Tract as determined by an independent appraiser. The Plan will make a lump sum payment in cash to the Union. In addition, the Plan will not be required to pay any real estate fees or commissions in connection with the sale. Subsequent to the sale, the deed to the Tract will be recorded to reflect the Plan's separable and ascertainable ownership of the subject property. Further, it is anticipated that the Plan will continue its use of the Union's parking lot on a rent-free basis.

6. Penny M. Virtue (Ms. Virtue), S.C.V., A.P.R.A., an independent appraiser affiliated with Appraisals Limited of Wilmington, Delaware, valued the Tract as if it had been separated and subdivided from the Real Property. Based upon an appraisal report dated February 16, 1988, Ms. Virtue determined that the Tract has a fair market value of $110,000 as of February 9, 1988.

7. John E. Stapleford, Ph.D. (Dr. Stapleford) will serve as the independent fiduciary for the Plan with respect to the proposed transaction. Dr. Stapleford is an economist from Newark, Delaware who has rendered expert advice in tort cases. Dr. Stapleford has been employed as the director of a nonprofit university research center and has served on the boards of two educational institutions and a nonprofit organization. Dr. Stapleford represents that he has no family, business or investment relationship with any of the employers contributing to the Plan. Dr. Stapleford states that he has been advised by counsel for the Plan of his duties, responsibilities and liabilities under the Act as a fiduciary. Dr. Stapleford also asserts that he understands and acknowledges these duties, responsibilities and liabilities in acting as a fiduciary to the Plan.

Dr. Stapleford believes the proposed transaction is in the best interests of the Plan and its participants and beneficiaries because: (a) The nature of the Plan's investment in the subject property fulfills the educational purposes of the Plan; (b) in providing educational benefits to participants, the Plan has legitimately set its priority to acquiring operating facilities that are customized to its special needs in a location that is convenient to its staff and a Plan participants; (c) the apprenticeship school will be industrial in nature and adaptable to alternative uses; (d) the subject property will be mortgageable on relatively short notice without liquidating the investment and interrupting operations; and (e) the Plan's net assets should be sufficient to cover its debt service. In forming his opinion, Dr. Stapleford has reviewed the exemption application, Ms. Virtue's written appraisal of the Tract and all other documentation associated with the Plan. Dr. Stapleford also states that he has examined the Plan's liquidity needs and diversification requirements and he believes both of these portfolio criteria are adequate. Finally, Dr. Stapleford represents that he will attend the closing of the sale of the Tract and monitor such transaction. In this connection, Dr. Stapleford explains that he will take all appropriate actions to safeguard the interests of the Plan.

8. In summary, it is represented that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The Plan will not pay more than fair market value for the Tract as such value is determined by an independent appraiser; (b) the sale of the Tract will involve a one-time payment for cash; (c) the Plan will not be required to pay any real estate fees or commissions in connection therewith; (d) the Plan participants will benefit from the gratuitous use of the parking lot on the adjoining Real Property as well as from the support services provided to Plan participants by Union and employer personnel; and (e) Dr. Stapleford, an independent fiduciary who will monitor the sale transaction, has determined the purchase is at arm's length and in the best interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Profit Sharing and Thrift Plan of Radiology Associates of Fort Worth (the Plan) Located in Fort Worth, Texas

[Application No. D-7676]

Proposed exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (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 an interest-free extension of credit on April 14, 1986, to the Plan by the InterFirst Bank Fort Worth, N.A. (now NCNB Texas National Bank) (the Trustee), a fiduciary of the Plan and a party in interest with respect to the Plan, provided that terms and conditions of the extension of credit were at least as favorable to the Plan as those which the Plan would receive in a similar transaction with unrelated parties.

EFFECTIVE DATE: If granted, the proposed exemption will be effective April 14, 1986.

Summary of Facts and Representations

(1) Radiology Associates of Fort Worth, a Texas professional association that employs 34 doctors and additional support personnel, is the sponsoring employer (the Employer) of the Plan. The Employer is engaged in the practice of radiology in Fort Worth, Texas and its environs. As of December 31, 1987, the Employer had a total of 119 employees.

The Trustee was a national banking association, organized under the laws of United States, and acquired during 1987 by the First RepublicBank Fort Worth, which was another national banking association, wholly owned by the First RepublicBank Corporation. On July 29, 1988, the Comptroller of the Currency declared all of the banks in the First Republic system (First RepublicBank) to be insolvent and the Federal Deposit Insurance Corporation (FDIC) was appointed Receiver. FDIC, exercising its authority as Receiver, created a new bank, JRB Bank, National Association (JRB Bank) and entered into a Purchase and Assumption Agreement with JRB Bank. Under the Purchase and Agreement JRB Bank acquired certain assets and liabilities of First RepublicBank, and succeeded First RepublicBank Fort Worth, N.A. as Trustee for the Plan. JRB Bank changed its name to NCNB Texas National Bank, which is a national banking association organized under the Competitive Equality Banking Act of 1987.

The Trustee and the Employer are represented to be independent of each other, having no common shareholders, officers, or directors and neither owning shares of the other. There has been a banking relationship between the Trustee and the Employer and its principal shareholder which is represented to be less than one percent of the Trustee's business.

(2) The Plan is a defined contribution plan with individual accounts for its 138 participants and with total assets of $20,326,367.61, as of December 31, 1987. Participation in the Plan is voluntary and is available to all employees of the Employer after completion of a minimum service requirement. In addition to the funding contributions by the Employer, participants are authorized to make contributions to the Plan and to direct the investments of their respective individual accounts. Directions by participants are given in writing to the Trustee for the investment of certain percentage balances in their individual accounts rather than by specifying certain dollar amounts to be invested. Participants may choose from 8 to 16 different funds during each half of the calendar year for investments to be made at the beginning of the succeeding six months. This method for directing investments can result in cash flow problems because it compels the Trustee to estimate the dollar value of each individual account as of July 1 and January 1 of each calendar year. One of the investment options available to the participants during 1985 was units of an open-end collective trust fund, designated as the Real Estate Collective Investment Fund (RECIF), which was maintained and trusteed by FirstRepublic Bank Dallas, N.A., a wholly owned subsidiary of the Trustee's former parent corporation. The RECIF is invested solely in commercial real estate which is located in regions experiencing adverse economic problems in the southwestern part of the United States. On September 23, 1986, RECIF was terminated and is being liquidated. All requests for withdrawal, which had been paid sequentially, are now being paid on a pro rata basis in accordance with the amount invested in RECIF.

(3) In November and early December 1985, nine participants directed the Trustee to reduce the percentage balances of their respective individual accounts that were invested in units of RECIF and to move the cash obtained by the reductions to selected alternative funds. During February 1986 when processing the changes in investments as directed by the nine participants, the Trustee discovered that the cash available from the units of RECIF were insufficient for making the alternative investments chosen by the nine participants. There was found to be an adjusted cash flow shortage because of rapidly rising values in the securities markets while there were drastically decreasing values in the commercial real properties in which RECIF was invested. These changing cash values of the individual accounts for December 31, 1985, resulted in an adjusted cash flow shortage of $197,553.66. Since RECIF had always funded withdrawal requests and the Trustee was unaware of the mounting liquidity problems of the RECIF, the Trustee assumed in April 1986 that the $197,553.66 would be immediately available from the units of the RECIF. This assumption caused the Trustee on April 14, 1986, to allow an overdraft in the form of an interest-free loan to the Plan for $197,553.66 in order that the nine participants could make their chosen alternative investments.[5] Commencing in September 1986 a portion of the liquidating distributions from RECIF, in the sum of $42,367.42, has been credited by the Trustee against its loan to the Plan, leaving a current balance owing of $155,186.24. Only that portion of the distribution by RECIF which would have been credited to the nine participants individual accounts had the loan not occurred has been applied against the loan. This portion equals 42 percent of the liquidating distributions from RECIF. As to future payments of the loan, the Trustee will continue to forego interest on the unpaid portion of the loan and will continue to apply 42 percent of the proceeds received from RECIF to the repayment of the loan. Upon receipt of the entire amount of the loan from RECIF any access receipts from RECIF will be allocated for the benefit of the nine participants. If the proceeds received in liquidation of RECIF are less than the loan, no other Plan assets can be used to pay off the loan. The applicants represent that the loan from the Trustee to the Plan resulted in no expense to the Plan and no risk to participants of the Plan. In addition, the loan facilitated the participants in obtaining better investments for their respective individual accounts.

(4) In summary, the applicants represent that the transaction satisfies the criteria of section 408(a) of the Act for the following reasons (a) the loan will be evidenced in a written document which does not provide the payment of interest by the Plan; (b) the transaction protects the participants and their beneficiaries for the Plan from a decline in the value of the RECIF properties and permits new, higher yielding investments without expense or penalty; (c) the terms for repayment of the loan is limited to cash proceeds received from liquidation of RECIF commercial properties and no other assets of the Plan will be used or affected; and (d) upon liquidation of RECIF investments, any proceeds in excess of the loan will be allocated to the nine individual accounts of the Plan participants.

[5] The loan will be documented by a non-interest bearing debenture with no security interest except the pro-rata share of the liquidating proceeds received from RECIF

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881 (this is not a toll-free number).

Welborn Clinic Employees' Retirement Plan (the Plan) Located in Evansville, Indiana

[Application No. D–7718]

Proposed exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (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, effective February 28, 1987, to the past and proposed lease by the Plan of certain improved real property to the Welborn Clinic (the Employer), the sponsor of the Plan, provided that the terms of such lease have been and will be at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Effective Date: This exemption if granted, will be effective February 28, 1987.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 317 participants as of December 31, 1987. The Employer is a multi-speciality group medical practice in Evansville, Indiana. The trustee of the Plan is the Citizens National Bank of Evansville (the Trustee), which represents itself to be independent of and unrelated to the Employer. The Employer's principal place of business is the Welborn Clinic Building (the Clinic), which the Employer leases from the Plan. The Trustee and the Employer are requesting an exemption, effective February 28, 1987, for the Employer's lease of the Clinic from the Plan under the terms and conditions described herein.

2. The Clinic was constructed over a twenty-four year period commencing in 1950, when the original clinic building (the Original Clinic) was constructed, and continued with subsequent improvements and expansions in 1954,

1959 and 1967. The Plan acquired the 35,000 square foot Original Clinic, including the underlying land, from its predecessor plan in 1960 and commenced leasing the Original Clinic to the Employer under a net lease (the Original Lease).

In 1974 the Original Clinic was expanded substantially with a 65,000 square foot addition (the Addition) constructed by the City of Evansville, Indiana (the City) on City-owned land (hereinafter included in references to the Addition) abutting the Original Clinic. Upon completion of the Addition, the Plan leased the Addition, including furnishings and medical equipment installed therein (the Equipment), from the City (the City Lease). The City Lease granted the Plan options (the Options) to purchase the Addition and the Equipment under certain stated circumstances.

Upon commencement of the City Lease, the Employer began subleasing the Addition from the Plan under a net sublease (the Sublease) which ensured that rentals received by the Plan thereunder would always exceed the rentals which the Plan paid the City under the City Lease. The Sublease, with an initial term of 20 years, was effective June 1, 1974. On that date the Plan and the Employer also executed a renewal of the Original Lease (the Renewed Lease), which has continued on a year-to-year basis since its initial term expired in 1979. The Employer represents that its lease of the Original Clinic from the Plan under the Original Lease and the Renewed Lease and its sublease of the Addition from the Plan under the Sublease were exempt until June 30, 1984 from the prohibitions of section 406 of the Act by virtue of section 414(c)(2) of the Act.[6]

Prior to June 30, 1984, fiduciaries of the Plan exercised the Plan's Option to purchase the Equipment from the City and then sold the Equipment to the Employer. The Employer represents that its purchase of the Equipment from the Plan was exempt from the prohibitions of section 406 of the Act by virtue of section 414(c)(3) of the Act.[7]

During 1984 the necessary actions were initiated to enable the Plan to exercise the Option to purchase the Addition from the City. The Plan acquired full title to the Addition on June 1, 1985 and has continued to lease the Addition to the Employer. As a result of the consolidated ownership of the Original Clinic and the Addition by the Plan, and in recognition that the Employer occupies and operates the formerly separate parcels as one consolidated Clinic facility, the Original Lease and the Sublease have been combined, amended and replaced with a single lease agreement (the New Lease) which governs the Employer's lease of the Clinic from the Plan and under which the Employer proposes to continue leasing the Clinic.

3. The New Lease is an absolute net lease for a fixed term which expires on May 31, 2009. The Trustee represents the interests of the Plan under the New Lease. Rentals under the New Lease are paid monthly and are subject to adjustment at five-year intervals to ensure that they remain no less than the fair market rental value of the Clinic property. For the period commencing August 1, 1988 and ending May 31, 1989, the rental (the Base Rent) shall be the greater of (1) $77,760 per month, or (2) the monthly fair market rental value of the Clinic as determined by a qualified independent appraiser selected by the Trustee. Thereafter, commencing June 1, 1989, the monthly rental shall be redetermined on June 1 every five years as the greater of (1) the monthly fair market rental value of the Clinic as determined by an independent qualified appraiser selected by the Trustee, or (2) the Base Rent adjusted for increases in the Consumer Price Index (the CPI) of the Department's Bureau of Labor Statistics in accordance with a procedure set forth in the New Lease.

Under the New Lease the Employer assumes all expenses of maintenance and repair of the Clinic and all costs of utility services to the Clinic. As additional rent, the Employer is obliged to pay all real estate taxes related to the Clinic property. The New Lease requires the Employer to purchase and maintain such insurance of the Clinic premises as the Trustee may reasonably require, to include fire and extended coverage insurance in an amount equal to full replacement cost, comprehensive bodily injury and property damage insurance in amounts required by the Trustee, and rent insurance. Under the New Lease the Employer agrees to indemnify and hold harmless the Plan against any claims and liabilities of any nature arising from the Employer's use of the Clinic premises or the Employer's noncompliance with any provisions of the New Lease. In the event the Employer defaults on the payment of rent under the New Lease or fails to fulfill any other obligation thereunder, the New Lease empowers the Trustee with remedial options which include taking possession of the premises and removing the Employer, terminating the New Lease, suing for damages while continuing the New Lease in effect, and any and all other remedies available to the Trustee at law or in equity.

Upon expiration of the New Lease provided that the Employer has performed all its obligations thereunder, the Employer may, subject to the Trustee's approval, renew the New Lease for no more than four successive renewal terms of five years each. The Trustee may decline to approve any renewal and the Employer may decline to renew. For any such renewal term, the rental shall be the greater of (1) the Clinic's monthly fair market rental value as determined by a qualified independent appraiser selected by the Trustee, or (2) the monthly rental paid during the immediately preceding five-year period adjusted for increases in the CPI according to a procedure set forth in the New Lease.

4. The Trustee maintains that it is independent of and unrelated to the Employer and that it has substantial experience as a fiduciary under the Act. The Trustee states that it has represented the Plan's interests under the previous lease arrangements with the Employer, including active and exclusive representation of the Plan's interests as of February 28, 1987, the effective date of the exemption proposed herein. The Trustee represents that it continues and will continue to represent the interests of the Plan actively and for all purposes under the New Lease. The Trustee represents that it fully understands its responsibilities as a fiduciary in this matter and that it will discharge its duties solely in the interests of the participants and beneficiaries of the Plan. In considering whether the Plan should retain the Clinic as an investment past June 30, 1984, the Trustee represents that it explored the possible alternatives, thoroughly evaluated the Plan's investment in the Clinic from various perspectives, and concluded that the Clinic constitutes an excellent investment for the Plan. The Trustee represents that since 1975 the Plan has received rent from the Employer in amounts equal to or greater than the Clinic's fair market rental value. The Trustee maintains that the terms of the New Lease adequately protect the Plan's interests in the Clinic and observes that they are sufficient to ensure that rentals will remain no less than the Clinic's fair market rental value. According to the Trustee, the Plan's investment in the

[6] In this proposed exemption the Department expresses no opinion as to whether the leases and the Sublease satisfied the requirements of section 414 of the Act.

[7] In this proposed exemption the Department expresses no opinion as to whether the sale satisfied the requirements of section 414 of the Act.

Clinic is consistent with an appropriate diversification of the Plan's total assets. Specifically, the Trustee represents that the value of the Clinic constituted less than 25 percent of the Plan's total assets as of February 27, 1987 and that it will constitute no more than 25 percent of the Plan's total assets on the date this exemption, if granted, is published in the **Federal Register**. According to David Matthews, MAI, an independent professional real estate appraiser in Evansville, Indiana, the unencumbered fee simple title of the Clinic had a fair market value of $6,350,000 as of December 31, 1987 and the renal payments of $77,760 per month under the New Lease were in excess of the Clinic's fair market rental value.

5. The Employer recognizes that the continuation of the subject lease arrangement past June 30, 1984 to February 28, 1987 constituted a prohibited transaction under the Act and the Code for which the Department is not proposing exemptive relief herein. Accordingly, the Employer represents that within 60 days after the publication in the **Federal Register** of a notice granting the exemption proposed herein, it will file a Form 5330 with the Internal Revenue Service and pay the excise taxes which are applicable under section 4975(a) of the Code as a result of the continuation of the lease arrangements from June 30, 1984 to February 28, 1987.

6. In summary, the applicant represents that the past and proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The interests of the Plan for all purposes under the subject lease arrangements have been and will be represented by the Trustee, a fiduciary which is independent of and unrelated to the Employer; (2) the New Lease is an absolute net lease under which the Employer pays all costs of maintenance and repair, full insurance coverage, and all taxes and utilities for the Clinic and indemnifies the Plan against all claims and liabilities resulting from use in the Clinic; (3) the New Lease includes a procedure to ensure that rentals paid by the Employer remain no less than the Clinic's fair market rental value; (4) after a thorough evaluation, the Trustee determined that the Clinic constituted an excellent and appropriate investment for the Plan; and (5) the Trustee's approval is required by any renewal or extension of the New Lease.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject on 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 the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of seciton 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or 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.

(4) The proposed exemptions if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of October, 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations Pension and Welfare Benefits Administration U.S. Department of Labor.

[FR Doc. 88-24717 Filed 10-25-88; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 88-96; Exemption Application No. D-6837 et al.]

Grant of Individual Exemptions; Real Estate for American Labor A Balcor Group Trust, 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 representations 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 exemption s 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.

Real Estate for American Labor A Balcor Group Trust (the Trust), Located in Chicago, IL

[Prohibited Transaction 88-96; Exemption Application No. D-6837]

Exemption

Section I. Exemption for Certain Transactions Involving the Trust

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) 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 (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section IV are met.

(1) *Transactions Between Parties-In-Interest and the Trust: General.* Any transaction between a party-in-interest with respect to a plan which has an interest in the Trust (a Participating Plan) and the Trust, or any acquisition or holding by the Trust of employer securities or employer real property, if the party in interest is not Balcor Institutional Realty Advisors, Inc. (Balcor) or one of its affiliates, any other trust maintained by Balcor or one of its affiliates, and if, at the time of the transaction, acquisition or holding, the interest of the Participating Plan, together with the interest of any other Participating Plan maintained by the same employer or employee organization in the Trust, does not exceed 10 percent of the total of all assets in the Trust.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Trust.* Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Participating Plan, and the Trust, or any acquisition or holding by the Trust of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

The interest of the multiemployer plan in the Trust exceeds 10 percent of the total assets in the Trust, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, Sales, or Holdings of Employer Securities and Employer Real Property.* (A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Trust which does not meet the requirement of paragraphs (a)(1) and (a)(2) of this Section I, if no commission is paid to Balcor or to the employer, or any affiliate of Balcor or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease or employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Trust are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the Trust that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither Balcor nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either:

1. The Trust owns the obligation at the time the plan acquires an interest in the Trust, and interests in the Trust are offered and redeemed in accordance with valuation procedures of the section applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation by the Trust not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. Balcor, its affiliates, and any collective investment fund maintained by Balcor or its affiliates, shall be considered to be persons independent of the issuer if Balcor is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which Balcor or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which Balcor or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party-in-interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) The restrictions of section 406(a)(1)(A) through (D) and section 406(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 transactions described below, if the conditions of Section IV are met.

(1) *Certain Leases and Goods.* The furnishing of goods to the Trust by a party-in-interest with respect to a Participating Plan or the leasing of real property owned by the Trust to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Trust, if—

(A) In the case of goods, they are furnished to or by the Trust in connection with real property owned by the Trust;

(B) The party-in-interest is not Balcor, any affiliate of Balcor, or one of the other trusts; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Trust with the same party-in-interest, or any affiliate thereof) does not exceed the greater or $25,000 or 0.5 percent of the fair market value of the assets of the Trust on the most recent valuation date of the Trust prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Trust to a party-in-interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406(a)(1)(A) through (D) 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 (D) of the Code shall not apply to the following transactions if the conditions of Section IV are met:

Any transaction between the Trust and a person who is a party in interest with respect to a Participating Plan, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Trust;

(2) At the time of the transaction, the interest of the Participating Plan, together with the interests of any other Participating Plan maintained by the same employer or employee organization in the Trust, does not exceed 20 percent of the total of all assets in the Trust; and

(3) The person is not Balcor or an affiliate of Balcor.

(d) The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reasons of section 4975(c)(1) (A) through (D) of the Code shall not apply to the purchase and sale of units of beneficial interest (Units) in the Trust if no more than reasonable compensation is paid therefor and (a) each purchase and sale is authorized in writing by a fiduciary of the Participating Plan who is independent of Balcor and any of its affiliates or (b) the purchase or sale is a mandatory redemption required by the Trust Agreement, including the failure of the Participating Plan to remain a plan which can invest in a group trust described in section 401(a)(24) of the Code, and the applicable conditions of Section IV are met.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) The restrictions of sections 406(a) and 407(a) 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 (D) of the Code shall not apply to any acquisition or holding or qualifying employer securities of qualifying employer real property (other than through the Trust) by a Participating Plan if (1) the acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Trust; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section IV of this exemption are met.

Section III. Transfers of Real Property From Balcor to the Trust

(a) The restrictions of section 406(a), 406(b)(1) and (2) of the Act and the taxes imposed by section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to any sale to the Trust of real property acquired by Balcor or an affiliate during the offering period if the following conditions are met:

(a) The price paid by the Trust for the property will be no greater than the lesser of the sum of the amount paid and the holding costs incurred by Balcor or an affiliate or the fair market value of the property, as determined by an independent appraiser, as of the date of sale to the Trust;

(b) The offering memorandum (Memorandum) is supplemented during the offering period with a description of the proposed investment;

(c) All documents relating to such an investment by Balcor indicate specifically that the investment is being made on behalf of the Trust and all documents relating to the calling of funds from investors specify the investment for which such funds will be used;

(d) All such transfers are completed within 120 days of purchase by Balcor or an affiliate; and

(e) The conditions set forth in section IV of this exemption are met.

Section IV. General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Balcor or its affiliate, the terms of the transaction are not less favorable to the Trust than the terms generally available in arms's-length transactions between unrelated parties.

(b) Balcor or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section IV to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Balcor or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section IV 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 Participating Plan who has authority to acquire or dispose of the interests in the Trust of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, 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 paragraph (c) shall be authorized to examine trade secrets of Balcor or its affiliate, or commercial or financial information which is privileged or confidential.

Section V. Definitions and General Rules

For the purposes of this exemption,

(a) The term "the Trust" shall include any collective investment fund that may hereafter be established, operated and managed by Balcor or its affiliate in essentially the same manner as the Real Estate for American Labor A Balcor Group Trust.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer (treating employers who are members of

the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563 (a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(f) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Trust occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections I(a)(1) and I(c) at such time as the interest of the Participating Plan exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results from an increase in the assets allocated to the Trust by the Participating Plan. For this purpose, assets allocated do not include the investment of Trust earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Trust as its proportionate interest in the total assets of the Trust as calculated on the most recent preceding valuation date of the Trust.

The availability of this exemption is subject to the express condition 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 transactions to be consummated pursuant to this proposed 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 July 29, 1988 at 53 FR 28716.

FOR FURTHER INFORMATION CONTACT: David Lurie of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

The O.C. Tanner Company Retirement and Savings Plan, the O.C. Tanner Manufacturing Retirement and Savings Plan, the O.C. Tanner Manufacturing Sales Representatives Retirement and Savings Plan, the O.C. Tanner Employees Savings Plan and the O.C. Tanner Retirement and Savings Plan Group Trust (collectively, the Plans) Located in Salt Lake City, Utah

[Prohibited Transaction Exemption 88–97; Exemption Application Nos. D–7604 through D–7608]

Exemption

The restrictions of section 406(a), 406 (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 a series of loans by the Plans to the O.C. Tanner Company involving up to 25% of each of the Plan's assets, provided that the terms of the transactions are not less favorable to the Plans than those obtainable in arm's-length transactions with 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 published on August 30, 1988 at 53 FR 33201.

For Further Information Contact: Mr. Alan Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Puckett Machinery Company Profit Sharing Plan (the Plan) Located in Jackson, MS

[Prohibited Transaction Exemption 88–98; Exemption Application No. D–7576]

Exemption

The restrictions of section 406(a), 406 (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 continued leasing (the Extended Lease) of certain improved real property by the Plan to Puckett Machinery Company (the Employer), a party of interest with respect to the Plan, provided the terms of the Extended Lease are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

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 28726.

EFFECTIVE DATE: This exemption is effective April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Alton Engineering Profit Sharing Plan (the Plan) Location in Bethesda, Maryland

[Prohibited Transaction Exemption 88–99; Exemption Application No. D–7640]

Exemption

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 sale by the Plan of three limited partnership interests (the Interests) and a certain parcel of improved real property (the Property) to George J. Quinn (Mr. Quinn), a disqualified person with respect to the Plan;[1] provided that the sales price is not less than the fair market value of the Interests and the Property as of the date of sale.

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 30, 1988 at 53 FR 33203.

Written Comments: The applicant submitted several comments with respect to the Notice of Proposed Exemption (the Notice).

Paragraph 4 of the Notice states that in addition to the Interests owned by the Plan, Mr. Quinn owns a 2.5% interest in the Paramount L.P., and holds or controls, along with the Alton Engineering Company, a 12.6% interest in the Columbia Pike L.P. (together, the

[1] Because Mr. Quinn is the only participant in the Plan and the Alton Engineering Company is wholly-owned by Mr. Quinn, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Quinn Interests). The fourth sentence of Paragraph 4 states that ". . . part of the Quinn Interests in the Columbia Pike L.P. were later sold to other investors, some of whom are related to Mr. Quinn." In this regard, the applicant represents that the fourth sentence of Paragraph 4 should state that part of the Quinn Interests in the Columbia Pike L.P. which were held by John A. Quinn, Mr. Quinn's older brother, were later bequeathed to other entities by Mr. John Quinn upon his death, some of which are related to Mr. Quinn. In addition, the applicant states that Mr. Quinn does not actually control all of the Quinn Interests.

After consideration of the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-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 the 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 fiduciary to discharge his duties respecting the plan solely in the interest of the paticipants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it effect 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or 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 facts 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 21st day of October, 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-24718 Filed 10-25-88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on these information collections must be submitted by November 25, 1988.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW, Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revision of three previously approved collections. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 1990 Inter-Arts Program Application Guidelines.

Frequency of Collection: One-time.

Respondents: State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit organizations and state or local arts agencies that apply for funding under specific program categories. This information is necessary for the accurate, fair and thorough consideraton of competing proposals in the peer review process.

Estimated Number of Respondents: 310.

Average Burden Hours per Response: 39.

Total Estimated Burden: 11,991.

Title: Music Presenters and Festivals Application Guidelines FY 1990.

Frequency of Collection: One-time.

Respondents: State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit organizations and state or local art agencies that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review system.

Estimated Number of Respondents: 400.

Average Burden Hours per Response: 39.

Total Estimated Burden: 15,751.

Title: Design Arts Application Guidelines for FY 1990.

Frequency of Collection: One-time.

Respondents: Individuals or households; State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, non-profit organizations, and state or local arts agencies that apply for funding under specific Design Arts Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 831.

Average Burden Hours per Response: 34.

Total Estimated Burden: 28,472.

Anne E. Cowperthwaite,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88-24780 Filed 10-25-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

GPU Nuclear Corporation, Three Mile Island Nuclear Station, Unit 2; Invironmental 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), relative to Facility Operating License No. DPR-73, issued to GPU Nuclear Corporation (the licensee) for the Three Mile Island Nuclear Station Unit 2 (TMI-2), located at the licensee's site in Londonderry Township, Dauphin County, Pennsylvania. By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to refelct the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in affect.

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, since this rulemaking action was not completed 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 envrironment.

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 State Library of Pennsylvania, Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 19th day of October 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorote I-4, Division of Reactor Projects—I/II.

[FR Doc. 88-24745 Filed 10-25-88; 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 Part 50.62(c)(4) to Niagara Mohawk Power Corporation (the licensee), for Unit No. 1 of the Nine Mile Point Nuclear Station

(NMP–1) located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

The exemption would grant relief from 10 CFR 50.62(c)(4) to allow the NMP–1 plant to use an equivalency formula considering sodium pentaborate solution concentration, pump flow rate, boron enrichment and vessel size to determine the requirements for the liquid poison system which performs the function of the standby liquid control system (SLCS).

The licensee's exemption request, and the bases therefor, are contained in a letter dated September 14, 1988.

The Need for the Proposed Action

The exemption is needed becasue the licensee proposes to depart from 10 CFR 50.62(c)(4) requirements, as a result of NMP–1 having a reactor vessel diameter which is smaller than that used to establish the minimum flow and boron content requirements set forth in the regulation. NMP–1 will use an equivalency formula which considers the concentration of sodium pentaborate, pump flow rate, boron enrichment and vessel size to determine the system requirements. This equivalency formula was discussed in the licensee's March 7, 1988 request for a Technical Specification amendment for Sections 3.1.2 and 4.1.2 regarding the liquid poison system. A smaller amount of sodium pentaborate will be required because of the higher enrichment and because the vessel diameter is 213 inches, as opposed to 251 inches which is the basis for the 86 gallons per minute requirement in 10 CFR Part 50.62.

Generic Letter 85–03, "Clarification of Equivalent Control Capacity for Standby Liquid Control Systems," dated January 28, 1985 states, in part:

> The "equivalent in control capacity" wording was chosen to allow flexibility in implementation of the requirement.

The 86 gallons per minute and 13 weight percent sodium pentaborate concentration were values used in NEDE–24222, "Assessment of BWR Mitigation of ATWS, Volumes I and II," December 1979 for BWR/4, BWR/5, and BWR/6 plants with 251-inch diameter vessels. NEDE–24222 recognized that different values would provide equivalent control capacity for smaller plants.

Environmental Impacts of the Proposed Action

The exemption provides a degree of protection of NMP–1 equivalent to that required by the regulation for reactors with larger reactor vessels to ensure prompt injection of negative reactivity into a boiling water reactor pressure vessel in the event of an Anticipated Transient Without Scram (ATWS). This exemption will not affect containment integrity, nor the probability of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined, nor will the granting of the proposed exemption otherwise effect radiological plant effluents, or result in any significant occupational exposure. Likewise, the exemption will not affect non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impacts or greater environmental impacts.

The principal alternative to granting the exemption would be to deny the requested exemption. Such action would not reduce environmental impacts of NMP–1 operations and would not enhance the protection of the environment.

Alternative Use of Resources

This does not involve the use of resources not previously considered in connection with the Final Environmental Statement for NMP–1 dated January 1974.

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 Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based on the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of human environment.

For further information with respect to this action, see the application for exemption dated September 14, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 13th day of October 1988.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects I/II.

[FR Doc. 88–24746 Filed 10–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–029]

Yankee Atomic Electric Co., Yankee Nuclear Power Station; 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–3 issued to Yankee Atomic Electric Company, (the licensee), for operation of the Yankee Nuclear Power Station located in Rowe, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) to accommodate changes in the incore detection system. The changes would be from moveable to fixed detectors.

The proposed action is in accordance with the licensee's application for amendment dated April 4, 1988.

The Need for the Proposed Action

The proposed changes to the TS would allow an increase in plant data collection capability to ensure that the operation of the reactor core is within the operating license limits.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. We reviewed the changes from moveable incore detectors to fixed incore detectors. The changes will both improve present data collection capability and in the future make it possible to increase this capability. Older instruments with a history of failures are being replaced by more modern reliable instruments. The proposed changes do 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 is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result with no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the TS involve systems located within the restricted area 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. If the requested amendment was denied, the plant would continue to operate with a less reliable core monitoring system. This could result in a degradation in safe operation with a potential for adverse environmental effects.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in previous reviews for the Yankee Nuclear Power Station. 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 Commission 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 April 4, 1988 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 19th day of October 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 88-24747 Filed 10-25-88; 8:45 am]

BILLING CODE 7590-01-M

Low Level Waste Disposal Regulatory Meeting.

ACTION: Low-Level Waste Disposal Regulatory Meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) will hold a meeting on low-level waste regulatory issues as a part of NRC's continuing exchange of information program with the Agreement States. The purpose of this meeting will be to provide an opportunity for NRC to discuss current regulatory issues related to low-level waste disposal. The meeting is open to the public. following the discussions of the NRC and State representatives, members of the public will have the opportunity to ask questions with selected States. Participants in the meeting will be from those States who are presently regulating low-level waste disposal facilities and those States who anticipate regulating these types of facilities in the near future.

DATES: November 15–16, 1988.

FOR FURTHER INFORMATION CONTACT: Joel O. Lubenau, Acting Assistant Director for State Agreements Program, State, Local and Indian Tribe Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–0819.

SUPPLEMENTARY INFORMATION: Preliminary Agenda for Low-Level Waste Disposal Regulatory Meeting, November 15–16, 1988, Days Inn Congressional Park, Rockville, Maryland.

November 15, 1988

Topic

8:30—Welcome and Introduction
8:45—Objectives of the Meeting
9:00—Technical Assistance to the States
9:15—Regulatory Issues: License Application Review Process
9:45—Break
10:00—Continuation of License Application Review Process
12:00—Lunch
1:30—Regulatory Issues: Site Selection/ Characterization
3:15—Break
3:30—Continuation of Discussion on Site Selection/Characterization
4:30—Adjourn

November 16, 1988

Topic

8:30—Regulatory Issues: Alternative Technology
10:30—Break
10:45—Policy Statement on Guidelines for Review of an Agreement State Program Regulating LLW
11:45—Public Participation
12:45—Close

Conduct of Meeting: This meeting will be conducted in a manner that will facilitate the orderly progression of business. Seating for the Public will be on a first come first served basis. A transcript of the meeting and written comments will be available for inspection and copying for a fee at the NRC Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555 on or about December 23, 1988.

Dated at Rockville, Maryland, this 18th day of October 1988.

For the United States Nuclear Regulatory Commission.

Carlton Kammerer,

Director, State, Local and Indian Tribe Programs, Office of Governmental and Public Affairs.

[FR Doc. 88-24744 Filed 10-25-88; 8:45 am]

BILLING CODE 7590-01-M

[License No. 34-18309-01MD; Docket No. 030-14827; EA 88-194, and License No. 34-18484-01MD; Docket No. 030-15166; EA 88-242]

SYNCOR Corp.; Order Modifying Licenses (Effective Immediately)

I

SYNCOR Corporation (SYNCOR), 5225 Creek Road, Blue Ash, OH 45242, is the holder of a specific byproduct material license issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") pursuant to 10 CFR Part 30. License No. 34–18309–01MD was originally issued to Pharmatopes Corporation on December 12, 1978, and was last renewed in its entirety on January 9, 1984. This license was due to expire on January 31, 1988; however, the NRC issued a letter dated January 7, 1988, acknowledging timely receipt of the Licensee's renewal application. Therefore, this license is currently active. This license authorizes, among other things, the use of molybdenum-99/ technetium-99m (Mo-99/Tc-99m) generators for the production of technetium-99m sodium pertechnetate for use with reagent kits in the preparation and distribution of

radiopharmaceuticals to authorized recipients.

II

SYNCOR Corporation (SYNCOR), 3025–3027 East 14th Avenue, Columbus, OH 43219, is the holder of a specific byproduct material license issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") pursuant to 10 CFR Part 30. License No. 34–18484–01MD was originally issued to Pharmatopes, Inc. on July 24, 1979, and was last renewed in its entirety on April 24, 1986. The license expires on April 30, 1991. The license authorizes, among other things, the use of molybdenum-99/technetium-99m generators for the production of technetium-99 sodium pertechnetate to be used to prepare technetium-99 tagged radiopharmaceuticals. The license also authorizes the distribution of radiopharmaceuticals to authorized recipients.

III

On April 29 and May 9, 1988, the NRC Region III Office received notification of several misadministrations of radiopharmaceuticals utilized in diagnostic procedures that occurred on April 28, 1988, at hospitals in Southwest, Ohio. The radiopharmaceuticals had been distributed from the SYNCOR facility at Blue Ash, Ohio.

On July 6–8, 1988, NRC Region III performed an inspection at the Blue Ash facility and on August 19, 1988, NRC Region III Office of Investigations (OI) initiated an investigation into this matter. Those activities disclosed that the Blue Ash facility had distributed 17 patients doses to client hospitals consisting of free technetium (Tc)-99m sodium pertechnetate improperly labeled as Tc-99m tagged to methylene diphosphonate (MDP), a bone imaging agent. This resulted in 14 diagnostic misadministrations at seven hospitals on April 28, 1988 (Appendix B to this Order). In addition to the improper labels, the inspection determined that tagging efficiency tests of compounded radiopharmaceuticals like Tc-99m/MDP were not always performed.

On July 13, 1988, NRC Region III issued Confirmatory Action Letter No. RIII–CAL–88–019 to SYNCOR confirming the commitments of the Blue Ash facility manager to: (1) Immediately report certain misadministration events to MRC Region III and the licensee's affected clients; (2) expand the quality control program to include introduction of test samples into the production testing operation; and (3) implement double verification of satisfactory quality control test completion.

On July 22, 1988, SYNCOR requested an amendment to the Blue Ash facility license to include the provisions of Confirmatory Action Letter No. RIII–CAL–88–019, Items 1–4. Those provisions were incorporated on August 29, 1988, into License Condition No. 23 through Amendment No. 16 to the Blue Ash facility license.

In addition to the concerns described above regarding the 14 misadministrations that occurred on April 28, 1988 (Appendix B to this Order), the inspection and the subsequent OI investigation disclosed several other apparent violations of the Blue Ash facility radiopharmaceutical production requirements and radiation protection program. The identified apparent violations are listed in Appendix A to this Order.

IV

On August 30 and 31, 1988, NRC Region III conducted interviews at a sampling of seven clients of the Blue Ash facility and identified numerous occurrences of improperly tagged or labeled radiopharmaceuticals being provided to these facilities within the past 15 months. The specific problems associated with the distributed radiopharmaceuticals are listed in Appendix B to this Order.

Each of these improperly tagged or labeled doses resulted in diagnostic misadministrations or in unnecessary organ and whole body doses during the procedures. Many of these occurrences could have been prevented had appropriate quality control testing been performed as indicated by the testing records, i.e., the percent tagging test could have indicated only free Tc99m pertechnetate in the vial. This testing is particularly important because the nuclear pharmacy distributes multiple doses to clients from a single preparation of a radiopharmaceutical and the clients place reliance on the pharmacy to ensure the radiopharmaceutical is properly prepared. The dose is directly administered to the patient by the client.

As a result of these findings, on September 2, 1988, NRC Region III issued Confirmatory Action Letter No. CAL–RIII–88–026 to SYNCOR Blue Ash, confirming the commitments of the chairman of the Board and the Blue Ash facility manager to perform independent verification of satisfactory completion of all quality control program and NRC required tests and assays prior to distribution of radiopharmaceuticals. The Blue Ash facility is currently operating under these restrictions.

V

On September 8 and 9, 1988, NRC conducted an inspection at the SYNCOR Columbus, Ohio facility. That inspection disclosed that on September 5 through 7, 1988, the instrumentation utilized to perform tagging efficiency tests was out of service and testing was not performed on radiopharmaceuticals distributed on those days.

As a result of these findings, on September 9, 1988, NRC Region III issued Confirmatory Action Letter No. RIII–CAL–88–027 to SYNCOR Columbus, confirming the commitments of the Chairman of the Board to perform daily audits by the Columbus facility pharmacy manager and weekly audits by the corporate staff to assure all tests and assays at the Columbus facility are performed properly.

VI

As a result of the inspections and investigation described above, the NRC has concluded that the Blue Ash facility distributed improperly tagged or labeled radiopharmaceuticals and the Blue Ash and Columbus facilities failed to perform tests on radiopharmaceuticals. In addition, records were inadequate to reflect the actual tests performed. Clinical use of improperly tagged or labeled radiopharmaceuticals will cause: (a) Additional unnecessary radiation exposures to patients because the tests must be repeated or the material is concentrated in parts of the body where it was not prescribed; (b) delays in obtaining diagnostic information; and/or (c) difficulty in interpeting the test results. Accurate records of the quality control tests are essential to permit pharmacy and corporate management to audit compliance with the testing requirements and follow-up on identified deficiencies. In addition to these concerns, the Blue Ash facility apparently failed to implement several radiation protection requirements including dose calibrator accuracy testing, semiannual testing for operation of the fume hood, leak testing of a sealed source, calibration of a survey meter to within ± 20 percent, and maintenance of radioactive waste disposal survey records. These are described in Appendix A to this Order.

Furthermore, on February 8, 1988, the NRC Region I office conducted an inspection at the SYNCOR Allentown, Pennsylvania facility. That inspection resulted in the issuance of a Notice of Violation on June 22, 1988, which included one Severity Level III violation involving failure to properly label

radiopharmaceuticals and a second aggregated Severity Level III violation involving failure to properly implement the radiation protection program at the Allentown facility. The multiple example labeling violation caused 14 diagnostic misadministrations and one of the aggregated radiation protection program violations concerned a radiation overexposure to a radiation worker. The cover letter transmitting that Notice emphasized that the NRC was concerned with the lack of management oversight of licensed activities. The NRC also issued Information Notice No. 88–53 to all manufacturers and distributors of radiopharmaceuticals for human use, nuclear pharmacies and medical licensees, to heighten their sensitivity to the NRC's concern regarding labeling errors.

In summary, the pervasiveness of SYNCOR's problems including the unacceptably large number of improperly tagged or labeled radiopharmaceuticals distributed from your Blue Ash facility, the failure of your staff at the Blue Ash and Columbus facilities to properly perform quality control including testing and recordkeeping, and the failure to properly implement certain aspects of the Blue Ash facility's radiation safety program, together with the problems which previously occurred at the Allentown facility, demonstrates a lack of control of licensed activities, raises questions regarding the adequacy of corporate oversight and presents an immediate health and safety concern. Consequently, without further regulatory action, I lack the reasonable assurance that licensed activities will be conducted in accordance with the Commission's requirements and have therefore determined that the public health and safety require that this Order be immediately effective.

VII

Accordingly, pursuant to Sections 81, 161b, 161i and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2, 30, and 32, it is hereby ordered effective immediately that:

A. 1. License No. 34–18309–01MD is modified to include the following condition: SYNCOR shall maintain in effect at the Blue Ash Facility the provisions of Confirmatory Action Letter No. RIII–CAL–88–0026, issued on September 2, 1988.

2. License No. 34–18484–01MD is modified to include the following condition: SYNCOR shall maintain in effect at the Columbus Facility the provisions of Confirmatory Action Letter No. RIII–CAL–88–0027, issued on September 9, 1988.

B. SYNCOR shall, within 10 days of the date of this Order, submit to the Regional Administrator, NRC Region III, a plan for assessment of its activities for assuring that it meets regulatory requirements and that it eliminates the distribution of improperly tagged or labeled radiopharmaceuticals at each of its facilities. This assessment shall be managed at the corporate level and the plan shall identify those individuals who will be conducting the assessment and their qualifications. Persons performing the assessment shall not be employees of the pharmacy or supervisors of the activities being assessed.

The assessment shall be initiated within 15 days of NRC approval of the plan and completed within 45 days of NRC approval.

The assessment shall include, but not be limited to: licensed activities at the Blue Ash and Columbus facilities and at least 50% of the other SYNCOR facilities licensed by the NRC, the selection of which shall have prior Region III approval, to assess:

1. The qualifications, training and commitment of SYNCOR's employees to perform licensed activities including radiopharmaceutical preparation, evaluation, and distribution tasks.

2. The adequacy of the number of SYNCOR staff assigned to perform licensed technical activities.

3. The adequacy of procedures, including manufacturer's instructions, for the preparation and distribution of radiopharmaceuticals and the uniformity of implementation of those procedures.

4. The adequacy of the quality control (QC) program and procedures for ensuring that proper radiopharmaceuticals are dispensed from the pharmacy.

5. The adequacy of the types of QC records and labeling utilized in the production and distribution of radiopharmaceuticals.

6. The validity of records maintained over the last 15 months to satisfy QC and NRC requirements.

7. The adequacy of the licensee investigation and action in response to any product deficiencies identified through internal and external (client) sources, including root cause determination, corrective actions, and notification. Interviews should be conducted with cognizant client personnel as part of this investigation.

8. The root cause of all incidents over the last 15 months involving distributed radiopharmaceuticals that were not as prescribed.

9. The adequacy of the corporate oversight of operation of the SYNCOR facilities' licensed programs.

Based on its findings, SYNCOR shall, in its report, identify programmatic weaknesses and planned program improvements and corrective action necessary to assure proper control of licensed activities.

D. SYNCOR shall submit its report within 30 days of completing the assessment to the Regional Administrator, NRC Region III; to the Director, Office of Enforcement; and to the Director, Office of Nuclear Materials Safety and Safeguards.

E. The Regional Administrator, Region III, may for good cause relax or rescind any of the above requirements upon written request by the licensee.

VIII

The licensee or any other person adversely affected by this Order may request a hearing within 30 days of the date of issuance of this Order. Any request for a hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington DC 2055, with copies to (1) the Assistant General Counsel for Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and (2) the Regional Administrator, Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the person's interest is adversely affect by this Order and should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee to answer or request a hearing within the specified time, the Order shall be final without further proceedings. A Request for Hearing shall not stay the Immediate Effectiveness of this Order.

If a hearing is requested, the Commission will issue an Order designating the time and place of any

hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order shall be sustained.

For the Nuclear Regulatory Commission.
Dated at Rockville, Maryland, this 12th day of October 1988.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Appendix A—Apparent Violations Identified During the Inspection and Investigation of Licensed Activities at the Syncor Blue Ash Facility

Apparent violations identified during the July and August inspections and investigations includes, but are not necessarily limited to the following:

1. Dose calibrator accurancy tests performed on March 17 and May 21, 1988, did not include the use of a barium-133 reference standard.

2. Records were not maintained of surveys of radioactive waste disposal activities performed on August 8, 1987.

3. Semiannual testing for proper operation of the fume hood used for storage or radioactive materials was not performed since October 21, 1987.

4. Semiannual sealed source leak testing of the nominal 148 microcurie barium-133 sealed source was not performed since March 1986.

5. A Bicron 2000 survey instrument was not calibrated in June 1988 to read within twenty percent of the known values for monitoring Tc-99m radiation fields.

6. Radiopharmaceuticals were dispensed on October 8, 1987, April 28, 1988, and June 9, 1988, with the incorrect pharmaceutical form listed on the dose container.

7. The "Prepared radiopharmaceutical Data Sheet" for radiopharmaceuticals prepared in-house on April 28, 1988 and on other occasions did not include the correct chemical form of the radionuclide.

8. Alumina breakthrough tests were not performed on each eluate of the generators as required by the instructions furnished by the manufacturer.

9. In the preparation of Tc-99m/MDP on April 28, 1988, using MDP–SQUIBB Technetium Tc-99m Medronate Kits, the procedure specified by the manufacturer requiring injection of sodium pertechnetate Tc-99m into the reaction vial was not followed. Instead, the sodium pertechnetate Tc-99m and the contents of several reaction vials were injected into a separate "Super Kit" vial.

Appendix B—Examples of Improperly Labeled or Tagged Radiopharmaceuticals Produced and Distributed by the Syncor Blue Ash Facility

Date	Description
6–12–87	Two doses of Tc-99m/HDP provided to Deaconess Hospital with inefficient tag.[1]
6–27–87	One dose of Tc-99m/HDP provided to Deaconess Hospital with inefficient tag.[1]
9–28–87	One dose of Tc-99m/HDP provided to Deaconess Hospital with inefficient tag.[1]
10–2–87	Two doses of Tc-99m/HDP provided to Deaconess Hospital with inefficient tag.[1]
10–6–87	One dose of Tc-99m/HDP provided to Deaconess Hospital with inefficient tag.[1]
10–8–87	One dose of free Tc-99m labeled as Tc-99m/MAA provided to Bethesda North Hospital.
12–5–87	One dose of Tc-99m/MAA labeled as Tc-99m/Chlorotec provided to Bethesda North Hospital.
2–17–88	One dose of Tc-99m/HDP provided to Deaconess Hospital with inefficient tag.[1]
4–15–88	Four doses of free Tc-99m labeled as Tc-99m/MDP provided to Bethesda North Hospital.
4–15–88	Two doses of free Tc-99m labeled as Tc-99m/MDP provided to St. Luke Hospital.
4–15–88	Two doses of free Tc-99m labeled as Tc-99m/MDP provided to Jewish Hospital.
4–18–88	Two doses of free Tc-99m labeled as Tc-99m/MDP provided to St. Luke Hospital.
4–28–88	Five doses of free Tc-99m labeled as Tc-99m/MDP provided to Bethesda North Hospital.
4–28–88	Two doses of free Tc-99m labeled as Tc-99m/MDP provided to Epp Memorial Hospital.
4–28–88	Two doses of free Tc-99m labeled as Tc-99m/MDP provided to St. Elizabeth South Hospital.
4–28–88	Two doses of free Tc-99m labeled as Tc-99m/MDP provided to St. Luke Hospital.
4–28–88	One dose of free Tc-99m labeled as Tc-99m/MDP provided to Jewish Hospital.
4–28–88	One dose of free Tc-99m labeled as Tc-99m/MDP provided to Mercy North Hospital.
4–28–88	One dose of free Tc-99m labeled as Tc-99m/MDP provided to Mercy South Hospital.
6–9–88	Two doses of free Tc-99m/DTPA labeled as Tc-99m/MAA provided to Bethesda Oak Street Hospital.

[1] While tagging efficiency is not regulated by the NRC, and a small amount of breakdown of the tag will occur with time, the frequency of inefficient tag on Tc-99m/HDP produced and distributed by the Blue Ash facility with quality control test records indicating a high tagging efficiency is cause for concern. The inefficient tag resulted in unnecessary organ dose to the patient.

[FR Doc. 88–24491 Filed 10–25–88 8:45 am]

BILLING CODE 7570–01–M

[Docket No. 50–331]

Iowa Electric Light and Power Co., Duane Arnold Energy Center; Exemption

I

The Iowa Electric Light and Power Company (the licensee) is the holder of Facility Operating License No. DPR–49, which authorizes operation of the Duane Arnold Energy Center. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site located in Linn County, Iowa.

II

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 completed 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 implemenation 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.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own

initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

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 section 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 is already 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.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as descibed in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in section III. Therefore, the Commission hereby grants the following exemption:

Iowa Electric Light and Power Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the 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.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38378).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 3rd day of October, 1988.

Gary M. Holahan,

Acting Director, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-24749 Filed 10-25-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-538]

Memphis State University, AGN-201 Research Reactor; Order Terminating Facility Operating License

By application dated November 10, 1986, as supplemented, Memphis State University (the licensee) requested the Nuclear Regulatory Commission (the Commission) for authorization to dispose of the component parts of its AGN-201 reactor facility and to terminate Facility Operating License No. R-127. A Notice of "Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License", was published in the **Federal Register** on February 13, 1987 (52 FR 4693). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action. By Order dated January 26, 1988, the Commission authorized dismantling of the facility and disposal of component parts as proposed in the licensee's dismantling plan.

The reactor was shutdown in March 1985 and all fuel has been removed from the core and shipped to a DOE facility for processing. The reactor facility has been completely dismantled and all requirements, particularly those relevant to residual radioactivity and the packaging and shipping of fuel and radioactive material, have been met. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated January 26, 1988. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, based on the application filed by Memphis State University, located in Memphis, Shelby County, Tennessee, and pursuant to sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(b), Facility Operating License No. R-127 is terminated as of the date of this Order. In accordance with 10 CFR Part 51, the Commission has determined that the issuance of this termination Order will have no significant impact. The Environmental Assessment was published in the **Federal Register** on October 18, 1988 (53 FR 40802).

For further details with respect to this action see (1) the application for termination of Facility Operating License No. R-127, dated November 10, 1986, as supplemented, (2) the Commission's Safety Evaluation related to the termination of the license, (3) the Environmental Assessment, and (4) the Notice of "Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License," published in the **Federal Register** on February 13, 1987 (52 FR 4693). Each of these items is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 19th day of October 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-24750 Filed 10-25-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp. et al., Nine Mile Point Nuclear Station Unit; Exemption

I

Niagara Mohawk Power Corporation, et. al. (the licensee) is the holder of Facility Operating License No. DPR-63, which authorizes operation of the Nine Mile Point Nuclear Station Unit No. 1 at a steady-state power level not in excess of 1850 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in the town of Scriba, New York. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Appendix J to 10 CFR Part 50 requires that primary reactor containments shall meet certain containment leakage test requirements. Among these are the requirements that containment isolation valves receive local leak rate tests (Type C) and the results of all of the Type C tests are to be added to the results of the Type B tests and the combined leakage rate shall be less than $0.60L_a$.

III

By letter dated May 6, 1988, the staff sent to the licensee a Safety Evaluation (SE) concerning a review of a portion of the licensee's containment leakage rate testing program. Once conclusion of that SE was that Appendix J to 10 CFR Part 50 requires Type C tests to be periodically performed on the four containment isolation valves in the condensate return lines from the emergency condensers (also known as the reactor isolation condensers).

Consequently, by letter dated June 23, 1988, the licensee requested a temporary, schedular exemption from certain requirements of Appendix J to 10 CFR Part 50. Specifically, the licensee requested a temporary exemption from the requirement to perform Type C testing of containment isolation valves 39-03, -04, -05, and -06 in the emergency condenser condensate return lines, and from the requirement to include the leakage rates of these valves in the sum of all Type B and C leakage rates for comparison to the acceptance criterion ($0.60L_a$) of Appendix J. The requested exemption is for the period up to and including the next plant refueling outage, currently scheduled for 1990.

IV

In the past, the licensee had not included the subject valves in the Type C testing program. The licensee did not consider them to be containment isolation valves, but to be system process control valves. However, as stated above, the staff has recently determined that these valves must be Type C tested.

A recent attempt was made to perform a local leakage rate test on the emergency condenser condensate return line valves. However, since these valves were not originally designed to meet Appendix J leakage rate testing requirements and had not been locally leakage rate tested in the past, the valves were found to exhibit leakage rates greater than that allowed by Appendix J. In fact, it was difficult to establish a pressurization condition between the valves. This was particularly true relative to the inside check valves, which were designed to be held tightly closed by water at high reactor pressure (1,000 psig), whereas the Type C test is run with relatively low air pressure conditions (35 psig).

In order to leak test these valves, a number of system changes will be necessary. The check valves, which were not designed for low pressure testing, may need to be replaced if they cannot be repaired or modified to consistently meet the required leakage rate. Additionally, leak-tight test block valves and test taps may need to be installed in order to perform appropriate Appendix J tests. If the block valves leak, then they will need to be repaired or replaced. This repair is difficult with water in the reactor vessel. A major effort is required to install plugs in the recirculation lines to facilitate this repair operation. Therefore, major system changes may be necessary in addition to the procurement of replacement valves for the current valves. The licensee states that these new valves require a lead time of approximately 12 months, and the development and installation of the required changes may take 18 to 24 months. Therefore, the licensee will not be able to install or appropriately test the valves prior to startup from the next refueling outage. The requested exemption would provide the time necessary to complete the modifications so that successful testing can be conducted.

The following information was provided by the licensee in support of the exemption requests.

The valves in the emergency condenser system would not normally be closed and therefore performing a containment isolation function during a Design Basis Accident (DBA) Loss of Coolant Accident (LOCA). In fact, it is normally important for the subject valves to be open in order to assure that adequate Emergency Core Cooling System (ECCS) makeup is delivered to the reactor for those breaks where the system is expected to operate. The emergency condenser system is therefore designed, operated, and maintained to a quality of safety consistent with its core cooling function. The emergency condenser system is poised for service during normal operation with the steam supply line valves open and the condensate return line air-operated valves closed. Under accident conditions, the outside air-operated condensate isolation valves 39-05 and 39-06 will automatically open and initiate the emergency condenser system service on high ractor pressure or low-low water level in the reactor vessel.

The emergency condenser system will automatically isolate if the integrity of the system is significantly compromised (e.g., multiple condenser tube breaks, piping system breaks). High steam flow monitors initiate the isolation action by closing the steam supply valves. High radiation levels in either the primary or the secondary side of the condensers are detected by radiation monitors and the abnormal conditions are brought to the reactor operator's attention. The operator is also capable of monitoring not only the raditation level at the condenser, but also the shell side temperature and water level and the vent steaming conditions. Any indication of a system integrity loss will result in a manual steam isolation.

As is cited above, the subject air-operated valves 39-05 and 39-06 and the check valves 39-03 and 39-04 are closed during normal plant operation. If these valves exhibit sufficient leakage (10 gpm) during normal operation, the leakage can be readily detected by steaming from the condenser vent or a reactor coolant system heat imbalance. Temperature detectors are also located at the isolation valves. These monitors will indicate and alarm on abnormal leakage. If leakage occurs, it will be quickly indentified and the reactor will be shut down if the leakage is excessive. The valve is then required to be repaired to prevent steam and/or condensate from leaking into or out of the reactor coolant system via the valves Therefore, during normal operation these valves receive a continuous leak-tightness check. In addition to the above, a system integrity check of the emergency

cooling system is performed per Technical Specification 6.14.

Based on the above informaton, the staff finds that the subject valves are designed to be, and would normally be, open during a LOCA and would only be required to close in the event of system leakage outside containment, which is periodically checked per Technical Specification 6.14. Also, although not equivalent to Type C testing, the valves receive, in effect, a continuous gross leak-tightness check through monitoring the system indications and alarms described above. Therefore, the staff finds that plant operation without Type C testing of the subject valves, and consequently, without adding the result of these Type C tests into the summation of leakages for comparison to the 0.60 L_a acceptance criterion, during the period until the next refueling outage will not present an undue risk to the public health and safety, considering the low probability of a LOCA during which the emergency condenser system would be required to be isolated during that limited period and the mitigating features of the system, described above. After the next refueling outage is compelte, the plant will be brought into compliance with Appendix J in that subject valves will be Type C tested.

V

On the basis of the above evaluation, the staff concludes that the requested temporary, schedular exemption from the Type C testing requirements of Appendix J to 10 CFR Part 50 for emergency condenser condensate return line valves 39–03, –04, –05, and –06, and, consequently, the omission of the results of these Type C tests from the summation of leakages for comparison to the 0.60 L_a acceptance criterion, is justified for the period up to and including the next refueling outage for Nine Mile Point, Unit 1.

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a), that (1) this exemption as described in Section IV is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) special circumstances are present for this exemption in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation since the staff's position was sent to them on May 6, 1988. Therefore, the Commission hereby grants the exemption request identified in Section IV above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (53 FR 37376).

Dated at Rockville, Maryland, this 17th day of October 1988.

For the Nulcear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–24751 Filed 10–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–400]

Carolina Power and Light Co., Shearon Harris Nuclear Power Plant, Temporary Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission's (NRC) local public document room (LPDR) for Carolina Power and Light Company's Shearon Harris Nuclear Power Plant has been temporarily moved from the Richard B. Harrison Library, Raleigh, North Carolina, to the Cameron Village Regional Library, Raleigh, North Carolina.

The relocation will be in effect for approximately six months while renovations are made to the Harrison Library. Members of the public may now inspect and copy documents and correspondence related to the licensing and operation of the Shearon Harris Nuclear Power Plant at the Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605. The Library is open on the following schedule: Monday through Friday 9 am to 9 pm; Saturday 9 am to 5 pm; and Sunday 1 pm to 5 pm.

For further information, interested parties in the Raleigh area may contact the LPDR directly through Janet Virnelson, telephone number (919) 755–6098. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, 2120 L Street, NW., Washington, DC 20555, telephone number (202) 634–3273.

Questions concerning the NRC's local public document room program or the availablity of documents at the Shearon Harris LPDR should be addressed to Ms. Jona L. Souder, LPDR Program Director, Freedom of Information Act/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (800) 638–8081 toll-free.

Dated at Bethesda, Maryland, this 18th day of October, 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

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

[FR Doc. 88–24748 Filed 10–25–88; 8:45 am]

BILLING CODE 7590–01–M

Proposed Availability of FY 1989 Funds for Financial Assistance to Enchance Technology Transfer and Dissemination of Nuclear Energy Process and Safety Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research announces proposed availability of Fiscal Year (FY) 1989 funds for grants to support professional meetings, symposia, conferences, national and international commission and publications for the expansion, exchange and transfer of knowledge, ideas and concepts directed toward the research necessary to provide a technology base to assess the safety of nuclear power (hereinafter called project). In addition, NRC has a limited amount for research grants to educational institutions (see topics in Section A below). The FY 1989 ceiling for these grants is approximately $1,200,000.00. Of this amount, approximately $600,000.00 will be available for new grants. Proposals for new FY 1989 research grants should be submitted between October 1 and December 30, 1988. Proposals received after that date may not be considered for funding in FY 1989.

EFFECTIVE DATE: October 1, 1988 through September 30, 1989 (FY 1989). New research grant proposals from eductional institutions should be submitted between October 1 and December 30, 1988. Because of the limited amount available for such grants (approximately $600,000.00), proposals received after that date may not be considered for funding in FY 1989.

ADDRESS: Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Office Administration and Resources Managemant, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Curcura (301) 492–4297 or Mrs. Yvonne Terry (301) 492–4210.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 1987 (52 FR 42161), the Nuclear Regulatory commission (NRC) published in the **FEDERAL REGISTER** a notice that announced the proposed availability of FY 88 funds for the NRC Grant Program. The NRC is revising that notice to provide information on their grant program for FY 1989 (October 1, 1988 through September 30, 1989).

Scope and Purpose of this Announcement

Pursuant to section 31.a. and 141.b. of the Atomic Energy Act of 1954, as amended, the NRC's Office of Nuclear Regulatory Research proposes to support educational institutions, nonprofit institutions, state and local governments, and professional societies through providing funds for expansion, exchange and transfer to knowledge, ideas and concepts directed toward the research program. The program includes, but is not limited to support of professional meetings, symposia, conferences, national and international commissions, and publications. In addition, NRC has a limited amount for research grants to educational institutions (see topics below). The FY 1989 ceiling for these grants is approximately $1,200,000.00—with approximately $600,000.00 of this amount available for new grants.

The primary purpose of this program is to stimulate research to provide a technological base for the safety assessment of systems and subsystems technologies used in nuclear power applications. The results of this program will be to increase public understanding relating to nuclear safety, to pool the funds of theoretical and practical knowledge and technical information, and ultimately to enhance the protection of the public health and safety.

NRC encourages educational institutions to submit research grant proposals in the following areas.

1. Development of advanced computational methods for solving dynamic problems in nuclear reactor coolant systems under accident conditions.

2. Serve accident evaluation including, high temperature chemistry of serve accident reactor radionuclides; advanced thermal hydraulic modeling of fluids including combustible gases and molten core materials in reactor primary systems during severe accidents.

3. Advanced demograhic models or statistical methods to predict population density and distribution around future power réactor sites.

4. High temperature material interactions during severe accidents (e.g., core/concrete, core debris/vessel components).

5. Steam explosions in reactors during severe accidents.

6. Human factors evaluation including criteria and guidelines to determine the risk reduction from application of human factors requirements on Nuclear Power Plant operations and maintenance.

7. Methods for the nuclear industry to use the growing pool of human preformance data.

8. Development of methodology for Risk and Reliability Analysis of closed loop control systems including advanced digital based control systems.

9. Develop and codify pragmatic, statistically valid, methods for updating severe accident frequency and consequence analysis to reflect results of new operational, experimental, and calculational data.

10. Develop merit of methods and procedures for establishing the degree to which Probabilistic Risk Assessment (PRA) results converge with operational data.

11. Development of methods to analyze and understand aging effects, improved examination and testing methods for determining condition of structures and components, and methods to assess residual lifetime of structures and components.

12. Development of methods for assuring component structural reliability, realistic methods to define the probabilities of radioactive release due to earthquakes.

13. Development of methods for assuring integrity of the primary system, i.e., pressure vessels, piping, steam generator tubing.

14. Development of methods to establish and validate decommissioning criteria, and effects of water chemistry on the primary system integrity.

15. Design of concepts to increase the safety of industrial radiography devices.

16. Development of comprehensive bibliography and analysis of data/study results on personnel dosimetry defining quantitative relationship between individuals absorbed dose and dosimeter measured dose.

17. Development of bases for a mandated or regulated periodic maintenance and replacement program for industrial radiography devices based on type of device, type of operation and operational environment.

18. Development of improved instrumentation or techniques for measuring activities, radiation dose, and dose rates, especially from small radioactive particles.

19. Development of methods for contamination prevention, measurement and control; and improved radiological air sampling methodology.

20. Investigation of the types, sensitivity and linearity of various biological effects of radiation that could be used as biological dosimeters.

21. Research on the metabolism of radionuclides and their compounds relative to calculation of internal dose.

22. Investigation of placental transfer of, and fetal doses from radionuclides incorporated by the pregnant worker.

23. Investigation of the efficacy of radioactive protective agents.

24. Compile bibliography of ionizing radiation hormesis publications.

25. Develop methodology for implementation of a nonprescriptive regulatory process at NRC, considering such factors as: (a) The most effective framework, (b) the pros/cons and practice aspects of its implementation and (c) the changes needed in NRC's current process and legislation to implement such a change.

Eligible Applicants

Educational institutions, nonprofit entities, State and local governments and professional societies are eligible to apply for a grant under this announcement.

Factors Generally Indicating Support Through Grants

The NRC's benefit from the results of grants should be no greater than for other interested parties, i.e., the public must be the primary beneficiary of the work performed. For example, surveys, studies, or research which provide specific information or data necessary for the NRC to exercise its regulatory or research mission responsibilities should be obtained by procurement contracts.

1. The primary purpose is to aid or support the development of knowledge or understanding of the subject or phenomena under study.

2. The exact course of the work and its outcome are not defined precisely and specific points in time for achievement of significant results may not be specified.

3. NRC desires that the nature of the proposed investigation be such that the recipient will bear prime responsibility for the conduct of the research and exercise judgment and original thought toward attaining the scientific goals within broad parameters of the proposed research areas and the resources provided.

4. Meaningful technical reports (as distinguished from Semi-Annual Status Reports) can be prepared only as new

findings are made, rather than on a predetermined time schedule.

5. Simplicity and economy in execution and administration are mutually desirable.

Research Proposals

A research proposal should describe: (1) The objectives and scientific significance of the proposed meeting, symposium, conference, or commission; (2) the methodology to be proposed or discussed, and its suitability; (3) the qualifications of the participants and the proposing organization; and (4) the level of financial support required to perform the proposed effort.

Proposals should be as brief and concise as is consistent with communication to the reviewers. Neither unduly elaborate applications nor voluminous supporting documentation is desired.

State and local governments shall submit proposals utilizing the standard forms specified in Office of Management and Budget (OMB) Circular A–102, Attachment M. Nonprofit organizations, universities, and professional societies shall submit proposals utilizing the standard forms stipulated on OMB Circular A–110, Attachment M.

The format used for project proposals should give a clear presentation of the proposed project and its relation to the specific objectives contained in this notice. Each proposal should follow the format outlined below unless the NRC specifically authorizes exception.

1. Cover Page. The Cover Page should be typed according to the following format (submit separate cover pages if the proposal is multi-institutional):

Title of Proposal—To include the term "conference," "symposium," "workshop," or other similar designation to assist in the identification of the project;

Location and Dates of Conferences, Symposium, Workshop, etc.;

Name of Principal Participants;

Total Cost of Proposal;

Period of Proposal;

Organization or Institution and Department;

Required Signatures:

Principal Participants:

Name:_____
Date:_____
Address:_____
Telephone No:_____

Required Organization Approval:

Name:_____
Date:_____
Address:_____
Telephone No:_____

Organization Financial Officer:

Name:_____
Date:_____
Address:_____
Telephone No:_____

2. Project Description. Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding.

Applicants must identify other proposed sources of financial support for a particular project.

The information provided in this section must be brief and specific. Detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for the project description:

(a) *Project Goals and Objectives.* The project's objectives must be clearly and unambiguously stated. The proposal should justify the project including the problems it intends to clarify and the development it may stimulate.

(b) *Project Outline.* The proposal should show the project format and agenda, including a list of principal areas or topics to be addressed.

(c) *Project Benefits.* The proposal should indicate the direct and indirect benefits that the project seeks to achieve and to whom these benefits will accrue.

(d) *Project Management.* The proposal should describe the physical facilities required for the conduct of the project. Further, the proposal should include brief biographical sketches of individuals responsible for planning the project.

(e) *Project Costs.* Nonprofit organizations shall adhere to the cost principles set forth in OMB Circular A–122; Educational Institutions shall adhere to the cost principles set forth in OMB Circular A–21; and state and local governments shall adhere to the cost principles set forth in OMB Circular A–87.

The proposal must rovide a detailed schedule of project costs, identifying in particular:

(1) Salaries—in proportion to the time or effort directly related to the project;

(2) Equipment (rental only);

(3) Travel and Per Diem/Subsistence in relation to the project;

(4) Publication Costs;

(5) Other Direct Costs (specify)—e.g., supplies or registration fees;

Note.—Dues to organizations, federations or societies, exclusive of registration fees, are not allowed as a charge.

(6) Indirect Costs (attach negotiated agreement/cost allocation plan); and

(7) Supporting Documentation. The supporting documentation should contain any additional information that will strengthen the proposal.

Proposal Submission and Deadline

This notice is valid for Federal Government Fiscal Year 1989 (October 1, 1988 to September 30, 1989). Potential grantees are advised, however, that due to the limited funding available for new research grants to educational institutions such proposals received after December 30, 1988 may not be considered for funding in Fiscal Year 1989.

Funds

For Fiscal Year 1989, the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research anticipates making a total of approximately $1,200,000.00 available for funding research grants to educational institutions. Of this amount, approximately $600,000.00 will be available for new research grants in FY 1989; thus, the importance of submitting such proposals by December 30, 1988.

Evaluation Process

All proposals received as a result of this announcement will be evaluated by an NRC review panel.

Evaluation Criteria

The award of NRC grants is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Evaluation of proposals for professional meetings, conferences, symposia, etc. will employ the following criteria:

1. Potential usefulness of the proposed project for the advancement of scientific knowledge

2. Clarity of statement of objectives, methods, and anticipated results

3. Range of issues covered by the meeting agenda

4. Qualifications and experience of project speakers and

5. Reasonableness of estimated cost in relation to anticipated results

Evaluation of proposals for research will employ the following criteria:

1. Technical adequacy of the investigators and their institutional base

2. Adequacy of the research design

3. Scientific significance of proposal

4. Utility or relevance and

5. Reasonableness of estimated cost in relation to the work to be performed and anticipated results.

Disposition of Proposals

Notification of award will be made by the Grants Officer and organizations whose proposals are unsuccessful will be so advised.

Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from or submitted to (Grant application packages, Standard Form 424, must be requested in writing: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Office of Administration and Resources Management, Washington, DC 20555.

The address for hand-carried applications is: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Office of Administration and Resources Management, 7920 Norfolk Avenue, Bethesda, MD 20014.

Nothing in this solicitation should be construed as committing the NRC to dividing available funds among all qualified applicants.

Dated at Washington, DC, this 17th day of October 1988.

For the U.S. Nuclear Regulatory Commission.

Patricia A. Smith,

Grant Officer, Contract Negotiation Branch No. 2, Division of Contracts and Property Management, Office of Administration and Resources Management.

[FR Doc. 88-24743 Filed 10-25-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits; 1989 Premium Reduction for Medicare Eligible Individulas

AGENCY: Office of Personnel Management.

ACTION: Notice of Rate Reduction.

SUMMARY: This notice sets forth the amount of the 1989 reduction in Federal Employee Health Benefits premiums for Medicare eligible individuals as provided in the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360).

DATES: The rate reduction will be effective from January 1, 1989, through December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Reginald M. Jones, Jr., Retirement and Insurance Group, OPM, Room 4351, 1900 E Street, NW., Washington, DC. 20415, telephone (202) 632-3772.

SUPPLEMENTARY INFORMATION: The Medicare Catastrophic Coverage Act of 1988, Pub. L. 100-360, was enacted on July 1, 1988. It expands benefits under Medicare Parts A and B effective January 1, 1989, and January 1, 1990, respectively. Some of the additional coverage provided under the new law duplicates coverage provided under the Federal Employees Health Benefits Program (FEHBP). In order to avoid having Federal annuitants pay premiums for overlapping coverage, Section 422 of the law provides for a reduction in FEHBP premium rates for Medicare eligible Federal annuitants.

The Office of Personnel Management, in consultation with carriers offering health benefits plans contracted pursuant to section 8902 of title 5, United States Code, has determined that the amount of the premium reduction for 1989 will be $3.10 per month for each Medicare eligible individual.

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88-24787 Filed 10-25-88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16603; (812-2330)]

MassMutual Income Investors, Inc.; Application

October 20, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: MassMutual Income Investors, Inc.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Dates: The application was filed on June 2, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 14, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 1295 State Street, Springfield, Mass 01111.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On November 13, 1972, Applicant filed Form N-8A to register under the 1940 Act as a closed-end, diversified management investment company. On November 13, 1972, Applicant also filed Form S-4 pursuant to the Securities Act of 1933 to register 11,400,000 shares of its capital stock, $1.00 per value, which registration statement became effective on December 19, 1972, the date upon which the initial public offering of Applicant's shares commenced.

2. Applicant was organized as a Maryland corporation on November 13, 1972 and it intends to be dissolved under the laws of the State of Maryland when the Applicant receives the order requested hereby.

3. Applicant's Board of Directors approved its Agreement and Plan of Reorganization ("Plan") on September 9, 1987 and Applicant's shareholders approved the Plan at a meeting held on February 9, 1988. Pursuant to the Plan, on April 15, 1988, the Applicant transferred all of its assets and liabilities to MassMutual Investment Grade Bond Fund (the "Series"), a series of MassMutual Integrity Funds (the "Trust"). The Trust, which was formerly named MassMutual Liquid Assets Trust, was registerd under the 1940 Act on March 17, 1982 (Filed No. 811-3420). Applicant's net asset value on the implementation date of the Plan was $116,861,497, or $10.41 per share, and it received in exchange a number of shares of beneficial interest of the Series equal in value to the number of shares of capital stock of the Applicant. No brokerage commissions were incurred and the Series assumed all of the obligations and liabilities of the Applicant. Immediately thereafter, the Applicant distributed the shares of the

Series received to its shareholders in complete liquidation.

4. All legal, acounting and other expenses relating to the reorganization from a Maryland coporation to a series of a Massachusetts business trust, approximately $29,130, were borne by the Applicant, and to the extent such expenses were unpaid on the date of the reorganization, by the Series. All legal, accounting and other expenses relating to the conversion of the Applicant from a closed-end investment company to an open-end investment company were borne by Massachusetts Mutual Life Insurance Company ("MassMutal").

5. The Plan authorized the Applicant, as sole shareholder of the Series prior to completion of the reorganization, to approve an investment advisory agreement between the Series and MassMutual. The Plan also authorized the Applicant to approve a plan of distribution pursuant to Rule 12b–1 under the 1940 Act on behalf of the Series, to ratify the election of the Trustees of the Trust, and to ratify the selection of the Trusts' accountants. The Applicant, acting as sole shareholder of the Series, took such actions on April 15, 1988.

6. Applicant has no shareholders, assets or liabilities. Applicant is not party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88–24775 Filed 10–25–88; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–26203; File No. SR–MBS–88–14]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of Amendment to Proposed Rule Change; Depository Division Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 13, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission an amendment to File No. SR–MBS–88–14 as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) *Excess Proprietary Net Free Equity*. Excess Proprietary Net Free Equity is defined in Article I, Rule 1 as Net Free Equity for any Proprietary Account included within a Participant's Master Account which is not required to collateralize transactions in such Proprietary Account. Excess Proprietary Net Free Equity is included in the computation of Supplemental Processing Collateral.

(b) *Cash Settlement*. Article VI, Rule 2, Section 3 is amended to provide, consistent with the Corporation's current practice, that the Corporation will deliver a written bill to each Participant or Limited Purpose Participant itemizing the charges for each Depository Account included within a Master Account or for the Limited Purpose Account. However, the Corporation may debit the Cash Balance of a single Depository Account designated by the Participant in lieu of debiting each Depository Account included within a Master Acount.

(c) *Participants Fund* Article V, Rule 2, Section 2, is amended to allow the Corporation to determine the amount of a Participant's Mandatory Deposit to the Participants Fund for each of its Master Accounts based on average gross debits to its Cash Balances on settlement days as prescribed by the Public Securities Association (the "PSA") or such other days as the Corporation deems appropriate.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Amendment is filed to make technical changes to the Depository Rules (a) to include in the computation of Supplemental Processing Collateral "Excess Proprietary Net Free Equity" for any Proprietary Account included within a Participant's Master Account which is not required to collateralize transactions in such Proprietary Account; (b) to allow the Corporation to charge a single Depository Account included within a Master Account and designated by the Participant for all the monthly charges for all Depository Accounts included in that Master Account; and (c) to allow the Corporation to determine the level of a Participant's Mandatory Deposit based on average gross debits for either settlement days announced by the Public Securities or such other days as the Corporation determines appropriate.

The first change is intended to give Participants the full benefit of surplus Proprietary Net Free Equity, including not only the Applicable Percentage of the Market Value of Securities but also any Credit Balances.

The second change is intended to reflect the Depository's current billing practices, which have been adopted for the administrative convenience of both the Depository and its Participants.

The third change is intended to allow for variations in business patterns among Depository Participants. For most Participants, the volume of Depository activity is expected to be the greatest on PSA-designated settlements days. However, in the event that a particular Participant's pattern of business results in a greater level of activity on other days, this change will give the Depository the flexibility to base the Participant's Mandatory Deposit on its average gross debits for those days.

The proposed amendments are consistent with Section 17A of the Securities Exchange Act of 1934 in that they promote the prompt and accurate clearance and settlement of securities transactions among MBSCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–MBS–88–14 and should be submitted by November 16, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegate authority.

Jonathan G. Katz,

Secretary.

Dated: October 20, 1988.

[FR Doc. 88–24771 Filed 10–25–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26205; File No. SR–NASD–88–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASD Assessments and Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 18, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change to section 2(b) and 2(c) of Schedule A increases from $50.00 to $65.00 the fee charged to members for each application for registration as a registered representative or registered principal, and restores to $50.00 the registered representative examination fee which was mistakenly raised to $65.00 in File No. SR–NASD–88–41 (Release No. 34–26118, September 26, 1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change to section 2(b) of Schedule A raises from $50.00 to $65.00 the fee charged to members for each application filed with the Association for registration as a registered representative or registered principal. In File No. SR–NASD–88–41 (published by the Commission on September 26, 1988, Release No. 34–26118), this proposed rule change was incorrectly proposed as a change to section 2(c), which imposes a fee of $50.00 for each individual required to take an examination for registration as a registered representative. The registered representative examination fee remains at $50.00.

The proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Securities Exchange Act of 1934, which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received with respect to the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective on filing pursuant to section 19(b)(3)(A)(ii) of the Act in that if affects assessments and fees imposed by the Association exclusively upon its members. Imposition of the fees will, however, be delayed until November 1, 1988.

At any time within 60 days of the filing of a proposed rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5

U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 16, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Johnathan G. Katz,

Secretary.

Dated: October 20, 1988.

[FR Doc. 88-24772 Filed 10-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26204; File No. SR-NYSE-88-28]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Listing Standards for Debt Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 29, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its *Listed Company Manual* to clarify its listing standards for debt securities. The text of this proposed revision is set forth below.

(Additions are italicized, deletions are bracketed)

Section 1—The Listing Process

102.01 Minimum Numerical Standards—Domestic Companies—*Equity Listings*

* * * * *

102.02 Alternate Listing Standards—Companies Operating Primarily to Provide Venture Capital for Small and Medium Size Businesses—*Equity Listings*

* * * * *

102.03 Minimum Numerical Standards—Domestic Equity-Listed Companies—Debt Listings

Aggregate market value or principal amount—$5,000,000

Interest Coverage—

The company must be in a position to cover interest charges on all debt issued by it or a subsidiary including the issue it is seeking to list.

Distribution—

The Exchange has set no minimum criteria for the distribution of debt securities but evaluates each application to determine whether the anticipated distribution of the issue is sufficient for trading on the Exchange.

Convertible Bonds—

Debt securities convertible into common stock may be listed only if the underlying common stock is also listed on the Exchange.

103.01 Minimum Numerical Standards—Non-U.S. Companies—*Equity Listings*

* * * * *

103.05 *Minimum Numerical Standards—Non-U.S. Equity-Listed Companies—Debt Listings*

Aggregate market value or principal amount—$5,000,000

Interest Coverage—

The company must be in a position to cover interest charges on all debt issued by it or a subsidiary including the issue it is seeking to list.

Distribution—

The Exchange has set no minimum criteria for the distribution of debt securities but evaluates each application to determine whether the anticipated distribution of the issue is sufficient for trading on the Exchange.

Convertible Bonds—

Debt securities convertible into equity securities may be listed only if the underlying equity securities are also listed on the Exchange.

* * * * *

703.06 Debt Securities Offerings Listed Process

(A) The Exchange has [not] set [any] minimum numerical criteria for the listing of debt securities *in Section 1.* The issue must be of sufficient [size and] distribution [however,] to warrant trading in the Exchange market system. The Exchange has *also* set certain numerical delisting criteria. The Exchange will delist a debt security if the aggregate market value or principal amount that is publicly-held is less than $1,000,000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed language provides one coherent and easily-located statement on debt listing standards in Section 1 of the Exchange's *Listed Company Manual* (The Listing Process) by incorporating text from other sections of the *Manual* and codifying a longstanding exchange practice involving the aggregate market value of an initial debt listing. The statutory basis under the Act is section 6(b)(5) and its requirement that a national securities exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submissions should file six copies thereof with the

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-88-28 and should be submitted by November 16, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 20, 1988.

[FR Doc. 88-24773 Filed 10-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24731]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 20, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The applications(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 14, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates (70-6583)

Eastern Utilities Associates ("EUA"), One Liberty Square, P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to sections 6(a), 7, 9(a), 10, and 12(c) of the Act and Rules 42 and 50(a)(5) thereunder.

By orders of the Commission dated December 6, 1979; May 5, 1981; November 1, 1982; September 14, 1984; and May 6, 1986 (HCAR Nos. 21329, 22039, 22685, 23421, and 24087, respectively), EUA has been authorized to issue and sell from time to time, through July 1, 1988, up to 3,000,000 of its authorized but unissued common shares pursuant to its Dividend Reinvestment and Common Share Purchase Plan (the "Plan"). As of September 30, 1988, EUA had issued and sold 2,851,370 of its authorized common shares pursuant to the Plan.

EUA now proposes to issue and sell (or, in the case of shares purchased on the open market, to purchase and sell,) from time to time up to December 31, 1990, the 148,630 common shares remaining from the 3,000,000 shares previously authorized, and no more than 800,000 additional common shares.

EUA has requested an exception from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(5) thereof for the proposed issuance and sale of common shares.

Monongahela Power Company, et al. (70-7300)

Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac"), Downsville Pike, Hagerstown, Maryland 21740, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, electric utility subsidiaries of Allegheny Power System, Inc., a registered holding company, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 6(b), and 7 of the Act and Rule 50 thereunder.

By orders dated June 12, 1987 and November 9, 1987 (HCAR Nos. 24410 and 24496, respectively), Monongahela, Potomac and West Penn were authorized to issue and sell, from time to time through December 31, 1988, their first mortgage bonds ("Bonds") in maximum aggregate principal amounts of $115 million, $110 million, and $35 million, respectively, pursuant to the alternative competitive bidding procedures. On July 1, 1987, Monongahela issued and sold $40 million of its Bonds. No other Bonds have been sold. Applicants-declarants now request authorization through December 31, 1989 to issue and sell the remainder of the Bonds previously authorized.

Public Service Company of Oklahoma [70-7526]

Public Service Company of Oklahoma ("PSO"), 212 East Sixth Street, Tulsa, Oklahoma 74119, an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed a post-effective amendment to its application pursuant to sections 9(a) (1) and 10 of the Act.

By order dated August 16, 1988 (HCAR No. 24696, the "Initial Order"), PSO was authorized to purchase the municipal electric distribution system of the Town of Chelsea, Oklahoma. The purchase agreement between Chelsea and PSO was conditioned on an affirmative vote of the qualified voters of Chelsea approving both the acceptance of PSO's bid and the grant to PSO of a 25-year franchise to operate it. On July 26, 1988 an election was held, both measures were approved, and the parties anticipated that the transaction would be closed on August 24, 1988. In the interim, an action in the District Court of Rogers County, Oklahoma, successfully challenged the election, whose results were set aside.

As a consequence, another election must be held before the transaction can be consummated. However, PSO's authorization granted in the Initial Order to consummate the transaction has expired pursuant to Rule 24(c)(1). PSO therefore requests that it be authorized to purchase Chelsea's distribution system at any time through July 30, 1989, in order to allow sufficient time for the new election to be held.

Middle South Utilities, Inc., et al. [70-7534]

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, its wholly owned generating subsidiary, System Energy Resources, Inc. ("SERI"), P.O. Box 23070, Jackson, Mississippi 39225 and Middle South's other electric utility subsidiaries, Arkansas Power & Light Company, P.O. Box 551, Little Rock, Arkansas 72203, Louisiana Power & Light Company, 142 Delaronde Street, New Orleans,

Louisiana 70174, Mississippi Power & Light Company, P.O. Box 1640, Jackson, Mississippi 39215, and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112, have filed a declaration pursuant to sections 6(a), 7, and 12(c) of the Act and Rules 42 and 50(a)(5) thereunder.

SERI proposes to issue and sell up to $400 million aggregate principal amount of its first mortgage bonds, in one or more series from time to time through October 31, 1990 ("Bonds"). In order to provide additional security for its obligations with respect to the Bonds, SERI may determine to enter into one or more assignments, for the benefit of the holders of the Bonds, of its rights under the Availability Agreement among SERI and Middle South's other electric utility subsidiaries and under the Capital Funds Agreement between SERI and Middle South.

SERI further proposes to use the net proceeds derived from the issuance and sale of the Bonds for general corporate purposes, including, but not limited to: (i) The acquisition and retirement, by means of tender offer, open market, negotiated or other forms of purchases, in whole or in part, prior to their respective maturities, of one or more series of SERI's outstanding First Mortgage Bonds; (ii) the payment of construction costs and nuclear fuel costs; (iii) the repayments of long and short-term borrowings; and/or (iv) other working capital needs.

SERI has requested an exception from the competitive bidding requirements of Rule 50 of the Act pursuant to Rule 50(a)(5) in order to negotiate and privately place the Bonds. It may do so.

Northeast Utilities, et al. [70–7544]

Northeast Utilities ("NU"), a registered holding company, Western Massachusetts Electric Company ("WMECO"), the Quinnehtuk Company ("Quinnehtuk"), all located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, The Connecticut Light and Power Company ("CL&P"), Northeast Utilities Service Company ("NUSCO"), Northeast Nuclear Energy Company ("NNECO"), The Rocky River Realty Company ("RRR"), all located on Selden Street, Berlin, Connecticut 06037, and Holyoke Water Power Company ("HWP"), Canal Street, Holyoke, Massachusetts 01040, subsidiaries of NU (collectively, "Companies"), have filed an application-declaration pursuant to sections 6, 7, 9, 10, and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

The proposal includes a request for authorization through December 31, 1990 of short-term borrowings in the form of bank notes ("Bank Notes") pursuant to lines of credit and revolving credit agreements and commercial paper ("Commercial Paper"), open account advances by NU to its subsidiaries, and the continuation of a money pool ("Pool").

The aggregate amount of all short-term borrowings through December 31, 1990, whether through Bank Notes, Commercial Paper or from the Pool will not exceed $100 million in the case of NU, $350 million in the case of CL&P $80 million in the case of WMECO, $10 million in the case of HWP, $50 million in the case of NNECO, $15 million in the case of RRR, $5 million in the case of Quinnehtuk, and $40 million in the case of NUSCO.

All of the Companies, except Quinnehtuk, request authority to issue Bank Notes. Borrowings under each Bank Note will have a maximum maturity of nine months, will bear interest at a fixed or floating rate, and at such rate as should be negotiated by the lending bank and the Companies issuing such Bank Note. In issuing Bank Notes, the Companies will negotiate the lowest effective interest cost for short-term borrowings, taking into account the proposed amount and maturity of each borrowing. Before reaching agreement with lending banks as to the interest rate on borrowing, the Companies will assess the then prevailing short-term rates, such as the prime rate, LIBOR, federal funds rates and certificate of deposit rates, but in no event will the interest rate exceed the higher of 1% above the lender's prime rate or 2% above the Federal Funds Rate. Based on an assumed prime rate of 10.00% as of August 31, 1988, the effective cost of borrowings under the informal credit lines would be 10.00% or 10.5% under formal credit lines assuming a 5% compensating balance. Borrowings evidenced by the Bank Notes will occur no later than December 31, 1990. Floating rate notes will generally be subject to prepayment at any time at the Companies' option. Fixed rate notes may, in certain circumstances, not be prepayable, or may be prepayable only with "Make whole" payments. Companies other than Quinnehtuk may negotiate formal credit lines with one or more banks, subject to compensating balance requirements not exceeding 5% of available amounts, and fees not exceeding .25% per annum.

NU, CL&P and WMECO request authority to issue and sell Commercial Paper to dealers at the prevailing discount rate per annum on the date of issuance for commercial paper of comparable quality and the particular maturity sold by other public utilities. Such sales will occur only if the issuer believes that the effective interest cost will be equal to or less than that cost for the issuance of Bank Notes in amounts at least equal to the principal amount of the Commercial Paper.

The Companies proposed to continue the use of the Pool administered by NUSCO. The Pool is composed of available funds loaned by the participating Companies and borrowed by the participating Companies, except NU, to assist in meeting their respective short-term borrowing needs. Additionally, NU would be able to borrow funds by issuing Bank Notes or selling Commercial Paper solely for the purpose of lending those funds through the Pool to NUSCO, NNECO, Quinnehtuk, and RRR.

Georgia Power Company (70–7559)

Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue, NE., Atlanta, Georgia, a wholly owned electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration pursuant to Section 9(a), 10 and 12(d) of the Act and Rule 44 thereunder.

Since 1963, Georgia Power has leased the distribution system serving the City of Warwick, Georgia ("Warwick System") under a lease agreement ("Lease Agreement") with Plant Telephone and Power Company ("Plant"), a nonaffiliate company. Georgia Power now proposes, pursuant to a proposed Letter Agreement with Plant, to purchase the Warwick System for the option exercise price specified in the Lease Agreement—the net depreciated book cost of the Warwick System as of May 3, 1963, the effective date of the Lease Agreement, of $107,892.50.

Georgia Power owns the distribution facility which serves J.C. Penney Company, Inc.'s ("JC Penney") Catalog Distribution Center, located in Forest Park, Georgia ("JC Penney Facility"). Georgia Power proposes to sell to JC Penney the JC Penney Facility for the negotiated replacement cost of the JC Penney Facility, less depreciation, and plus an amount necessary to modify the JC Penney Facility to replace the multiple meter service with single meter service, at an aggregate sale price of $1,224,044.57. The proposed transaction will permit JC Penney to take advantage of a more favorable rate tariff through single meter service from Georgia Power.

New England Hydro-Transmission Corporation, et al. (70–7564)

New England Hydro-Transmisison Corporation ("NEH–NH"), a Park Street, Concord, New Hampshire 03301 and New England Hydro-Transmission Electric Company, Inc. ("NEH–M"), 25 Research Drive, Westborough, Massachusetts 01582, subsidiaries of New England Electric System, a registered holding company (together, "Applicants") have filed an application-declaration pursuant to section 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

Applicants seek authorization to enter into financing arrangements ("Credit Facility") with a syndicate of participating banks ("Bank Participants") pursuant to which Applicants may borrow up to $300 million for expansion of the existing transmission interconnection (Phase II) between the electric systems of the New England Power Pool and Hydro-Quebec. The total cost of Phase II construction in the United States is currently estimated to be approximately $565 million.

A financing company, New England Hydro Finance Company, Inc. ("NEHFC"), will be incorporated prior to the closing of the Credit Facility for the purpose of facilitating the issuance of the debt to be incurred by NEH–NH and NEH–M in connection with Phase II. NEHFC will have nominal equity capital of $10,000 and its only business will be the lending of funds obtained from the Credit Facility to NEH–NH ad NEH–M at cost. It is proposed that NEM–NH and NEH–M will each acquire 50% of the 1,000 shares of common stock of NEHFC, par value $1.00 per share, proposed to be authorized, issued and outstanding.

Under the Credit Facility, which will mature on June 30, 1998, Bank Participants will make loans ("Advances") to NEHFC under the following separate lending provisions, to be determined at the option of NEHFC. First, the Bank Participants will be obligated to make Same Day Advances, as defined, to NEHFC upon short notice at the higher of prime rate or the then applicable Federal Funds rate plus ⅛ of 1%. Such advances may remain outstanding for up to a maximum of seven business days. Second, upon not less than three days' notice Bank Participants will be obligated to make U.S. dollar 1, 2, 3 or 6 month London Inter-bank Offered Rate ("LIBOR")-based Advances to NEHFC at a maximum interest rate ("Maximum Interest Rate", defined below). Third, upon not less than three days' notice NEHFC may request the Bank Participants and/or other selected financial institutions, which participate as members of a tender panel ("Tender Panel") to bid competitively to make U.S. dollar 1, 2, 3, or or 6 month LIBOR-based Advances. Members of the Tender Panel who are not Bank Participants will loan funds on an unsecured basis. In addition, NEHFC will be entitled to request, upon similar notice, short term advances from the agent bank for a minimum aggregate amount of $1 million up to a maximum of $10 million. Such advances will be priced at the agent bank's cost of funds plus ⅛ of 1% and may remain outstanding for up to 60 days. For the first three years of the Credit Facility, the Maximum Interest Rate will be LIBOR plus ⅛ of 1%. For the next three years, the Maximum Interest Rate will be LIBOR plus ¼ of 1%. For the remaining years, the Maximum Interest Rate will be LIBOR plus ⅜ of 1%.

The Credit Facility further contemplates that, should NEHFC wish to issue commercial paper in lieu of, or in conjunction with, its direct borrowing options the Bank Participants will provide "back up" for a letter of credit to support such commercial paper issuance. This commitment to back up a letter of credit would be available unconditionally for the initial three years of the Credit Facility and extendable at the mutual option of NEHFC and the Bank Participants on a year-by-year basis thereafter. However, NEHFC would first have to secure one or more letters of credit from the Bank Participants or other banks to provide for the direct payment of maturing commercial paper. NEH–NH and NEH–M propose to guarantee the obligations of NEHFC.

The principal amount of Advances to NEHFC available under the Credit Facility will be reduced in equal semiannual amounts beginning January 1, 1994. If Phase II is cancelled, the Credit Facility shall be terminated 180 days from the date of cancellation. The Credit Facility may be cancelled in whole or in part by NEHFC without penalty upon 30 days' prior notice; provided, however, that at no time shall the uncancelled amount be less than the face value of the advances to NEHFC outstanding. Amounts cancelled may not be reinstated.

Energy Intitiatives, Incorporated (70–7568)

Energy Initiatives, Incorporated ("EII"), One Gatehill Drive, Gatehill Center I, Parsippany, New Jersey 07054, a subsidiary of Jersey Central Power & Light Company ("JCP&L"), a wholly owned subsidiary of General Public Utilities ("GPU"), a registered holding company, has filed an application-declaration pursuant to sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By Commission order dated April 16, 1987 (HCAR No. 24373), EII was authorized, through December 31, 1996, to invest in qualifying cogeneration facilities located anywhere in the United States, and in other qualifying facilities located within the service territories of the companies that are parties to the Pennsylvania-New Jersey-Maryland Interconnection Agreement. By order dated September 16, 1988 (HCAR No. 24718), EII was authorized, through December 31, 1992, to perform feasibility studies, develop, and provide engineering and other services for a fee ("September 1988 Order").

EII now requests authority to make investments in the activities described in the aforementioned filings of up to an aggregate amount of $30 million through December 31, 1992. The investments would be made directly or indirectly by way of the acquisition of stock or other securities, participation in general or limited partnerships, joint ventures or project financings, the making or guaranteeing of loans or involvement in other contractual arrangements. EII would not, however, guarantee any indebtedness which matures more than ten years after the date of its issue or which bears an interest rate in excess of 120% of the then prime (or comparable) rate. Any corporation, partnership, joint venture, or other business entity in which EII invests (other than any such entity which performs those additional feasibility studies, development and other services for a fee authorized by the September 1988 Order) may itself engage in financing through project financing, short-term and long-term borrowings, sales of stock or capital contributions, or any other means and in such amounts as may be deemed appropriate.

In a related filing, S.E.C. File No. 70–7525, a notice was issued on September 1, 1988 (HCAR No. 24708) on a proposal by GPU to acquire a new subsidiary, GPU Capital Resources ("GPUCR") and thereafter to transfer to CPUCR the common stock of EII.

The Columbia Gas System, Inc., (70–7569)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and Commonwealth Gas Services, Inc. ("COS"), 800 Moorefield Park Drive, Richmond, Virginia 23236–3659 and

Columbia Gas of Virginia, Inc. ("CVA"), 200 Civic Center Drive, Columbus, Ohio 43215, both of which are distribution subsidiaries of Columbia, have filed an application-declaration pursuant to section 6(a), 7, 9(a), 10 and 12(f) of the Act and Rules 43 and 44 thereunder.

CVA, a distribution company operating in the Commonwealth of Virginia with approximately 44,000 customers is one of the Columbia distribution companies ("CDC") headquartered in Columbus, Ohio. COS is a distribution company operating in Virginia with approximately 60,000 customers and is headquartered in Richmond, Virginia. It is proposed that these two companies be merged, with COS as the surviving company, succeeding to all properties and liabilities of both companies. Pursuant to the Merger Agreement, shares of COS common stock ($50 par value) will be issued to Columbia in exchange for all shares of CVA common stock ($25 par value) held by Columbia based on the ratio or par values. Therefore, one share of COS common stock will be issued for each two shares of CVA common stock held by Columbia.

The merger into COS of Lynchburg Gas Company, the third CDC operating in Virginia, is planned for June 1989 and authority for that transaction will be sought by post-effective amendment to this file.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-24774 Filed 10-25-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #6670]

Declaration of Disaster Loan Area; Montana

The Counties of Beaverhead, Big Horn, Cascade, Carbon, Flathead, Gallatin, Granite, Lewis & Clark, Madison, Missoula, Park, Powder River, Powell, Rosebud, Sanders, Stillwater in the State of Montana constitute an Economic Injury Disaster Loan Area as a result of damage from fires, which started as early as June 5, 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 July 20, 1989 at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, California 95853-4795

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: October 19, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-24690 Filed 10-25-88; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Meeting

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of Las Vegas, Nevada, will hold a public meeting, on Friday, November 18, 1988 at the Small Business Administration Post Office Building, 3rd Floor, Las Vegas, Nevada from 8:00 a.m. to 11:00 a.m., 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 Elizabeth Sutton, Secretary for the Advisory Council, U.S. Small Business Administration, 301 E. Stewart, P.O. Box 7527, Las Vegas, NV 89125, 702-388-6611.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 18, 1988.

[FR Doc. 88-24691 Filed 10-25-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Approval of Applicant as Trustee: First Interstate Bank of Texas, N.A.

Notice is hereby given that First Interstate Bank of Texas, N.A., with offices at 1000 Louisiana, Houston, Texas 77002, has been approved as Trustee pursuant to Pub. L. 89-346 and 46 CFR § 221.21—221.30.

Dated: October 19, 1988.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 88-24709 Filed 10-25-88; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Announcing the Fourth Meeting of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the fourth meeting of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The Committee was established in accordance with the provisions of the Federal Advisory Committee Act to obtain independent advice on motor vehicle safety research. At this meeting the Committee will consider reports from subcommittees on rollover crash protection for occupants of passenger cars, light trucks, and vans; biomechanics of injury; heavy truck safety; and crash data analysis. The Committee will also consider matters relating to the use of "Information Age" electronic technologies to improve vehicle safety in the traffic of tomorrow and review committee procedural matters.

Date and Time: The 1-day meeting is scheduled to begin at 10:30 a.m. on Friday, November, 18, 1988, and conclude at 5:00 p.m. that afternoon.

ADDRESS: The meeting will be held in Room 4234 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for motor vehicle safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

The meeting is open to the public, and participation by the public will be determined by the Committee Chairman.

A public reference file (Number 88-01) has been established to contain the products of the Committee and will be open to the public during the hours of 8:00 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366-2768.

FOR FURTHER INFORMATION CONTACT: Louis V. Lombardo, Office of Research and Development, 400 Seventh Street, SW., Room 6208, Washington, DC 20590, telephone: (202) 366–4862.

Issued on: October 20, 1988.

Howard M. Smolkin,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 88–24776 Filed 10–25–88; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 88–68]

Conditional Approval of Francisco J. Rovira, d/b/a International Marine Consultants, as a Commercial Gauger

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of conditional approval of Francisco J. Rovira, d/b/a International Marine Consultants, as a commercial gauger.

SUMMARY: Francisco J. Rovira, d/b/a International Marine Consultants, of Hato Rey, Puerto Rico, recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils in bulk and in liquid form under § 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Mr. Rovira meets the requirements for conditional approval.

Therefore, in accordance with § 151.13(c), Francisco J. Rovira, d/b/a International Marine Consultants, 429 Padre Rufo Street—Floral Park, Hato Rey, Puerto Rico 00917 (P.O. Box 6085, Old San Juan, Puerto Rico 00903), is conditionally approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–2446.

Dated: October 19, 1988.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 88–24756 Filed 10–25–88; 8:45 am]

BILLING CODE 4820–02–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 information collection must be completed, 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 respond; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed information collection 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 within 30 days of this notice.

Dated: October 19, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Farm Survey and Overall Farm and Home Plan Self-Proprietor/Manager—Chapter 31, Title 38, U.S.C.
3. VA Form 28–1905n.
4. The form is used by the Vocational Rehabilitation Specialist to properly evaluate a veteran's farm for its potential and suitability to meet the goals established in the rehabilitation plan. The survey data are also used to develop and monitor the veteran's training program.
5. On occasion.
6. Individuals or households; Farms.
7. 30 responses.
8. 60 hours.
9. Not applicable.

[FR Doc. 88–24706 Filed 10–25–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 207
Wednesday, October 26, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

October 20, 1988

FCC To Hold Open Commission Meeting, Thursday, October 27, 1988

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, October 27, 1988, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Inquiry into the Compulsory License for Cable Retransmission of Broadcast Signals. Summary: The Commission will consider further action in this proceeding.

Private Radio—1—Title: Petition for Reconsideration of the Report and Order in PR Docket 87-5 regarding Multiple Address. Summary: The Commission will consider a Petition for Reconsideration of the Report and Order in PR Docket 87-5.

Common Carrier—1—Title: Rule amendments to replace the Restoration Priority System with the Telecommunications Service Priority System. Summary: The Commission will consider whether to amend Parts 0 and 64 of its rules relating to National Security Emergency Preparedness, as recommended by the Secretary of Defense and addressed in the Notice of Proposed Rulemaking in General Docket No. 87-505.

Mass Media—1—Title: Petition for Partial Reconsideration filed by the Association of Maximum Service Telecasters, Inc., and the National Association of Broadcasters of the Low Power TV Service Terrain Shielding *Policy Statement*. Summary: The Commission will reconsider its limited waiver policy regarding the consideration of terrain shielding in the evaluation of television translator, television booster and low power television applications.

Mass Media—2—Title: In the Matter of Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules. Summary: The Commission will consider further action in MM Docket No. 87-7 relating to the duopoly and one-to-a-market provisions of the Commission's broadcast multiple ownership rules.

Mass Media—3—Title: Reexamination of the Commission's Cross-Interest Policy. Summary: The Commission seeks further comment on aspects of the cross-interest policy.

Mass Media—4—Title: Reexamination of the Commission's Cross-Interest Policy. Summary: The Commission considers changes to its cross-interest policy, which prevents individuals or entities from having meaningful relationships in two media outlets serving substantially the same area.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Issued: October 20, 1988.

[FR Doc. 88-24812 Filed 10-24-88; 10:50 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 12:00 noon, Monday, October 31, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: October 21, 1988.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 88-24788 Filed 10-24-88; 9:02 am]

BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-88-27]

TIME AND DATE: Friday, November 4, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E. Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. Nos. 701-TA-297 and 731-TA-422 (P) (New Steel Rails, except Light Rails, from Canada)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary. (202) 252-1000.

Kenneth R. Mason,

Secretary.

October 14, 1988.

[FR Doc. 88-24781 Filed 10-24-88 9:10 am]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 24, 31, November 7, and 14, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 24

Tuesday, October 25

11:00 a.m.
Periodic Briefing by TMI-2 Advisory Panel (Public Meeting)

Thursday, October 27

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

11:00 a.m.
Periodic Briefing by the Advisory Committee on Nuclear Waste (Public Meeting)

Week of October 31—Tentative

There are no meetings scheduled for the Week of October 31.

Week of November 7—Tentative

Wednesday, November 9

2:00 p.m.
Briefing on Status of Resolution of Concerns with Location of Exploratory Shaft at Yucca Mountain (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, November 10

10:00 a.m.
Briefing on Final Rule on Standards for Protection Against Radiation—Part 20 (Public Meeting)

Week of November 14—Tentative

Thursday, November 17

10:00 a.m.
Briefing on Proposed Commission Policy Statement on the Professional Conduct of Nuclear Power Plant Operators (Public Meeting)
2:00 p.m.
(Briefing by DOE on High Level Waste Program (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Briefing on Safety Goal Implementation Plan (Public Meeting) scheduled for October 20, *postponed.*

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill,

Office of the Secretary.

October 20, 1988.

[FR Doc. 88–24791 Filed 10–24–88 9:04 am]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 53, No. 207
Wednesday, October 26, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-88-122]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Authorization of an Additional Container

Correction

In rule document 88-22103 beginning on page 37728 in the issue of Wednesday, September 28, 1988, make the following corrections:

1. On page 37729, in the first column, in the fifth complete paragraph, in the 12th line, "Texas" was misspelled.

PART 906—[CORRECTED]

2. On the same page, in the second column, in amendatory instruction 2, in the first line, "906-340" should read "906.340".

§ 906.340 [Corrected]

3. On the same page, in the same column, in § 906.340(a)(1)(vi), in the fourth line, "gauge" was misspelled.

4. On the same page, in the same column, in § 906.340(a)(1)(vii), in the eighth line, "one" should read "once".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-88-121]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Proposed Tighter Minimum Size Requirements

Correction

In proposed rule document 88-22561 beginning on page 38295 in the issue of Friday, September 30, 1988, make the following corrections:

1. On page 38295, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the fourth line, after "AMS" insert a comma.

2. On page 38296, in the first column, in the second complete paragraph, in the first line, "minimum" was misspelled.

3. On the same page, in the same column, in the third complete paragraph, in the seventh line, "minimum" was misspelled.

§ 906.365 [Corrected]

4. On the same page, in the second column, in § 906.365(a)(2), in the fourth line, "2 9/16" should read "2 9/16".

5. On the same page, in the same column, in § 906.365(b), in the fifth and ninth lines, "17 CFR" should read "7 CFR".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 80736-8197]

Summer Flounder Fishery

Correction

In rule document 88-23221 beginning on page 39475 in the issue of Friday, October 7, 1988, make the following correction:

On page 39476, in the third column, in the seventh complete paragraph, in the first line, "Section 625.4(a)" should read "Section 625.4(l)".

BILLING CODE 1505-01-D

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

Correction

In notice document 88-23042 beginning on page 39330 in the issue of Thursday, October 6, 1988, make the following correction:

On page 39330, in the third column, in the table, in the right hand column, the 11th line should read "79,950 dozen.".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-42064A; FRL-3459-9]

Approval of the Department of Energy Plan for Certification of Applicators of Restricted Use Pesticides

Correction

In notice document 88-23178 beginning on page 39518 in the issue of Friday, October 7, 1988, make the following correction:

On page 39518, in the third column, under **ADDRESSES**, in the 14th line, "303-292-1603" should read "303-293-1603".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 83F-0020]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Sodium Polyacrylate

Correction

In rule document 88-23204 beginning on page 39455 in the issue of Friday, October 7, 1988, make the following correction:

§ 173.73 [Corrected]

On page 39456, in § 173.73(a)(2), in the third column, in the fourth line, "(HRR-330)" should read "(HFF-330)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

[BERC-440-P]

Medicaid Program; Eligibility of Aliens for Medicaid

Correction

In proposed rule document 88-21898 beginning on page 38032 in the issue of Thursday, September 29, 1988, make the following corrections:

PART 435—[CORRECTED]

1. On page 38037, in the second column, in amendatory instruction 4, in the first line, "reusing" should read "revising".

§ 436.406 [Corrected]

2. On page 38039, in the first column, in § 436.406(k), in the fifth line, after "or" remove "§".

§ 436.408 [Corrected]

3. On page 38040, in the third column, in § 436.408(j), in the fourth line, "1152(b)" should read "1252(b)".

4. On page 38041, in the first column, in § 436.408(k), in the fifth line, after "or" remove "§".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 785 and 823

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Prime Farmland

Correction

In rule document 88-23848 beginning on page 40828 in the issue of Tuesday, October 18, 1988, make the following corrections:

1. On page 40831, in the second column, in the fifth complete paragraph, in the second line, "couple" should read "coupled".

2. On page 40835, in the first column, under "Proposed 3 Percent Exemption for Surface Facilities", in the second paragraph, in the 13th line, "real" should read "areal".

3. On the same page, in the second column, in the second complete paragraph, in the 21st line, "varied" should read "valid".

4. On the same page, in the third column, in the second complete paragraph, in the seventh line, "water" should read "waste".

5. On page 40838, in the first column, in the second complete paragraph, in the 12th line, after "the" insert "subsoil".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 801

Application of the Employee Polygraph Protection Act of 1988

Correction

In rule document 88-24377 beginning on page 41494 in the issue of Friday, October 21, 1988, make the following corrections:

1. On page 41495, in the second column, in paragraph (5), in the fourth line, "This" should read "Thus".

2. On page 41496, in the second column, in the third complete paragraph, in the first line, "sets" should read "set".

§ 801.10 [Corrected]

3. On page 41499, in the first column, in § 801.10(b), in the eighth line, "nonappropriated" was misspelled.

§ 801.11 [Corrected]

4. On the same page, in the same column, in § 801.11(a), in the first line, "Exemptions" should read "exemptions" and, in the seventh line, "test" should read "tests".

5. On the same page, in the same column, in § 801.11(c), in the 13th line, insert after the semicolon "or any employee of a contractor to such agency;".

§ 801.12 [Corrected]

5a. On the same page, in the second column, in the line after paragraph (g), "§ 810.12" should read § 801.12".

6. On the same page, in the third column, in § 801.12(b), the 25th line should read "of itself, would not be a sufficient basis to".

7. On page 41500, in the first column, in § 801.12(c)(2), in the first line, "economic" was misspelled.

8. On the same page, in the same column, in § 801.12(e)(1), continue the paragraph on the sixth line with the text beginning on the seventh line.

§ 801.22 [Corrected]

9. On page 41506, in the first column, in the fourth line, in § 801.22(c)(4), "(b)(2)(B)" should read "8(b)(2)(B)".

§ 801.30 [Corrected]

10. On page 41506, in the second column, in § 801.30(a) introductory text, the third line should read, "from the date the polygraph".

11. On the same page, in the third column, in § 801.30(c), in the ninth line, "of" should read "or".

§ 801.42 [Corrected]

12. On page 41507, in the second column, in § 801.42(a)(1), in the eighth line, "of" should read "or".

13. On the same page, in the same column, in § 801.42(a)(4), in the third line, "act" should read "Act".

§ 801.60 [Corrected]

14. On page 41508, in the second column, in § 801.60, in the fifth line, "§ 810.53" should read "§ 801.53".

§ 801.67 [Corrected]

15. On page 41509, in the second column, in § 801.67(b), in the fifth line, "appropriateness" was misspelled.

§ 801.72 [Corrected]

16. On page 41510, in the first column, in § 801.72, in the sixth line, "(15) days, fifteen" should read "fifteen (15) days,".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25304, Amdt. 61-80, 71-11, 91-205]

RIN: 2120-AC35

Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements

Correction

In rule document 88-23556 beginning on page 40318 in the issue of Friday, October 14, 1988, make the following correction:

§ 91.90 [Corrected]

On page 40323, in the second column, in § 91.90(a)(3), in the fifth line, after "in" insert "the".

BILLING CODE 1505-01-D

federal register

Wednesday
October 26, 1988

Part II

Environmental Protection Agency

40 CFR Parts 280 and 281

Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements and State Program Approval Objective; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 280 and 281

[FRL-UST-3; 3419-3]

Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements and State Program Approval Objective

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is promulgating financial responsibility requirements applicable to owners and operators of underground storage tanks containing petroleum under Section 9003 (c) and (d) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA). This rule establishes requirements for demonstrating financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of underground storage tanks containing petroleum.

Today EPA is also promulgating, for purposes of state program approval, a federal technical objective for financial responsibility of owners and operators of petroleum UST systems. Subtitle I of RCRA allows EPA to approve state programs to operate in place of the federal UST requirements if those state programs have standards that are no less stringent than the federal requirements, and also provide adequate enforcement of compliance with those standards.

EFFECTIVE DATE: This rule becomes effective on January 24, 1988.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in Washington, DC.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Authority

These regulations are issued under the authority of Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Waste Disposal Act, as amended. The principal amendments to this Act have been under the Resource Conservation and Recovery Act of 1976, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616) and the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499) (42 U.S.C. 6921, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), and 6991(h)).

II. Background

This section provides the legislative and regulatory background for the final rule, describes the comprehensive underground storage tank (UST) regulatory program, and summarizes today's financial responsibility rulemaking.

A. Legislative and Regulatory Background of the Rule

The Hazardous and Solid Waste Amendments of 1984 (HSWA) extended and strengthened the provisions of the Resource Conservation and Recovery Act (RCRA). HSWA created Subtitle I, which provides for the development and implementation of a regulatory program for underground storage tanks (USTs) [1] containing regulated substances, including petroleum [2] and other regulated substances [3] (such nonpetroleum regulated substances are hereinafter referred to as hazardous substances). Section 9003(a) of Subtitle I requires the EPA Administrator to promulgate requirements for release detection, prevention and correction as necessary to protect human health and the environment. These technical standards were promulgated at 53 FR 37082 (September 23, 1988).

The Superfund Amendments and Reauthorization Act of 1986 (SARA) amended sections 9003 (c) and (d) of Subtitle I to mandate that the Agency establish financial responsibility requirements for UST owners and operators to assure the costs of corrective action and third-party liability caused by sudden and nonsudden accidental releases from USTs. SARA made other changes to Subtitle I affecting financial responsibility.

(1) It established $1 million per occurrence and an appropriate annual aggregate as the minimum assurance levels for USTs at facilities engaged in petroleum production, refining, or marketing, and for USTs which handle substantial amounts of petroleum; the Administrator may set lower per-occurrence limits for USTs at other types of facilities.

(2) It authorized the Administrator to suspend enforcement of the financial responsibility requirements if financial assurance for a particular class or category of USTs is "not generally available" and steps are being taken to either form a risk retention group (RRG) or establish a state fund pursuant to § 9004(c)(1).

(3) It created a $500 million Leaking UST Trust Fund to fund certain corrective action costs for petroleum releases (including the costs of cleanup, enforcement and cost recovery).[4] Before the effective date of today's rule, Trust Fund monies can be used whenever the Administrator or state under cooperative agreement determines that such action is necessary to protect human health and the environment and when there is no owner or operator capable or willing to undertake proper action. Priority must be given to cases posing the greatest threat to human health and the environment. After the effective date of today's rule, the circumstances under which Trust Fund monies may be used are more restricted (see Section IV.B).

On April 17, 1987, the Agency proposed financial responsibility requirements for USTs containing petroleum (52 FR 12786). The Agency provided a 60-day comment period and extended it for an additional 30 days. In addition, the Agency published two Supplemental Notices modifying the initial proposal (52 FR 48638, December 23, 1987, and 53 FR 10401, March 31, 1988). Based on EPA's analysis of the comments, EPA has revised the rule and is today promulgating a final rule, which is summarized in Section C below.

EPA has also issued an Advanced Notice of Proposed Rulemaking (ANPRM) on financial responsibility requirements for USTs containing hazardous substances (53 FR 3818, February 9, 1988).

B. The Comprehensive Federal UST Regulatory Program

In addition to this financial responsibility rule for USTs containing petroleum, the Agency has promulgated technical standards for USTs containing petroleum and hazardous substances (53 FR 37082, September 23, 1988) and procedures for approval of state UST programs (53 FR 37212, September 23, 1988). The three rulemakings together establish a comprehensive program to regulate USTs, as required by Subtitle I of RCRA.

The technical standards require UST owners and operators to meet standards for tank operation and design, release detection and reporting, corrective action, and closure. The operation and design standards require that USTs be protected from corrosion and equipped with devices to prevent spills and overfills. The release detection and reporting standards require owners and operators to install leak detection systems and report actual and suspected releases. These requirements pertain to new USTs on the effective date of the rule. Some operational requirements pertain to USTs currently in use on the effective date. USTs currently in use become subject to the tank operation and design requirements over a ten-year phase-in period and the release detection requirements over a five-year phase-in period. The corrective action standards, which apply to all tanks on the effective date, require owners and operators to clean up releases from UST systems. In the short run, one effect of the technical standards will be to

---

[1] Under section 9001(1) "underground storage tank" is defined as "any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. Such term does not include any—

(A) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,

(B) Tank used for storing heating oil for consumptive use on the premises where stored,

(C) Septic tank,

(D) Pipeline facility (including gathering lines) regulated under—

(i) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, *et seq.*),

(ii) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, *et seq.*), or

(iii) Which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (i) or (ii) of this subparagraph,

(E) Surface impoundment, pit, pond, or lagoon,

(F) Storm water or waste water collection system,

(G) Flow-through process tank,

(H) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(I) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term 'underground storage tank' shall not include any pipes connected to any tank which is described in subparagraphs (A) through (I)." These terms are further defined by regulation under the technical standards published at (CITE-TS).

[2] Under section 9001(8), petroleum is defined as "petroleum, including crude oil or any fraction thereof," which is liquid at standard conditions of temperature (60 degrees Fahrenheit) and pressure (14.7 pounds per square inch absolute).

[3] Under section 9001(2), "regulated substances" are defined as "(A) any substance defined in section 101(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C), and (B) petroleum."

[4] The Trust Fund may not be used to compensate third parties.

increase detection of releases; over the long run, the standards will reduce the likelihood that new releases will occur.

The financial responsibility rule requires that UST owners or operators demonstrate financial responsibility for the costs of corrective action and compensation of third parties arising from release of petroleum from underground storage tanks. The financial responsibility requirements will help ensure that owners and operators can respond promptly to clean up releases and to compensate third parties for any injuries or damages associated with the releases. Because the providers of financial assurance mechanisms may require UST owners and operators to install leak detection and corrosion protection systems as a condition of coverage, the financial responsibility requirements may accelerate compliance with the technical standards.

The state program approval objectives (53 FR 37212, September 23, 1988) enable states whose programs are no less stringent than the federal program and which provide for adequate enforcement of compliance to administer the UST regulatory program. EPA has designed the approval criteria to provide flexibility consistent with statutory requirements to encourage states to adopt the UST program. EPA believes that regulation of the large and varied UST population is best implemented by state and local agencies, which can oversee and enforce the UST program more effectively than EPA.

Finally, the last major component of the federal UST regulatory program, establishing financial responsibility requirements for USTs containing hazardous substances, will be proposed in the future.

C. Program Objectives and Summary of Today's Rule

1. Program Objectives and Major Changes in the Final Rule

The Agency had three guiding objectives in considering the comments received on the proposed rule and in adopting the changes for the final rule. First, the financial responsibility program for petroleum USTs must require adequate and reliable financial assurance for the costs of UST releases, based on the following considerations:

(1) The certainty that funds will be available;

(2) The sufficiency of funds to cover the costs of releases; and

(3) The availability of funds for corrective action and third-party liability.

Second, while requiring adequate and reliable financial assurances, the rule must provide flexibility, where possible, to increase the feasibility of compliance by the regulated community. Subtitle I specifically allows flexibility in establishing per-occurrence levels of assurance for USTs at facilities not engaged in petroleum production, refining, or marketing, and for aggregate levels of assurance. The Agency has carefully considered where to allow flexibility in the financial responsibility program while ensuring adequate protection for covering the costs of petroleum UST releases.

Finally, to the extent possible, this rule should promote expansion of existing assurance mechanisms and development of new ones to achieve maximum compliance by UST owners and operators. The Agency recognizes the current limited availability of financial assurance mechanisms and the difficulty many owners and operators will have in complying with the requirements, at least initially. However, insurance coverage is available now to some UST owners and operators, and a number of states have either adopted or are taking steps to adopt state funds. The Agency has constructed the final rule to promote timely compliance by all owners and operators and to encourage development of additional assurance mechanisms.

The major changes in the rule and the way in which they further these objectives are summarized below:

• *Phased schedule of compliance.* The final rule phases in compliance in four stages for different categories of UST owners. The Agency has adopted this approach to allow adequate time for compliance and to promote development of financial assurance mechanisms in the following ways:

—Owners most able to comply, based on financial strength, must do so 3 months after the promulgation date.

—Most owners in the next two groups have or can obtain insurance. The phase-in allows time for processing insurance applications (which may take several months per application). It also provides time for insurance providers to conform their policies to the requirements of this rule, as well as to decide whether to extend their policies to new segments of the regulated community. Some owners in these groups may also be able to rely on state funds.

—Owners scheduled for compliance 24 months after the date of promulgation of the rule, e.g., single station owners and non-marketers, will rely primarily on state funds and expansion of insurance and RRGs beyond currently available programs. The schedule provides time for these mechanisms to become available.

—Phasing in compliance also provides UST owners and operators time to invest in technical improvements or replacement of tanks to make them insurable, as well as to comply with the UST technical standards.

• *$500,000 per occurrence level of assurance allowed for non-marketers with monthly throughput of 10,000 gallons of gasoline or less.* The Agency has determined that this amount should be sufficient to cover about 99 percent of all claims at these facilities—a key criterion in deciding the coverage amounts. At the same time, this lower coverage amount reduces the burden on individual owners or operators. In addition, allowing a lower level of assurance may increase the number of policies insurers are able to write and may provide an incentive to extend coverage to non-marketers.

• *Lower aggregate level of assurance.* The final rule requires a maximum aggregate of $2 million and raises the number of tanks qualifying for the $1 million aggregate to 100. These aggregate levels achieve the Agency's goal that releases at UST facilities not exceed the aggregate more than one percent of the time. At the same time, the lower levels significantly reduce the burden on owners and operators. More firms will be able to use existing insurance programs (which currently provide maximum aggregate coverage of $2 million). The lower aggregate will also make it easier to capitalize RRGs and state funds.

• *Suspension of enforcement.* Today's rule does not contain suspension of enforcement procedures. The Agency has chosen to defer the promulgation of these procedures. The Agency hopes to gain experience with implementation of the program on which to base a process that minimizes the administrative burden of suspension of enforcement on owners and operators as well as on the Agency.

2. Summary of Today's Rule

This section briefly summarizes EPA's financial responsibility rule for petroleum USTs. Section III of this preamble describes the final rule, some of the major comments that were made on the proposed rule, and the rationale for the changes. The Comment/Response Document ("Summary of Comments and EPA's Response to Comments on the April 17, 1987, Proposed Financial Responsibility Rule for Petroleum Underground Storage Tanks") in the docket contains a detailed summary of all comments on the proposed rule and the Agency's response to those comments.

Today's financial responsibility requirements are applicable to owners or operators of "petroleum UST systems" with the following exceptions: (1) Federal or state entities that own or operate USTs containing petroleum; and (2) owners and operators of USTs excluded from the technical standards (Section III.A.6 below). For purposes of covering costs of corrective action and third-party liability, EPA requires all owners or operators of petroleum USTs

at facilities engaged in petroleum production, refining, or marketing and owners or operators of USTs with an average monthly throughput of more than 10,000 gallons to obtain financial assurance of at least $1 million per occurrence. Owners or operators of USTs at facilities not engaged in petroleum production, refining, or marketing with an average monthly throughput of 10,000 gallons or less must maintain financial assurance of at least $500,000 per occurrence. All owners or operators must maintain an annual aggregate of $1 million or $2 million, depending on the number of USTs assured.

UST owners or operators may satisfy the requirements using the following mechanisms: insurance or risk retention group coverage, surety bond, guarantee, letter of credit, financial test of self-insurance, trust fund, a state-required mechanism, or a state fund or other state assurance. Mechanisms can be used alone or in combination to cover the costs of taking corrective action and compensating third parties as long as a mechanism or combination of mechanisms provides the appropriate amount of assurance. The only combination of mechanisms that is not allowed is the financial test of self-insurance and a guarantee where the financial statements of the owner or operator and the guarantor are consolidated.

The final rule does not contain procedures for obtaining a suspension of enforcement of the requirements. The Agency will promulgate suspension of enforcement procedures at a later date.

The final rule requires owners or operators to submit documentation of financial responsibility to the implementing agency after a known or suspected release occurs; when a provider becomes incapable of providing assurance; and when a provider revokes a mechanism and the owner or operator is unable to obtain alternate coverage. Owners or operators must also submit documentation of financial responsibility if requested by the implementing agency. In addition, UST owners or operators must notify the implementing agency of their methods of demonstrating financial responsibility upon installation of new tanks. Owners or operators must maintain records of the financial assurance mechanisms used to satisfy these requirements on-site or at their place of business.

The final rule also requires that UST owners or operators receive a notice of cancellation before terminating coverage to allow them sufficient time to procure alternate assurance and to determine whether there are existing releases.

Owners and operators must comply with these financial responsibility requirements over a phased-in compliance period lasting up to 24 months from the promulgation date of this rule.

The state program approval objective for financial responsibility of owners and operators of petroleum UST systems is also promulgated today. This objective outlines the financial responsibility requirements that owners and operators of petroleum UST systems must meet in order to be "no less stringent" than the corresponding federal technical standard, and to demonstrate adequate enforcement of compliance.

D. Availability of Mechanisms

The Agency received many comments suggesting that the mechanisms allowed to demonstrate compliance with today's rule are generally unavailable. The Agency recognizes that, for several reasons, including cost, company size, or lack of qualified providers, some of the mechanisms proposed in the rule might have a limited availability at this time. Some mechanisms, such as surety bonds and letters of credit, are likely to be available and affordable to only a few owners and operators. However, in deciding to allow a wide variety of mechanisms to be used to demonstrate financial responsibility, the Agency did not want to preclude the use of any mechanism that might be used and that would provide an adequate degree of assurance that funds will be available if needed. The guarantee, for example, was included because some UST owners and operators have business relationships with firms who might be willing and able to provide them guarantees. Not all owners and operators, however, will have that option.

The Agency recognizes that insurance and state financial assurance programs are likely to be the most feasible mechanisms for most owners and operators to comply with today's rule. Currently, however, pollution liability insurance for USTs is not widely available for a number of reasons. Foremost is the fact that such pollution liability insurance is now and is likely to continue to be offered by a limited number of specialized providers. Second is the unpredictability of the risks involved for unprotected tanks that have not been subject to regular leak detection. In addition, it is unclear to insurers how the new UST technical requirements, especially for corrective action, may change the number and cost of claims. This current uncertainty also affects the amount of reinsurance that is available for insurance policies written for USTs and thereby limits the number of policies that insurers are able to issue.

Despite its limited availability, a number of UST owners and operators have been able to find coverage. Commenters indicated that several insurers are already covering some USTs or are planning to offer such coverage in the future. While a substantial number of petroleum marketers are currently insured, the Agency recognizes that many smaller motor fuel marketers and UST owners not engaged in motor fuel marketing have had difficulty in obtaining coverage.

Implementation of the technical standards rule is likely to increase the availability of insurance over the long term. As old, unprotected tanks are removed and/or fitted with release detection systems, the number of leaks that are detected should increase significantly. As these leaks are detected and corrected, the requirements for upgrading or replacing tanks, combined with regular monitoring, should significantly reduce both the occurrence of leaks and their duration prior to detection. Over the long term, implementation of the technical standards should make UST risks more predictable and, therefore, insurers should be more willing to provide coverage.

Owners and operators who cannot secure traditional insurance coverage may also have alternatives. For some owners and operators, RRGs will offer an alternative to insurance. One such RRG has been formed and offers coverage to petroleum marketers. Several other commenters indicated an interest in forming RRGs.

State funds may also be available to UST owners and operators. In fact, Congress specifically recognized the important role that state funds may play in providing financial assurance by including attempts to form a state fund as a basis for suspension of enforcement and by explicitly allowing such funds to meet financial responsibility requirements for state program approval under RCRA section 9004(c)(1). Although not widely available at present, state funds have already been established in several states. The Agency recognizes that, in most cases, state funds may only supply a portion of the financial assurance required. Some currently available funds cover corrective action but not third-party liability costs; others cover both.

Generally, these funds do not supply coverage in the full amount required in today's rule. State funds may need to be used in combination with other mechanisms to meet the requirements of today's rule. Depending on their structure, state funds can provide an important means for compliance with financial responsibility requirements at the onset of the program and encourage development of insurance and RRGs over the longer term.

The Agency realizes that the mechanisms allowed in today's rule may be difficult to obtain at present. However, the phased-in schedule for compliance with the rule will provide insurers more time to develop and expand lines of insurance and states more time to establish state funds. In addition, the Agency expects to promulgate final procedures for suspension of enforcement in the near future. Following promulgation of that rule, those owners and operators unable to obtain a financial assurance mechanism by their compliance date may form classes and apply for a suspension of enforcement.

III. Section-by-Section Analysis

A. Applicability (§ 280.90)

The rule promulgated today applies to owners and operators of all underground storage tank systems containing petroleum, with certain exemptions or deferrals. Commenters raised several issues concerning the applicability of this rule.

1. Owners and Operators (§ 280.90(a))

The final rule applies to owners and operators of all petroleum UST systems (as defined in § 280.12 of the technical standards rule). If the owner and operator are separate persons, only one person is required to demonstrate financial responsibility although the Agency will hold each responsible if the financial responsibility requirements are not complied with by either party. While the Agency's intention with respect to this issue was explicitly stated in the preamble to the proposed rule (52 FR 12795, April 17, 1987), the rule also conveyed the Agency's intention by using the phrase "owner *or* operator" instead of "owner *and* operator" in all but the applicability section.

The Agency retains this approach and expliticly states it in the rule, as well as in the preamble, to avoid possible confusion. For this reason, the Agency has added the following language to § 280.90 *Applicability:*

If the owner and operator of a petroleum UST system are separate persons, only one person is required to demonstrate financial responsibility.

Some commenters supported the Agency's approach to applicability when the owners and operators are separate persons; however, other commenters believed that EPA should designate which person should comply with the rules. Of these commenters, some supported a rule that required only the owners to comply with the requirements while other commenters believed only operators should be held responsible. Some commenters suggested that the person with responsibility for a particular activity, e.g. tank installation, maintenance or daily operation, should demonstrate financial responsibility.

The commenters who urged EPA to designate only one responsible person when the owners and operators are separate persons believed that the proposal left owners and operators to "fight it out" to determine who will demonstrate financial responsibility and that problems would occur when they do not agree who should obtain coverage. The commenters who urged EPA to hold only operators responsible pointed out that in many cases owners will have only minimal or nominal control over the operation of the tanks (e.g., passive lessors of property such as oil jobbers or marketers ordinarily do not control day-to-day tank operations). On the other hand, one commenter who supported holding only owners responsible pointed out that, when oil jobbers and marketers own tanks, they have usually assumed responsibility for tank replacement and maintenance.

The Agency has decided not to designate a single party, either the owner or operator, as responsible for compliance with the rules because the statute requires the UST standards to be applicable to "all owners and operators," and a determination of which person should assume these costs could only be made on a cases by case basis. Under the technical requirements, both persons are responsible for corrective action; however, the liability of owners and operators to third-party claimants will vary depending on the circumstances of each case and on the applicable state law. Making financial assurance the responsibility of only the person engaged in a particular activity would also be inappropriate because the liability of an owner or operator is not limited to the results of particular activities. In some cases the person responsible for one activity may have allowed a release to occur and therefore incur liability to third parties, while in another case, the person responsible for a different activity may be liable. Under theories of strict liability and negligence, even passive lessors could be liable for third-party damages in some situations. Moreover, the person responsible for maintenance and installation will vary depending on the individual arrangements between owner and operator.

The Agency recognizes that in some instances owners and operators will have difficulty agreeing which one of them will comply with the rules. Nonetheless, the Agency believes that owners and operators are in the best position to decide between themselves, as part of their ongoing business relationships, which one of them should demonstrate financial responsibility. Owners and operators may decide that the person most responsible for particular activities should obtain financial assurance, or they may decide that the person most able to demonstrate financial responsibility should do so. EPA believes this approach will allow for greater flexibility, yet avoids the considerable expense of requiring both parties to secure financial assurance.

Other commenters expressed concern about other applicability issues. Some commenters objected to requiring current owners and operators to obtain financial assurance when past owners and operators might be responsible for contamination. Another commenter pointed out that tank testers may be responsible for releases and urged that they should be subject to financial responsibility requirements.

Current owners and operators are responsible under the regulation for obtaining financial assurances for their tanks even if previous owners or operators are responsible for contamination. In situations where a current owner or operator is faced with claims for contamination that occurred under a previous owner or operator, he may pursue appropriate legal remedies against the previous owner or operator. Similarly, damage to tanks and releases which result from tank testing activity are subject to tort claims under applicable state law. Moreover, the statute does not authorize the imposition of financial responsibility requirements on tank testers, only UST owners and operators.

Finally, one commenter requested that the Agency clearly define owners and operators to exclude corporate parents or affiliates. Parents and affiliates generally would not be subject to today's rule. Parents, for example, may serve as guarantors for owners and operators, thereby enabling the owner or

operator to satisfy financial responsibility requirements, but would not be directly responsible themselves for complying with these requirements. The Agency might, however, hold parents or affiliates subject to these requirements in certain situations. For example, if an owner or operator attempted to circumvent today's requirements through the creation of a sham subsidiary or through other arrangements, the Agency could in appropriate circumstances hold a parent or affiliate responsible for compliance with these rules. Thus, a definition of owners and operators which excludes corporate parents or affiliates in all situations is not appropriate. The Agency does not expect, however, that parents or affiliates will generally be subject to these financial responsibility requirements.

2. Tanks Taken Out of Operation Before the Date for Compliance (§ 280.90(b))

The preamble to the proposed rule stated EPA's intention to make the rule applicable to tanks taken out of operation before the effective date of the rule. The language of the proposed rule, however, did not state specifically that it would apply to such tanks.

The Agency received a number of comments on this provision. One commenter questioned the Agency's authority under Subtitle I to apply financial responsibility requirements retroactively to owners of tanks taken out of operation before Subtitle I was enacted in 1984.

The statutory definition of "owner" in RCRA section 9001(3)(A) and (B) includes owners of tanks taken out of operation before enactment of HSWA, as well as owners of tanks in used on the date of enactment. RCRA section 9003(a) further authorizes EPA to promulgate regulations, including financial responsibility regulations, applicable to all owners and operators of USTs. Therefore, the Agency has authority to regulate tanks taken out of operation before the enactment of Subtitle I and to impose financial responsibility requirements on owners and operators of such tanks where necessary to protect human health or the environment.

Some commenters, while not questioning the Agency's statutory authority, urged the Agency to exempt tanks taken out of operation before the effective date of the rule or before November 8, 1985 (one year after enactment of HSWA). Commenters gave the following reasons for such an exemption:

- Providers of financial assurance are not likely to offer assurance for tanks taken out of operation unless it can be proven that there is no contamination present.
- Because so many tanks have been taken out of operation in recent years, it would be extremely difficult to identify these tanks and inform former owners and operators of their obligations.

One commenter recommended that if the requirement for such tanks is retained, owners and operators of tanks that are properly closed should not be required to maintain financial assurance if they can demonstrate that no contamination is present.

At the time the Agency proposed to require owners or operators of tanks taken out of operation before the effective date to obtain financial assurance, it also proposed in the technical rule to require these tanks to comply with closure requirements (§ 280.80). The Agency reasoned that, because non-operational tanks were subject to the closure and corrective action requirements under Subparts F and H of the technical standards, requiring financial assurance was necessary to ensure that closure was undertaken properly and quickly.

Since that time, the Agency has decided to eliminate the requirement that all USTs taken out of operation before the effective date for the technical rule undergo closure. The rule does provide, however, that implementing agencies may require owners or operators to close these tanks properly if there is a reason to believe that they may pose a threat to human health and the environment. The preamble to the technical standards rule discusses the reasons for this change.

Based on comments on the proposed financial responsibility rule and the revisions to the technical standards, the Agency has decided not to require owners or operators of USTs taken out of operation before the compliance dates in this rule to obtain financial assurance. The Agency recognizes that for many owners and operators of USTs, insurance will be the only feasible financial assurance mechanism available. The Agency agrees with commenters, among them insurance companies, that insurance providers would be extremely reluctant to assure tanks taken out of operation because of the perceived greater uncertainly associated with them.

Even if providers of assurance would assure these tanks, it is unlikely that they would cover leaks which occurred before the effective date of the policy. For example, based on standard insurance industry practice, owners and operators applying for coverage must meet certain pre-conditions which may include tank tightness testing and a determination that there are no existing releases. If releases are discovered, insurance policies probably would not cover them, because the insurance industry's practice is to exclude pre-existing releases from coverage. In addition, as a condition for coverage of a tank not in operation, an insurer might require proper closure in order to minimize the risk of a release of material which might remain in the tank. Such an insurance policy would be of little value of protecting human health and the environment since it would not cover pre-existing conditions and would only cover tanks that have been emptied of their contents. The Agency believes that the owners' and operators' resources would be better spent in closure and corrective action that in attempting to procure this type of insurance. Nevertheless, owners and operators of tanks taken out of operation before the effective date remain responsible for the costs of releases associated with them.

3. Applicability to State and Federal Government Entities (§ 280.90(c))

The final rule, like the proposed rule, is not applicable to state and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States. Several commenters argued that state and federal government entities should not be exempt from the financial responsibility requirements. Their reasons included the following:

- Such an exemption conflicts with Congressional intent to have all tanks assured.
- The exemption will discourage sound tank management practices on the part of state and Federal governments.
- The exemption would provide state-owned transit agencies with unfair advantages over private owners.

The Agency does not interpret the Congressional intent of Subtitle I to preclude exempting any class of USTs from otherwise applicable requirements when the Agency has determined that such requirements are not necessary to protect human health or the environment. See RCRA section 9003(a). With respect to financial responsibility, such requirements need not be imposed where the owners or operators will consistently be able to cover the costs of releases in a timely fashion. The purpose of these financial responsibility requirements is to ensure that funds will be available in a timely manner to cover the costs of corrective action and compensation of third parties arising

from UST releases. While the Agency recognizes that these requirements may provide an incentive for sound tank management practices, this is not their primary purpose.

No commenters disputed the Agency's opinion that Federal and state governments have the requisite financial strength and stability to fulfill their financial assurance obligations. In addition, exemption from the requirements will not discourage sound tank management practices by state and federal government entities, because they remain responsible for the cost of corrective action associated with the releases.

The Agency concedes that not having to pay the costs of procuring a financial assurance mechanism may result in a slight competitive advantage for state-owned transit agencies. Such an advantage is not likely to be significantly greater than advantages already enjoyed by state-owned transit systems (e.g., through government subsidies). In addition, the financial advantage of the state-owned agency is comparable to the position of any firm which can rely on a guarantee provided by a parent or related firm, and merely reflects the difference between large and small businesses. If releases occur, state-owned agencies may rely on state assistance to pay the costs of damages. Privately-owned transit agencies, however, would have to rely on their own funds to pay these costs. Thus, even without today's rule, private transit agencies have a financial incentive to purchase insurance coverage not shared by the state-owned agency.

4. Applicability to Local Government Entities

While the proposed rule exempted from the requirements those government entities whose debts and liabilities are the debts and liabilities of federal or state governments, local government entities were required to provide financial assurance for USTs that they own or operate. The final rule remains applicable to local government entities. However, under the Agency's schedule for phased compliance with the rule, local government entities have 24 months from the promulgation date to comply. EPA also intends to develop a financial test in the interim that will allow local governments that can demonstrate the requisite financial strength and stability to cover the costs associated with UST releases to self-insure.

Local government entities include both general purpose local governments and special purpose local entities. General purpose local government entities include municipalities, counties, townships, towns, villages, parishes and New England towns. Special purpose local governments perform a single function or a limited range of functioins. Special purpose governments are generally designated as either public authorities or special districts such as school districts, water and sewer authorities, transit authorities or power authorities. All local governments, both general and special purpose, are subject to this rule.

One commenter supported application of the financial responsibility requirements to local government entites. However, many commenters stated that the proposed exemption for federal and state governments from demonstration of financial responsibility should be extended to local government entities. The major arguments in favor of such an exemption focused on three areas: (1) The permanence and stability of local governments; (2) the incentives for local governmens to provide funds in a timely manner; and (3) the financial strength and capability to raise funds in a timely manner.

First, several commenters maintained that the permanence and stability that the Agency attributes to Federal and state governments also apply to local governments; local governments are unalterably attached to their particular location. Moreover, commenters asserted that cities almost never go bankrupt, and when they are unable to meet their financial obligations over the short-term, their debts are not forgiven under the bankruptcy laws but are extended until they can be satisfied. Therefore, unlike private firms, local governments do not disappear even if they file bankruptcy.

Second, commenters stated that local governments have the same incentives as federal and state governments to meet their UST obligations in a timely manner. Local governments exist to safeguard public health and welfare, and local officials have voter accountability that helps assure an immediate and effective response to an UST release. One commenter, an association of city governments, stated that cities have consistently demonstrated an ability to respond to UST leaks in a timely manner and have taken prompt action to ensure that leaks do not recur in the future by either upgrading or removing failed USTs.

Third, commenters claimed that local governments have the requisite financial strength to meet potential UST obligations in a timely manner. One commenter representing city governments pointed out that cities are accustomed to addressing emergencies such as natural disasters and routinely establish contingency funds of a size that could easily cover the costs associated with most UST leaks. Another commenter noted that local appropriation procedures often are structured so that officials may take fund originally intended for one purpose and divert them to a more pressing need related to USTs.

Finally, one commenter argued that for UST releases in excess of fund reserves, many local government entities—like states—have the ability to raise funds through taxes and debt issues. The commenter stated that the delays involved with tax and bond initiatives are unlikely to affect the timeliness of an UST cleanup because cities tend to be excellent credit risks and can often have contracted work performed in an emergency without having to provide funds until after the emergency is remedied or use their own personnel to respond.

The Agency believes that there is merit in many of the points commenters raised as applied to particular municipalities. However, for several reasons, the Agency is unwilling to exempt all local government entities from these requirements. There is substantial variability in local governments in terms of size, financial capacity, and functions. A number of commenters urged that the financial test should be modified so that local government entities could use it. The corporate financial test is not applicable to most government entities because it contains a net worth indicator, a financial measure that is either unavailable to many local governments or does not measure financial strength in the same way it does for private firms. It requires reporting to the U.S. Securities and Exchange Commission (SEC) or to Dun and Bradstreet, which is also not applicable to government entities. Accordingly, the Agency is taking steps to develop a financial test that will allow local governments meeting the test criteria to self-insure like private companies that use the corporate financial test. Local governments which pass this financial test will not be required to obtain other financial assurance mechanisms to comply with the requirements of this rule. In the interim as discussed in Section III.B, under the phased schedule of compliance, the compliance date for local government entities is 24 months after promulgation. The Agency anticipates that the final financial test for local government entities will be promulgated before their scheduled compliance date.

Some commenters on the proposed rule suggested that particular special purpose local governments such as public power entities or airports should be exempt from the financial responsibility requirments. The Agency sees no reason to treat particular special purpose local government entities differently from all other local governments. All local governments remain subject to the rule and may be able to meet the local government financial test under development.

Some commenters suggested a change to the corporate financial test so that power authorities meeting the other criteria in the test could use it. Specifically, they suggested that the Agency accept reports to the Rural Electrification Administration and the Energy Information Administration, as an alternative to filing with the SEC or Dun and Bradstreet. Their comments indicated that other than filing annual statements with a different Agency, they could use the Subtitle I corporate financial test. This change has been made to the corporate financial test so that power authorities meeting the criteria in the test may use. it.

5. Applicability to Indian Tribes

The proposed rule did not address the applicability of the financial responsibility requirements to Indian tribes. Indian tribes are included in the statutory definition of municipalities in RCRA Section 1004(13). Accordingly, under the phased schedule of compliance, Indian tribes will be required to comply with financial responsibility requirements on the last compliance date, 24 months after the promulgation date of the rule, similar to municipalities. However, in the proposed financial test for local government entities, the Agency will specifically request comments on whether this test should apply to Indian tribes. The Agency intends to finalize this proposed rule before the compliance date for local government entities and Indian tribes.

6. Deferrals and Exclusions (§ 280.90(d))

Under the proposed rule, EPA would have deferred from the financial responsibility requirements certain categories of tanks that the Agency also was proposing to defer under the technical requirements. The Agency proposed to defer the regulation of these categories of USTs because it had limited information about these USTs or was otherwise uncertain about the need to regulate them. Several commenters addressed these and other categories of tanks that they believed should be deferred or exempted from the final rule.

The proposed technical requirements deferred the following categories of tanks from all of their requirements (except the requirements for corrective action and notification and the prohibition of bare steel UST installation requirements): (1) Wastewater treatment tanks, (2) sumps, (3) underground bulk storage tanks, (4) USTs containing radioactive waste and other radioactive materials, (5) UST systems containing electrical equipment, (6) hydraulic lift tanks, and (7) UST systems containing used oil.

In the final technical standards rule (53 FR 37082, September 23, 1988), the Agency has excluded some of these categories of USTs from the technical requirements. Some of the other categories of USTs that the Agency proposed to defer from regulation are now regulated. The Agency continues to defer regulating certain categories of USTs (except from corrective action requirements and prohibition of bare steel UST installation).

The financial responsibility rule tracks the final technical standards rule with respect to exclusions and deferrals from the requirements. All USTs excluded from regulation are excluded from these financial responsibility requirements. All USTs that are deferred from regulation also are not subject to these financial responsibility requirements. Because the Agency is uncertain about the need to regulate deferred categories of USTs, or has limited information about them, the application of financial responsibility requirements to the deferred categories of USTs is inappropriate at this point. The Agency's decision about the regulation of each of the categories of excluded or deferred tanks is summarized below. The preamble to the final technical standards rule contains a thorough discussion of the Agency's rationale for each decision.

• *UST Systems Containing Hazardous Waste and Regulated Substances.* The Agency has excluded these tank systems from regulation under Subtitle I.

• *UST Systems Containing Electrical Equipment and Hydraulic Lifts.* Equipment or machinery using regulated substances for operational purposes are now excluded from regulation.

• *Wastewater Treatment USTs.* Wastewater treatment tanks regulated under the Clean Water Act are excluded from regulation. Wastewater treatment USTs that are *not* regulated under the Clean Water Act are deferred from regulation.

• *Tanks Containing De Minimis Quantities of Regulated Substances.* The Agency is excluding the following categories of USTs:

—USTs with a capacity of less than 110 gallons;

—USTs holding a *de minimis* concentration of regulated substances; and

—USTs that serve as emergency backup tanks, hold regulated substances for only a short period of time, and are expeditiously emptied after use.

• *Sumps.* Sumps are not excluded or deferred as a separate category; however, many sumps may be excluded under the *de minimis* exclusions, the wastewater treatment exclusion, and the statutory exclusion for storm water and wastewater collection systems. Other sumps may be deferred under the "field-constructed tank" deferral.

• *Field-Constructed Tanks.* Field-constructed tanks, which include many tanks that were classified as underground bulk storage tanks in the proposal, are deferred from regulation.

• *UST Systems That Contain Radioactive Wastes and Other Radioactive Materials.* The Agency is deferring UST systems that contain radioactive materials from regulation.

• *Backup Diesel Tanks at Nuclear Facilities.* These USTs are deferred from regulation.

• *Airport Hydrant Fueling Systems.* These USTs are deferred from regulation.

• *Used Oil.* Tanks containing used oil, including crankcase oil, are no longer deferred. They are now subject to the final technical rule, and are also subject to the financial responsibility requirement.

For each of the following categories of tanks, the Agency received comments supporting a deferral or exemption of these requirements from the financial responsibility requirements (see also the preamble to the technical standards rule for a more thorough discussion):

• *Small Capacity Tanks.* One commenter urged "special consideration" for small capacity users. One commenter suggested that petroleum USTs containing under 5,000 gallons should be exempt. Another commenter suggested 4,000 gallons as a cutoff. As noted above, the Agency has decided on a *de minimis* exclusion for tanks with a capacity of less than 110 gallons.

• *Small Business.* One commenter requested a small business cutoff for the final rules because insurance may be offered only at unaffordable rates. Other commenters requested an exemption for small businesses not engaged in petroleum marketing. The Agency has not exempted small businesses from the final financial responsibility requirements because the costs of corrective action and third-party claims will not be different for small businesses than for other owners and operators. The specific concerns of small businesses and businesses not engaged in petroleum marketing are addressed in establishing a phased compliance schedule (Section III.B in the preamble) and a lower peroccurrence amount for certain facilities not engaged in petroleum production, refining or marketing (Section III.D.1).

• *Tanks Containing Heating Oil.* Based on experience with releases in New Jersey, one commenter urged that heating oil for on-site

consumption should not be excluded from the requirements. Because heating oil tanks are excluded from regulation by statute, EPA cannot require these USTs to obtain coverage.

• *Small Throughput Tanks.* One commenter supported exempting a system with small throughput volume. According to this commenter, this exemption is appropriate because most leaks are associated with piping. The Agency recognizes that a large number of releases are associated with piping; however, the Agency does not believe an exclusion for these tanks is appropriate. Releases may still occur from tanks with small throughput and owners or operators should obtain coverage for releases that do occur. However, the Agency has taken these concerns into account in establishing a lower pre-occurrence amount of financial assurance for tanks at certain facilities not engaged in petroleum production, refining, or marketing.

• *Tanks Owned by Small, Rural Telephone Systems.* One commenter urged EPA to consider exempting small, rural telephone systems from these requirements for the following reasons: (1) The unavailability of pollution insurance, (2) the high net worth requirement for self-insurance, and (3) the high per-occurrence and aggregate coverage levels. Although EPA recognizes owners and operators of these USTs may have difficulty obtaining financial assurances, releases from these USTs may still require corrective action and cause bodily injury and property damage to third-party claimants. For these reasons, EPA has not exempted these categories of USTs.

• *Aircraft Owners.* One commenter supported an exemption for aircraft owners, comparing these USTs to motor fuel tanks with a capacity less than 110 gallons. All tanks with a capacity of less than 110 gallons are now excluded from these requirements. Thus, many aircraft owners with USTs that contain a capacity of less than 110 gallons are excluded under the *de minimis* exclusion. In addition, EPA has deferred regulation of airport hydrant systems. The Agency is not aware of any evidence to support an additional exemption for these categories of USTs that contain more than 110 gallons.

B. Compliance Dates (§ 280.91)

Today's rule is effective on January 24, 1988. However, UST owners are required to *comply* with this regulation by the date assigned to their appropriate compliance category in the rule. The composition of the compliance categories and the compliance dates for each of these categories is summarized in Table 1. As Table 1 shows, EPA has designated UST ownership as the factor determining compliance categories. The rationale for this decision is explained below.

UST owners in Category I are required to comply on the effective date three months after the rule's promulgation. UST owners in Category I include all petroleum marketing firms that own 1,000 or more USTs and all other UST-owning entities that report a tangible net worth of $20 million or more to the SEC, Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration.

USTs owners in Category II are required to comply by 12 months after the rule's promulgation date. UST owners in Category II include all petroleum marketing firms owning 100 to 999 USTs.

USTs owners in Category III are required to comply by 18 months after the rule's promulgation date. UST owners in Category III include all petroleum marketing firms owning 13 to 99 USTs at more than one facility.

TABLE 1.—COMPLIANCE DATES FOR AND COMPOSITION OF COMPLIANCE CATEGORIES

Category and compliance date for this category	Composition of category	
	Petroleum marketing firms	Nonpetroleum marketing firms
I. 3 months after promulgation date of rule, on the effective date.	All petroleum marketing firms owning 1,000 or more USTs.	All UST-owning non-petroleum marketing firms that report a tangible net worth of $20 million or more to the SEC, Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration.
II. 12 months after promulgation date of rule	All petroleum marketing firms owning 100-999 USTs.	None.
III. 18 months after promulgation date of rule	All petroleum firms owning 13-99 USTs at more than one facility.	Do.
IV. 24 months after promulgation date of rule	All petroleum firms owning 1-12 USTs or owning only one facility with fewer than 100 USTs.	All UST-owning non-petroleum marketing firms that do not report a tangible net worth of $20 million or more to the SEC, Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration, including all local government entities.

UST owners in Category IV are required to comply by 24 months after the rule's promulgation date. UST owners in Category IV include all petroleum marketing firms owning 1–12 USTs or those owning only one facility with fewer than 100 USTs. (For example, a petroleum marketing firm owning 13 USTs at one facility would be classified by EPA in Category IV.) Category IV also include all UST-owning firms not engaged in petroleum marketing but having tangible net worth of less than $20 million and all local government entities.

In § 280.92 of the final rule, the Agency defines petroleum marketing firms as all firms owning facilities engaged in petroleum production, refining, or marketing. These includes all facilities at which petroleum is produced and all facilities at which petroleum is produced and all facilities from which petroleum is sold or transferred to other petroleum marketing or to the public. Petroleum production facilities include all refineries and all facilities engaged in producing petroleum products from purchased materials. Facilities from which petroleum is sold or transferred to other petroleum marketers or to the public include all wholesale petroleum marketers facilities, such as bulk terminals and bulk plants, and all retail petroleum marketing facilities, such as automobile service stations, marine service stations, truck stops, convenience stores selling gasoline, etc. The Agency considers all facilities selling petroleum products to the public to be retail petroleum marketing facilities, even if the amount of petroleum sold is minimal. Facilities that store petroleum products in underground storage tanks *only* to refuel their own vehicles (e.g., establishments owning fleets of vehicles) are not considered facilities that are engaged in petroleum marketing. Establishments that store fuel to refuel vehicles rented to the public (e.g., rental car facilities) are not considered facilities engaged in petroleum marketing as long as the fuel is not sold to the public at large.

The Agency considers firms owning both petroleum marketing facilities and other types of facilities that are not engaged in petroleum marketing to be petroleum marketing firms. The compliance date for such firms is based

on the total number of USTs owned at their petroleum marketing facilities and at their other facilities.

Many commenters on EPA's proposed rules suggested that the Agency delay the effective date of the rule because pollution liability insurance for USTs and other financial assurance mechanisms would not be available to a large number of UST owners and operators by the rule's effective date. Although EPA has decided not to delay the effective date of this rule, the Agency is concerned about the unavailability of financial assurance mechanisms for a large portion of the regulated community. On March 31, 1988, EPA published a supplement to the proposed rule (53 FR 10401) in which the Agency explained that it was considering a phase-in of the financial responsibility regulations to allow different categories of owners and operators to come into compliance at different times after publication of the final rules. The principal reason for the phase-in was to provide sufficient time for owners and operators to obtain financial assurance in accordance with the rules. Additional reasons for the proposed phase-in included:

- The time necessary for providers of financial assurance mechanisms to conform them to EPA's requirements;
- The time necessary to provide assistance and outreach programs for portions of the regulated community;
- The administrative difficulties of trying to implement this regulation for such a large and diverse regulated community; and
- The unavailability of mechanisms to large portions of the regulated community.

The Agency received a large number of comments in response to this notice. Although the majority of commenters generally agreed with the phase-in strategy, many suggested an across-the-board delay and still others were concerned about the possible negative consequences of any type of delay (including a phase-in) to the implementation of the financial responsibility rules. The Agency agrees with many commenters who pointed out that the relative unavailability of financial responsibility mechanisms (primarily insurance, the financial test of self-insurance, or state funds) presents a problem for some members of the regulated community and that a phase-in may help to alleviate this problem. However, the Agency recognizes that the problem of the unavailability of mechanisms for some members of the regulated community may not be resolved before the compliance date for the requirements for those owners. The Agency retains its discretion to use the suspension of enforcement authority provided in section 9003(d)(5)(D) to address the problem of unavailability in the future. EPA expects that implementation of the rule during the phase-in period will enable the Agency to develop appropriate suspension of enforcement procedures based on this experience tailored to the numbers and types of facilities for which assurance remains unavailable.

Many commenters opposed a phase-in or any type of delay in the implementation of these rules. Their arguments included:

- Delaying implementation of financial responsibility rules will not increase the availability of insurance and may even further delay any response from the insurance marketplace.
- Delaying the implementation of financial responsibility rules removes a strong incentive to replace or upgrade substandard USTs quickly.
- Delaying implementation of the financial responsibility rules may delay the establishment of state funds.
- Delaying implementation of the financial responsibility rules will not eliminate the need for regulated entities to apply for a suspension of enforcement.

In deciding that a phase-in is the best regulatory strategy, the Agency has attempted to establish compliance dates which are as early as possible considering the type of assurance different types of facilities are likely to obtain. The use of an approach involving different compliance dates for different compliance categories is designed to achieve the maximum balance between the need to ensure financial capability for UST releases and the necessary time for owners and operators to obtain assurance mechanisms. For example, EPA believes that almost all firms in Category I will be able to comply with these requirements using the financial test of self-insurance or a guarantee. Chapter 2 of an EPA-sponsored study, entitled "Financial Responsibility for Underground Storage Tank Releases: Financial Profile of Retail Motor Fuel Marketing Firms," shows that all but one of the firms for whom data were collected that own 1,000 or more USTs (assuming that there are 4.1 USTs per outlet) have over $20 million in tangible net worth. Firms in other industry sectors with at least $20 million in tangible net worth will be able to pass the financial test of self-insurance as long as they file financial statements with the SEC, the Energy Information Administration, or the Rural Electrification Administration, or they report their tangible net worth to Dun and Bradstreet and Dun and Bradstreet assigns them a financial strength rating of 4A or 5A. The Agency sees no reason why such firms should not be required to comply with this regulation by the effective date of the requirements.

Further, almost all firms in Category II either have insurance now or can buy it from providers already in the marketplace, on the condition that they upgrade their tanks to meet insurers' criteria. These firms have 12 months from the promulgation date to apply for insurance and to upgrade their tanks. This period also gives insurance providers time to conform their pollution liability or environmental impairment policies to EPA's regulatory requirements and to raise the necessary capital or reinsurance to offer the limits of liability required in today's rules.

The Agency recognizes that the smaller petroleum marketing firms in Category III are less likely than firms in Category II to have have insurance and therefore need additional time for processing of their insurance applications and upgrading their USTs to meet insurers' requirements. These firms have 18 months from the promulgation date to comply with the regulations.

The Agency expects that regulated entities in Category IV (which includes the smallest petroleum marketing firms, general industry firms with tangible net worth under $20 million, local government entities, etc.) will have the most difficulty obtaining financial assurance. Most of these entities cannot pass the financial test of self-insurance included in today's rule, and pollution liability insurance has not generally been available to them. EPA expects that the majority of these regulated entities will have to rely on state funds for assurance. Many commenters responding to the Supplemental Notice (53 FR 10401) stressed that EPA's estimate of 18 months for state funds to form was overly optimistic. Today's rule would give those entities relying on a state fund for financial assurance 24 months from the rule's promulgation date to come into compliance.

In the absence of a phase-in, the Agency does not believe that most entities in the regulated community would have adequate time to comply with the financial responsibility regulations, because only the self-insurance mechanism can be implemented immediately by those firms able to use it. Those firms able to use insurance will probably not be able to comply by the effective date of the regulations. Even those firms that already have UST pollution liability policies probably do not have policies that conform to EPA's requirements or

that have sufficient limits of liability. These policies will have to be changed or augmented to comply with today's financial responsibility regulation.

It will be even more difficult for those firms that may be able to obtain insurance but have not yet done so to comply by the effective date of the regulations. One current insurer of USTs commented that some type of phase-in is "imperative" because the administrative capacity of UST insurers is not sufficient to accommodate all tank owners and operators who want to purchase insurance. In addition, most of the pollution liability insurance currently being offered to petroleum marketers contains preconditions with respect to the age of the USTs insured and leak detection methods. Firms with older USTs or inadequate leak detection methods will need time to comply with these insurer requirements. It would be impossible for all firms not already meeting these requirements to comply with them by the effective date of the regulations. Finally, as pointed out by many commenters, the development of state funds can take a considerable amount of time. Thus, the Agency concludes that it would be impossible for most of the regulated community to comply with today's financial responsibility requirements within 90 days of the promulgation of the regulations.

At the same time, the discretionary authority to suspend enforcement of the rules is not an adequate substitute for the phase-in because suspension does not serve the same purpose as a phase-in. The Agency believes that human health and the environment will be better protected by establishing reasonable compliance dates than by requiring large portions of the regulated community to devote their immedaite compliance efforts to petitioning for a suspension of enforcement. During the phase-in period, the resources of the regulated community can be devoted to obtaining financial assurance mechanisms, and the resources of the states, EPA, and the regulated community can be devoted to developing and encouraging the development of mechanisms such as state funds and RRGs. Inclusion of a phase-in will restrict the use of the suspension of enforcement mechanism to those situations where compliance difficulties have to do with things other than inadequate time to complete administrative activities and to meet insurers' preconditions.

The Agency also does not believe that deferral of the requirements is a useful substitute for a phase-in. A phase-in has two advantages over a deferral. First, a phase-in is more protective of human health and the environment than a deferral in that it requires those who can obtain financial responsibility mechanisms to do so. Second, when the deferral period is ended, there is likely to be a last-minute rush of activity that could overwhelm the insurance industry's administrative capacity and the capacity of those businesses providing tank replacement, upgrading, and release-detection services.

Furthermore, the Agency does not think this relatively short phase-in will delay the entry of new insurers into the marketplace. If the rule did not include a phase-in of compliance dates, any new insurer would have to (1) develop and announce a new program that would comply with EPA's requirements and (2) process and accept applications for this program within 90 days to allow the regulated community to comply by the effective date of the regulations. EPA believes it would be extremely difficult for UST owners and operators to get pollution liability insurance conforming to the requirements of this rule from new insurers within 90 days of the rule's effective date. The phase-in establishes the necessary time for new insurance programs to develop, publicize their operations, and process applications. With the phase-in, a new program would have 1 year to carry out these steps for its first customers and an additional year to process applications for other members of the regulated community. Furthermore, the regulated community still has a strong incentive to purchase insurance prior to the required compliance dates. The phase-in of compliance with the financial responsibility requirements does not relieve the regulated community of liability for corrective action and third-party liability. Thus, many in the regulated community will attempt to obtain insurance as soon as it becomes available.

Nor does the Agency believe that the phase-in will remove incentives for regulated entities to replace or upgrade substandard USTs or to initiate leak detection. If the rule had only one compliance date, it would be impossible for the existing tank replacement and leak detection industries to provide adequate professional service to the many firms that may need their services. The technical standards rule phases in leak detection and tank upgrading and replacement requirements for the same reason.

Finally, the Agency does not believe that the phase-in will delay the implementation of state funds. None of the state representatives who commented on the Supplemental Notice (53 FR 10401) were of the opinion that the phase-in would delay the implementation of state funds. They explained that states would need time to pass laws authorizing the establishment of a fund, to develop regulations specifying how the fund would be implemented, and to develop revenue sources and capitalize the fund. In fact, EPA views the phase-in as the only way to allow states adequate time to develop thoughtful, sound, and adequately-funded programs. The Agency believes it is more protective of human health and the environment to allow time for the development of well-thought-out programs than to create a situation that will result in the development of state funds that have not been properly designed.

In the example given in the Supplemental Notice (53 FR 10401), the phase-in categories were set up based on the number of tanks owned or operated as an indicator of financial strength and thus the time needed to comply with the rule. In today's rule, the phase-in categories are set up based on UST ownership for petroleum marketing firms and on net worth for non-petroleum marketing firms. One commenter requested that EPA clarify, both for the purpose of the phase-in and for the rule in general, that "individual persons controlling separately operated facilities may * * * treat themselves either as a single owner or operator or as several independent operators." Although this interpretation reflects EPA's intention with regard to most provisions of the final rule being promulgated today (see Section III.A.1. above), it is not the basis for the final rule's phase-in provision. Instead, the phase-in is based on the total number of USTs owned to make clear at what time USTs that are owned and operated by different entities are required to be in compliance with the final rule. UST ownership is a better indicator of both ability to comply with the financial test and to obtain insurance. If the Agency adopted the commenter's suggestion, many more owners or operators of USTs at more than one facility could qualify for a later compliance date. EPA has designated UST ownership, rather than UST operation, as the factor determining the compliance category so that earlier compliance dates will be required for most USTs (since UST-owning firms tend to be larger than UST-operating firms).

The majority of commenters agreed that the number of tanks is the most reasonable basis on which to predicate

a compliance date phase-in. The reasons for the choice of the number-of-tanks criterion included:

- The number of tanks reflects a firm's financial strength and its ability to get insurance (and thus to comply with the rule);
- The number of tanks is a partial measure of the risk of release; and
- The number of tanks is easy to determine for compliance purposes and easy to verify for enforcement purposes.

Other phase-in criteria suggested by commenters included measures that were more reflective of risk (e.g., age, storage capacity, or location of tanks), financial strength, and type of industry. One commenter suggested that the basis for compliance should be the ability of owners or operators to self-insure or to obtain insurance from private or public sources. In essence, this is the strategy the Agency has adopted: it involves separating the regulated community into two groups, petroleum marketing firms and other regulated entities. For petroleum marketing firms, the number of tanks owned acts as a reasonable proxy for the ability of a firm to self-insure or to obtain insurance. For other regulated entities, the $20 million in tangible net worth requirement is a good proxy for firms that will be able to use the financial test because almost all firms with $20 million in tangible net worth should be able to use the financial test, irrespective of how many tanks that they own. (Entities with less than $20 million in tangible net worth may not be able to self-insure and insurance has not been available to such firms up to now.)

The Agency rejected basing the phase-in on risk-related measures because a schedule designed to require the highest risk USTs to comply first would not further the Agency's objective in phasing in compliance with the rules. The Agency's objective for phasing in compliance is to give the regulated community the time it will need to obtain assurance. For this reason, in developing the phase-in the Agency considered only those factors (e.g., financial strength) related to the ability of various segments of the regulated community to obtain assurance.

The Agency also notes that requiring high-risk USTs to comply first could have a negative impact on the availability of financial assurance mechanisms. If high-risk USTs were required to comply first (as some commenters suggested), insurers already in the market would be reluctant to insure additional USTs and new insurers would be reluctant to enter the market. Therefore, this would act as a disincentive to a gradual increase in the availability of insurance.

In the example described in the March 1988 **Federal Register** notice, EPA set up compliance categories and compliance dates as follows:

Compliance date	Number of tanks owned or operated
Effective date of rule	1,500 or more.
6 months after effective date	50 to 1,499.
12 months after effective date	6 to 49.
18 months after effective date	1 to 5.

For reasons already discussed, EPA decided to base the phase-in on the number of USTs owned and to develop different compliance categories for petroleum marketing firms and for non-petroleum marketing firms to reflect the time necessary for regulated entities to comply with this regulation. The Agency decided to give firms in the second category more time to comply and to change the number of tanks owned (for petroleum marketing firms) in each category so that the categories would more accurately reflect this objective. In making these changes, the Agency was aided by information provided by commenters with regard to the availability of assurance to various segments of the regulated community.

Petroleum marketing firms owning 1,000 or more USTs (as opposed to 1,500 or more USTs) are in Category I because the Agency believes that such firms can almost always use the financial test of self-insurance.[5] Petroleum marketing firms owning between 100 to 999 USTs (as opposed to 50 to 1,499 USTs) are in Category II because the Agency believes this UST ownership spread more accurately represents the UST-owning firms that have insurance now or can obtain it most easily. Petroleum marketing firms owning between 13 and 99 USTs at more than one facility (as opposed to 6 to 49 USTs) are in Category III because this range more accurately represents UST-owning firms that are eligible for insurance but may need more time to obtain it than firms in Category II. In addition, because insurance has not been available to petroleum marketing firms owning only one facility in the past, such facilities have been moved to Category IV.

Category IV was expanded to include firms owning 1 to 12 USTs or, as noted above, only one facility with fewer than 100 USTs (as opposed to 1 to 5 USTs). This expansion of the upper limit of the category from 5 to 12 USTs allows additional time for compliance for the smallest rural jobbers. These firms may have older USTs and greater difficulty obtaining insurance than other petroleum marketers. All non-petroleum marketing firms which cannot self-insure, including local government entities, have also been included in Category IV because pollution liability insurance has not been available to these entities in the past.

[5] Information supporting EPA's assumptions with regard to the types of financial assurance mechanisms available to petroleum marketing firms owning different numbers of USTs can be found in the Regulatory Impact Analysis for the rule that is available in the docket.

C. Definition of Terms (§ 280.92)

In the preamble to the proposed rule, the Agency discussed definitions for several terms used in the rule. With the exception of "occurrence," the Agency is adopting the definitions as proposed. This discussion addresses only those terms for which the Agency received comment.

1. Accidental Release and Occurrence

In the April 17, 1987, proposal, the Agency defined "accidental release" as

> "Any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action, bodily injury or property damage neither expected nor intended by the tank owner or operator (§ 280.91).

This definition incorporates both sudden and nonsudden releases, as required by RCRA Section 9003(c)(6). In addition, the Agency proposed to define "occurrence" as "an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank."

Two commenters asserted that the proposed definitions of occurrence and accidental release do not reflect standard insurance definitions. The commenters noted that the comprehensive general liability (CGL) form issued by the Insurance Service Office (ISO) defines "occurrence" as "an accident, including continuous or repeated exposure to substantially the same generally harmful conditions." They also noted that the ISO's pollution liability coverage form does not define "occurrence" or "release." Instead, the policy uses the term "pollution incident." These commenters urged EPA to remove the definitions of "occurrence" and "accidental release" from the rule and the certificate and endorsement forms, and to replace them with the term "pollution incident." Another commenter argued that the definition of "occurrence" should be changed to reflect the ISO's newest CGI form.

Commenters warned that if the definitions in the regulation remain at variance with those in use in the ISO's

pollution liability coverage form, courts will have to review more than one definition of key policy terms during litigation. Insurers indicated that EPA's use of non-standard definitions in today's rule would reduce the range of predictability in UST coverage and expose insurers to an uncertain amount of liability. Such conditions, they argued, would seriously impair the insurance industry's willingness to provide liability insurance required by today's rule.

In specifying the language in the certificate of insurance and endorsement, the Agency does not intend to modify contractural obligations regarding the extent of coverage under insurance policies used to satisfy the liability coverage requirement. In response to the problems cited by commenters, the Agency has retained the definition of "occurrence" but added clarifying language to the rule. The rule now allows insurance policies containing alternate definitions of "occurrence" or standard terms other than "occurrence," such as "pollution incident," to be used to satisfy the UST liability coverage requirements. This definition of occurrence is included in today's rule to assist in the understanding of the financial assurance requirements, i.e., to clarify the scope of coverage required under the rule. It is not intended to limit the meaning of "occurrence" in a way that conflicts with general insurance industry usage.

The Agency prefers not to require that policies incorporate a specific definition of "occurrence" because of the wide range of definitions currently in use and because insurance practices may change over time. However, the Agency has the authority under RCRA section 9003(d)(1) to specify acceptable and unacceptable liability insurance policy terms and the Agency may need to specify such terms in the future. In addition, policies employing unsatisfactory definitions of "occurrence" or unsatisfactory terms other than "occurrence" may not provide liability protection in accordance with today's rule.

In addition, the Agency has made a minor change to the definition of "accidental release" simply to capture the meaning more precisely. The modified definition, with the modification in italics, is as follows:

"Any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action *and/or compensation for* bodily injury or property damage neither expected nor intended by the tank owner or operator (§ 280.92(a)).

The Agency received two comments arguing that the definitions of "occurrence" and "accidental releases" should include releases that are caused intentionally (e.g., sabotage, vandalism). EPA believes that an explicit inclusion is unnecessary. Since "accidental release" is defined as a release resulting in "a need for corrective action and/or compensation for bodily injury or property damage, neither expected nor intended by the tank owner of operator," the relevant determinants of coverage are the intentions and expectations of the insured. Thus, damage resulting from sabotage or vandalism is accidental if the insured party had no intention or expectation of such damage.

Finally, a commenter also suggested that vague terms like "intended" or "expected" in the definition of accidental release be defined in the rule. However, as discussed above, EPA intends to allow insurers flexibility in writing policy language by not defining every policy term explicitly. The Agency recognizes that such terms are open to interpretation, but also realizes that because they are common in insurance industry usage, defining them in the rule is not necessary and may limit availability. Therefore, the Agency believes that it is appropriate to leave interpretation of such terms to private insurance law.

2. Bodily Injury

In the proposal and in the final rule, the Agency defines "bodily injury" as having the meaning given to it by applicable state law. In addition, the definition excludes those liabilities that, consistent with standard industry practice, are excluded from coverage in liability insurance policies for "bodily injury."

The Agency received several comments in favor of the proposed definition and some comments opposed. Commenters opposed to the definition maintained that it would create inconsistent definitions, and thus varying scopes of coverage, from state to state. One commenter proposed that EPA define "bodily injury" as "any damage to a third party which the tank owner or operator is legally liable for causing due to negligence."

The Agency is reluctant to adopt a standard definition for a number of reasons. First, the Agency fears that any attempt to redefine "bodily injury" will result in a more tightly limited insurance market. Comments received from the insurance industry strongly urged EPA to retain the approach in the proposed rule, and predicted that insurers might exit the market if the term is given a standard definition.

Second, EPA recognizes that third parties will generally bring liability claims pursuant to state law. Because the definition of "bodily injury" and the treatment of bodily injury claims differ from state to state, the Agency believes that mandating a nationwide definition would promote confusion in state courts, which would be required to review two definitions of "bodily injury" (i.e., a definition pursuant to state law and a standard definition) during litigation.

Third, the Agency prefers the definitions of terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. Since the definition of "bodily injury" often varies from state to state, mandating a standard definition would establish definitions of terms inconsistent with their common meanings.

Consequently, EPA has retained the proposed definition of "bodily injury" in today's final rule.

3. Director of the Implementing Agency

This term refers to the person responsible for implementing the UST program under Subtitle I of RCRA. For USTs in authorized states, this person is the Director of the state agency; for USTs in states without approved programs, this person is the EPA Regional Administrator.

In today's rule, this term replaces the term "Regional Administrator," a term used in the proposed rule, wherever appropriate.

4. Petroleum Marketing Facilities

This definition was not in the proposed rule. It has been added to the final rule to assist in understanding the phased schedule for compliance and to define per-occurrence levels of assurance for USTs. The definition closely follows the statutory language of RCRA section 9003(d)(5) (A) and (B). "Petroleum marketing facilities" are all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

5. Petroleum Marketing Firms

These are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs, as well as petroleum marketing facilities, are considered to be petroleum marketing firms. This definition also was not in the proposed rule. It has been added to the final rule to assist in understanding the phased schedule for compliance.

6. Property Damage

In the proposed rule and in the final rule, the Agency defines property damage as having the meaning given it by applicable state laws. In addition, the term excludes those liabilities which, consistent with standard industry practice, are excluded from coverage in liability insurance policies.

One commenter agreed with the Agency's approach, while other commenters suggested that the definition be modified to cover an intentional act (e.g., sabotage). Including intentional acts in the definition, the commenters argued, would ensure that owners or operators will be financially responsible for all leaks and spills, not just those that are accidental or unintentional.

As noted above, the relevant intentions and expectations of damage or injury are those of the insured. Thus, damage resulting from sabotage would be considered accidental if the insured party did not intend or expect such damage.

Consequently, EPA has decided that including intentional acts in the definition of "property damage" is unnecessary.

7. Additional Definitions

One commenter suggested that EPA use the broad term "financial assurance" to designate all acceptable methods of satisfying the financial responsibility requirements, and proposed a definition of the term.

EPA uses the term "financial assurance" to designate all acceptable methods of satisfying the financial responsibility requirements, but is not defining the term in today's rule. Because the rule clearly delineates all financial assurance mechanisms by which owners or operators may satisfy these requirements, the Agency believes that defining the term is unnecessary.

D. Amount and Scope of Required Financial Responsibility (§ 280.93)

The rule promulgated today requires that owners or operators of petroleum USTs that are located at facilities engaged in petroleum production, refining, or marketing or that handle more than 10,000 gallons of petroleum per month demonstrate evidence of financial responsibility in the minimum amount of $1 million per occurrence to cover corrective action and third-party compensation costs for accidental releases from their tanks. The minimum per-occurrence amount of assurance required for owners or operators of USTs that are not located at facilities engaged in petroleum production, refining, or marketing and that handle 10,000 gallons or less of petroleum per month is $500,000. In addition, the Agency is establishing requirements for annual aggregate levels of assurance, based on the number of USTs to be assured. Today's rule also includes a paragraph (§ 280.90(e)) that explicitly states that if the owner and the operator of a tank are separate persons, only one person must demonstrate financial responsibility. The Agency's reason for adding this paragraph is discussed in Section III.A.1, Owners and Operators.

The rationale for determining the amount and scope of required assurance is discussed below, as it pertains to the following topics:

(1) Per-Occurrence Amounts.
(2) Aggregate Amounts.
(3) Apportionment of Costs and Level of Assurance under Separate Mechanisms.

1. Per-Occurrence Amount

Section 280.93(a) of today's rule establishes $1 million per occurrence as the minimum amount of required financial assurance for owners or operators of petroleum USTs located at facilities engaged in petroleum production, refining, or marketing and for owners or operators of petroleum USTs that handle more than 10,000 gallons of petroleum per month. The minimum amount of required assurance for USTs that handle 10,000 or less gallons of petroleum per month and are located at facilities that are not engaged in petroleum production, refining, or marketing is $500,000. The proposed rule required that *all* owners or operators of petroleum-containing USTs provide assurance in the minimum amount of $1 million.

EPA received numerous comments on the subject of the required per-occurrence amount of assurance. Arguments for lowering this amount of assurance included:

- The costs of almost all UST releases are far lower than $1 million;
- Small businesses cannot afford to obtain $1 million in per-occurrence coverage;
- The money required to pay insurance premiums would be better spent on upgrading tanks;
- Insurance coverage for $1 million per-occurrence is not available; and
- A lower per-occurrence limit would encourage insurers and reinsurers to offer UST pollution liability coverage.

Several commenters pointed out that EPA had required the same per-occurrence limit of $1 million for all USTs even though Subtitle I clearly allows the Agency to set limits lower than $1 million for USTs at facilities not engaged in petroleum production, refining, or marketing and that are not used to handle large amounts of petroleum. The reasons given in support of a lower per-occurrence limit for USTs at these facilities included many of the same arguments presented above and additional reasons specific to facilities not engaged in petroleum production, refining, or marketing. Some of these additional reasons included:

- Low-volume facilities are less likely to have catastrophic-failure-induced large releases;
- Low-throughput facilities will have smaller releases from their underground pipes; and
- Low-throughout facilities can be monitored more accurately.

Finally, several commenters argued that $1 million in per-occurrence coverage might be too low. They explained that past claims data underestimate future claims and that both corrective action and third-party liability awards will be more costly in the future than they have been in the past because of corrective action regulations that impose minimum cleanup standards.

As explained in the proposal, the minimum $1 million per-occurrence level required for owners or operators of USTs at facilities engaged in petroleum production, refining, or marketing was based on the provisions of section 9003(d)(5) (A) and (B) of Subtitle I of RCRA. These sections state:

> (5)(A) The Administrator, in promulgating financial responsibility regulations under this section, may establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than $1,000,000 for each occurrence with an appropriate aggregate requirement.
>
> (B) The Administrator may set amounts lower than the amounts required by subparagraph (A) of this paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

The Agency's interpretation of these provisions is confirmed by the discussion of this amendment to Subtitle I, section 205 of SARA, in the Conference Report accompanying SARA. The Report states that "The Administrator cannot set a minimum financial responsibility requirement of less than $1 million for tanks which are engaged in petroleum production, refining or marketing * * *." (House Report 99–962, 99th Congress, 2nd Session, p. 264.)

Therefore, absent further instruction from Congress, EPA's per-occurrence

requirement for USTs at facilities engaged in petroleum production, refining, and marketing must be at least $1,000,000.

The Agency shares the concern expressed by commenters that releases may be more expensive in the future, and performed an analysis of this issue. The model developed to aid in this analysis estimates both the costs and frequency of UST-related corrective actions. It takes into account both the more stringent cleanup standards that will prevail under the technical standards being imposed by EPA and the fact that releases will be detected sooner, when they are smaller, once the regulations have been promulgated. This analysis showed that the average costs of UST-related corrective actions will be lower rather than higher in the future (see Appendix A of the Regulatory Impact Analysis for the Financial Responsibility Requirements for Underground Storage Tanks Containing Petroleum and Chapter 7 of the Regulatory Impact Analysis of the Technical Standards for Underground Storage Tanks). Because the number of UST-related releases and the extent of the damage associated with these releases will not increase in the future, the Agency is confident that corrective action and third-party liability costs will also not increase in the years after promulgation of these requirements.

In the final rule, EPA allows owners or operators of petroleum underground storage tanks that are not located at facilities engaged in petroleum production, refining, or marketing and that handle an average of 10,000 gallons or less of petroleum per month (based on annual throughput for the previous calendar year) to provide a minimum of $500,000 in per-occurrence assurance. As indicated above, section 9003(d)(5)(B) authorizes the Administrator of EPA to set per-occurrence amounts lower than $1 million for petroleum USTs located at facilities that are not engaged in petroleum production, refining, or marketing and that are not used to handle substantial quantities of petroleum.

Section 9003(d)(5)(C) of Subtitle I lists the factors that the Administrator may consider in setting an amount of assurance lower than $1 million for certain classes and categories of USTs:

- The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks;
- The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category;
- The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry;
- The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph; and
- Such other factors as the Administrator deems pertinent.

When the Agency considered these factors for the proposed rule, it concluded that a $1 million per-occurrence level of assurance for all USTs was appropriate and would achieve EPA's goal, which was to set a per-occurrence level high enough to cover the costs of 99 percent of UST release occurrences.

The Agency still believes that this goal is appropriate. Material submitted to the docket in response to the proposed rule has enabled the Agency to perform a more refined analysis of the frequency of per-occurrence claims at various levels. From this analysis, the Agency concludes that a $500,000 level of assurance is adequate to assure the costs of approximately 99 percent of per-occurrence claims for USTs with throughputs no greater than the throughputs characteristic of USTs at retail motor fuel marketing facilities. (This analysis is provided in Appendix B to the Regulatory Impact Analysis.) Thus, the Agency has revised the final rule to provide a lower per-occurrence level for such facilities, and has limited facilities qualifying for this lower per-occurrence amount to those with UST throughputs no greater than retail motor fuel marketing facilities (i.e., 10,000 gallons per month).

In responding to comments on the proposal and revising the rule, the Agency considered each of the criteria in section 9003(d)(5)(C), both when evaluating a per-occurrence limit of $500,000 and when identifying the class of USTs that would be allowed to use this lower per-occurrence limit. The Agency decided to use monthly throughput as the measure that best distinguishes USTs used in petroleum producing, refining, and marketing, for which Congress mandated a minimum per-occurrence limit of $1,000,000, from USTs used in other industries that might appropriately be assigned a lower per-occurrence limit. As discussed in the preamble to the proposed rule, factors such as age of tank, material of construction, and the presence of a secondary containment are not critical in determining a per-occurrence limit:

> Although such factors do affect a tank's propensity to leak, there is no evidence to suggest that any of these factors affects the costs related to a release. The setting of an appropriate per-occurrence level depends on the costs of individual releases rather than on the probability that a release will occur, and there is therefore no reason why the factors mentioned above should have a bearing on the per-occurrence level of coverage required. For example, a release from a 1-year-old tank can be just as expensive to address as a release from a 20-year-old tank.

The Agency based its decision to allow a lower per-occurrence limit for facilities that are not engaged in petroleum production, refining, or marketing and that have a monthly throughput of 10,000 gallons or less primarily on the extent of the potential damage associated with releases from these tanks. The Agency also carefully analyzed the extensive UST claims record submitted by the largest insurer of service station USTs and found that this record provided statistically significant evidence that releases costing more than $500,000 occur less than 1 percent of the time. The Agency has concluded that coverage of $500,000 will assure that the per-occurrence limit is exceeded less than 1 percent of the time. These same data show that a per-occurrence limit set below the $500,000 level would be exceeded more than 1 percent of the time.

For this reason, the final rule rejects those suggestions of commenters that low-throughput USTs be exempted or that the per-occurrence limit for such USTs be set below $500,000.

The choice of 10,000 gallons per month as the definition of "substantial quantities of petroleum" is also consistent with Congressional intent as expressed in the Conference Report accompanying SARA. It states that the Administrator cannot:

> set a minimum financial responsibility requirement of less than $1 million * * * for tanks that dispense very large volumes, for instance tanks at airports. (p. 264)

The 10,000-gallon-per-month throughput limit for USTs qualifying for the $500,000 minimum per-occurrence amount is far lower than the volume of fuel dispensed monthly at typical airports.

EPA has not considered economic impact to be a primary factor in determining the appropriate per-occurrence limits. The Agency's regulatory impact analysis found that the cost of insurance premiums would have relatively minor impacts on most smaller firms that are not engaged in retail motor fuel marketing. Further, the threat to human health and the environment posed by releases from USTs is the same, in terms of severity, whether the leaking tank is owned by a small firm or a large firm.

The Agency agrees with those commenters who suggested that facilities outside the retail motor fuel marketing industry may have difficulty obtaining financial assurance mechanisms. The Agency has found that no insurer offering policies to facilities not engaged in petroleum production, refining, or marketing meets these coverage requirements. Lowering the per-occurrence limit may serve to increase the availability of financial assurance mechanisms. A lower per-occurrence limit will make it easier for insurers with limited reserves to offer these policies, will ease the capitalization of RRGs, and will allow states to set up state funds with less commitment of funds.

2. Aggregate Amounts

Section 9003(d)(5)(A) of Subtitle I grants the Administrator discretion to set "an appropriate aggregate requirement" for financial responsibility for petroleum USTs. In § 280.92(b) of the proposed rule issued on April 17, 1987, owners or operators of petroleum USTs were required to demonstrate evidence of financial responsibility in annual aggregate amounts that varied from $1 million to $6 million, depending on the number of USTs assured (see Table 2) by the mechanism or combination of mechanisms. (For the purposes of determining required aggregate levels of coverage only, any reference to tanks means only individual containment units and does not include combinations of these units. See § 280.93(c).)

TABLE 2.—PROPOSED AGGREGATE SCHEDULE

Number of tanks	Annual aggregate amount
1–12 tanks	$1,000,000
13–60 tanks	2,000,000
61–140 tanks	3,000,000
141–250 tanks	4,000,000
251–340 tanks	5,000,000
341 or more tanks	6,000,000

The Agency considered this appropriate because the aggregates were set at a sufficiently high level that corrective action and third-party liability costs incurred in any one year from releases from petroleum USTs would not be exceeded more than one percent of the time. The aggregate amounts were derived from an analysis of the probability and magnitude of corrective action and third-party liability costs during the first five years after the technical standards were promulgated. EPA's analysis used an annual probability of 11.8 percent that a tank would experience a release during these years.

The Agency received numerous comments on the proposed aggregate schedule, many of which called for lower aggregate levels. Commenters justified their requests for lower aggregates on the grounds that insurers reported no release costs exceeding $2 million and that the Agency had based its proposed aggregate schedule on an unrealistically high (11.8 percent) release probability rate. They also pointed out that aggregate insurance coverage over $2 million was unavailable, higher aggregate levels would cause correspondingly higher insurance premium costs, and the money needed for higher premium costs would be better spent on upgrading tanks. The two largest insurers of USTs noted that an aggregate of $2,000,000 had never been exceeded on any of their policies.

The Agency continues to find that the aggregate is most appropriately set on the basis of the number of USTs covered by a financial mechanism, and that an aggregate should generally provide adequate funding 99 percent of the time. However, the Agency agrees with those commenters who argued that EPA's initial estimates, both of the costs and probabilities of releases, were too high, especially for those firms that will actually be able to obtain insurance. In addition, the Agency recognizes that both the availability of financial mechanisms and economic impacts should be considered in determining classes and categories with respect to aggregate limits, as authorized under section 9003(d)(5)(C). As a result of these considerations, the Agency has revised its aggregate schedule so that the maximum aggregate is $2,000,000 (the maximum aggregate currently available), and mechanisms covering 100 USTs or less may use an aggregate of $1,000,000. Table 3 presents the aggregate schedule included in the final rule.

TABLE 3.—Aggregate Schedule

Number of tanks	Annual aggregate amount
1–100 tanks	$1,000,000
101 or more tanks	2,000,000

This revised aggregate schedule assures that most firms will not exceed the aggregate more than 1 percent of the time, given the Agency's revised estimates of the risk of UST releases. (See Appendix B of the Regulatory Impact Analysis for the Financial Responsibility Requirements for Underground Storage Tanks Containing Petroleum.) The revised aggregate schedule also has a number of important advantages over the proposed schedule. First, insurance programs do not currently provide coverage for aggregates higher than $2 million. Thus, under the revised schedule, which caps aggregates at $2 million, firms will be able to use existing insurance programs. Also, the lowered aggregates should encourage greater availability of mechanisms other than insurance and thus enable more owners or operators to utilize alternate mechanisms. For example, by reducing the amount of capitalization required, the revised schedule will make it easier to capitalize RRGs and state funds that form to provide UST pollution liability insurance. In addition, firms that already have pollution liability insurance for their USTs at the $1 million and $2 million aggregate levels will not be required to find methods of meeting the balance of their financial responsibility obligations. Given that these aggregate levels ensure that most UST owners and operators will not exceed the aggregate more than 1 percent of the time, EPA believes that the cost of requiring such additional assurance would be unnecessary.

Under the revised aggregate schedule, there are two categories of firms that may exceed the aggregate more than 1 percent of the time. The first category includes firms with more than 500 USTs. (These firms also could have exceeded the aggregate more than 1 percent of the time under the proposed aggregate schedule.) The Agency has not extended the aggregate schedule for firms owning more than 500 USTs because these firms are large and usually have more than $1 billion in net worth. Such firms can easily meet their financial obligations for UST corrective action and third-party liability, even if these obligations exceed $2 million. Futher, these firms tend to have good leak prevention programs and consequently have lower risks of UST releases than most similar firms.

The second category of firms that may have more than a 1 percent chance of exceeding the aggregate are firms with between 40 and 100 USTs that do not have sufficient leak detection programs. However, most firms with between 40 and 100 USTs are currently insured and meet insurers' leak detection requirements. Because the small number of firms with between 40 and 100 USTs that do not have sufficient leak detection programs will have to meet EPA's UST leak detection technical standards within 5 years, the Agency

has decided not to set a higher aggregate for these firms on the basis of their temporarily higher risks.

The Agency received a number of comments suggesting that a lower aggregate level for owners or operators of upgraded tanks could provide an incentive for other owners or operators to upgrade their systems—in essence a "credit system." EPA agrees with these suggestions, but because the Agency has lowered the maximum aggregate level of required assurance from $6 million to $2 million and has raised the number of tanks qualifying for the $1 million aggregate from 12 to 100, much of the incentive to upgrade tanks and qualify for a lower level of required assurance has effectively been eliminated. Given that few owners or operators would be able to upgrade tanks to a level that would qualify for a lower amount of assurance, EPA believes that the complexity of developing, implementing, and administering such a program far outweighs its potential benefits. Therefore, the Agency still believes that it is appropriate to continue to use the number of tanks owned or operated, rather than tank characteristics, as the basis for determining aggregate levels.

During the comment period, a number of questions were raised regarding the effective date for increases in an aggregate level when an owner or operator acquires or installs additional tanks. The Agency agrees that it could prove awkward to change an aggregate level in midyear and took that factor into consideration in determining when financial assurance levels should be updated. Financial assurance mechanisms such as insurance policies and letters of credit are generally written for one year, and the final rule is consistent with this practice. Thus, an owner or operator who is using a single mechanism to assure his tanks and who has increased the number of tanks for which he is providing financial assurance is required to update the level of assurance (i.e., the aggregate level) on the anniversary date of the financial assurance mechanism. If this same owner or operator is using a combination of mechanisms to provide financial assurance for his tanks, the level of assurance must be updated by the first-occurring anniversary of any of the mechanisms being used (excluding a financial test or guarantee) (see § 280.93(f)).

The question of tank numbers also arose in the context of determining the appropriate aggregate amount when a firm is acting as a self-insurer, guarantor, and/or indemnitor (however, indemnities are not an allowable mechanism under the final rule, as discussed in Section III.G of the preamble). By aggregate amount, EPA means the total of all costs potentially incurred within a given year for all releases from petroleum USTs for which evidence of financial responsibility is being demonstrated by a single mechanism or a combination of mechanisms. If an owner or operator uses different financial assurance mechanisms to cover different USTs, the appropriate aggregate amount is based on the number of tanks covered by each separate mechanism or combination of mechanisms. One commenter recommended that, for the purpose of determining whether a firm passes the financial test, the aggregate level of coverage be "based on the total number of tanks for which a firm is responsible by self-insurance, indemnity, or guaranty." Because this was EPA's intention at the time of the proposal, the Agency recognizes that the explanation in the preamble to the proposed rule confused some commenters. By stating that the aggregate amount is based on the number of tanks for which a single mechanism or combination of mechanisms is being used to demonstrate evidence of financial responsibility the Agency means:

1. If an owner or operator self-insures his own tanks and guarantees tanks belonging to a different owner or operator, the owner must pass the *financial test* based on the total number of tanks self-insured and guaranteed. Two different examples follow:

- If an owner is self-insuring 60 tanks and guaranteeing 60 tanks, the amount of annual aggregate assurance to be demonstrated to use the financial test to self-insure and guarantee these tanks is $2 million. The guarantee must be issued for an aggregate amount of $1 million.
- If a guarantor guarantees 60 tanks for each of three different owners, the amount of annual aggregate assurance to be demonstrated to use the financial test to guarantee these 180 tanks is $2 million. Each of the three guarantees, however, must be issued for an aggregate amount of $1 million.

2. If an owner or operator uses a *combination of mechanisms* (e.g., insurance and surety bond) to demonstrate evidence of financial responsibility, the aggregate amounts provided by these mechanisms added together must equal the required aggregate amount for the number of tanks for which these mechanisms are demonstrating financial responsibility. For example, if an owner with 200 tanks has insurance with a $1 million aggregate, aggregates of additional mechanisms for these tanks must equal at least $1 million, for a total of $2 million in aggregate coverage.

3. If an owner or operator uses one financial mechanism to demonstrate evidence of financial responsibility for one set of tanks and another mechanism to demonstrate evidence of financial responsibility for a different set of tanks, each mechanism must have an aggregate amount appropriate to the separate set of tanks assured. For example, an owner has a total of 300 tanks: 140 tanks in one state and 160 tanks in another state. The 140 tanks are assured at the $2 million aggregate level by a mandatory participation state fund that only assures tanks in that state. The owner must provide additional financial assurance at the $2 million aggregate level for the other 160 tanks located elsewhere.

3. Apportionment of Costs and Levels of Coverage Under Separate Mechanisms

Several commenters questioned the provision that separate mechanisms (or combinations of mechanisms) obtained for corrective action and third-party liability must each be at the full amount of required assurance. The commenters believed that this provision would be prohibitively expensive. The Agency has retained this provision in the final rule despite the added costs of providing coverage under this approach. As explained in the preamble to the proposed rule, the Agency decided not to apportion costs between third-party liability and corrective action because apportionment limits the amount of funds that are available for either type of cost. Thus, mechanisms covering these costs separately cannot be set at amounts less than the full amount of required assurance.

Owners or operators may use a combination of mechanisms to obtain a total of $1 million per occurrence and appropriate aggregates, as long as both corrective action and third-party compensation are fully covered. For example, an owner or operator may obtain insurance coverage for the first $100,000 of corrective action and third-party liability costs and use an approved state fund to cover corrective action and third-party liability costs in excess of $100,000 up to $1,000,000. In another example, an owner or operator could obtain insurance coverage for the first $100,000 of corrective action and $300,000 of liability costs and use an approved state fund to assure corrective action costs above $100,000 and third-party liability costs above $300,000, up to $1 million.

E. Allowable Mechanisms and Combinations (§ 280.94)

1. *Mechanisms Allowed.* The proposed rule allowed a variety of mechanisms to be used to demonstrate financial responsibility, including: a financial test of self-insurance, guarantee contract, indemnity contract, insurance, RRG coverage, surety bond letter of credit, state-required mechanisms, or a state fund or other

state assumption of responsibility. In general, commenters supported the range of allowable mechanisms proposed by the Agency. As discussed below, the final rule authorizes the use of each of the proposed mechanisms, with the exception of the indemnity contract, and an additional mechanism, a fully-funded trust fund.

The preamble to the proposed rule stated that three mechanisms were considered but not included in the set of allowable mechanisms: trust funds, security agreements, and lines of credit. One commenter explicitly supported the Agency's rationale for excluding trust funds and security agreements. The Agency rejected security agreements because of three concerns with respect to the adequacy of the assurance such agreements would provide: (1) The liquidity of the collateral subject to the agreement; (2) the procedural requirements to establish and maintain a security agreement; and (3) the ability of the implementing agency to seize and sell the collateral.

One commenter urged the agency to allow lines of credit, stating that lines of credit could be used for UST purposes as well as for other business purposes. The Agency believes, however, that its basis for rejecting lines of credit (i.e., that they are conditional on the current financial standing of the borrower and therefore do not represent a substitution of the issuer's credit for the borrower's) continues to be valid and, thus, that lines of credit should not be an allowable mechanism.

Another commenter advocated the inclusion of trust funds in the set of allowable mechanisms, claiming that large firms may want to use a trust fund to cover multiple tanks if other mechanisms are not available. The commenter recommended allowing either a fully funded trust fund or partial funding combined with additional coverage from another instrument.

The Agency has decided to include the trust fund as an allowable financial assurance mechanism. (See also Section III.M of this preamble.) For reasons cited in the preamble to the proposed rule, a trust fund with a build-up period does not provide adequate financial assurance for corrective action and third-party liability which could be incurred at any time in the future. However, the Agency will allow a trust fund that is immediately funded at the full amount of coverage, or partially funded and combined with another mechanism to provide full coverage. Although such a trust fund will be costly compared to other mechanisms, the Agency decided to allow it as another option to the coverage requirements.

The Agency has also removed indemnities from allowable mechanisms. In order to cover third-party liability, indemnities so closely duplicate the structure and operation of a guarantee contract that there was little to be gained by including it, and including it as a separate mechanism might create unnecessary confusion. Indemnities would generally be provided by the same firms that provide guarantees and thus their inclusion in the rule would not increase the number of potential providers of assurance.

2. *Combinations of Mechanisms.* Under the proposed rule, any combination of allowable financial assurance mechanisms could be used to demonstrate financial responsibility for corrective action and third-party compensation. Commenters in general supported this approach.

In the preamble to the proposed rule, the Agency discussed a "double-counting" problem that may arise when a financial test is combined with a guarantee provided by a corporate parent. In many cases, the reported net worth of a corporate parent includes the net worth of its subsidiaries. If a subsidiary uses the financial test (based on its own net worth) in combination with a parent guarantee (based on the parent's net worth), the subsidiary's assets available to cover UST obligations will be double counted. This double-counting will exaggerate the reserves available to the subsidiary and the parent to cover UST obligations and thus may provide inadequate financial assurance. To avoid this problem, the Agency suggested that, in cases where a financial test is combined with a guarantee, the financial information supporting the two instruments cannot be drawn from consolidated statements.

One commenter objected to the Agency proposal on two counts. First, the commenter pointed out that the Agency did not include the prohibition against consolidated financial statements in cases of a combined financial test and guarantee in the proposed rule itself, but only in the preamble. Second, the commenter stated that preparing unconsolidated financial statements would be costly for many firms and would effectively require firms to reveal generally confidential, unconsolidated data. The commenter recommended that some other means be found to address the double-counting problem of a combined financial test and guarantee.

Despite this last objection, the Agency has decided to incorporate in the final rule (§ 280.94(c)) the restriction on the use of consolidated financial statements in support of a financial test and guarantee combination. While the Agency acknowledges that this provision may impose costs on those financial test users that do not routinely prepare statements that are not consolidated with those of their guarantors, commenters have not suggested an alternative and the Agency sees no other simple way to ensure that a combined financial test and guarantee offers the full amount of net worth coverage that the Agency is requiring. If the costs of preparing unconsolidated statements and of revealing confidential business information outweigh the benefits of using a combined financial test and guarantee, then owners or operators have other financial assurance mechanisms available.

EPA does agree, however, that the restriction on the use of consolidated financial statements should be formalized in the rule itself and has accordingly added this provision at § 280.94(c).

3. *Attorney General Certification (§ 280.94(b))*— The proposed rule required that a guarantee, indemnity contract, or surety bond have a certification by the Attorney General of any state where the tanks being assured are located that the mechanism is valid and enforceable in that state. This provision was designed to ensure that the mechanisms satisfy necessary contractual formalities or requirements of a state's laws.

Several commenters objected to the requirement for an Attorney General's certification. They maintained that state Attorneys General will find the "valid and enforceable" standard unacceptable and that they do not possess the statutory authority to issue such a certification. Another commenter claimed that the certification is unnecessary because the "ultra vires" defense is essentially untenable and the right of third parties to enforce such instruments is a commonly accepted legal principle.

The Agency disagrees with the commenters' concern over the certification issue. First, state Attorneys General have indicated their willingness to provide "valid and enforceable" certifications required for the RCRA Subtitle C corporate guarantee for liability coverage (40 CFR 264.147(g) and 265.147(g)). Of a group of state Attorneys General surveyed regarding the Subtitle C corporate guarantee for liability coverage, no responding Attorney General refused to issue a certification for this corporate guarantee based on a lack of statutory authority. However, several Attorneys General indicated

that such a request could only be made through a state agency.

Second, the surety bond and guarantee authorized in today's rule may be subject to the insurance laws and regulations of certain states. Although the "ultra vires" defense is generally no longer considered tenable, the Attorney General certification requirement ensures that any contractual formalities unique to a particular state have been addressed in the contractual agreement and that questions concerning the validity of the agreement will not delay the provision of funding for corrective action. The Agency recognizes that some states may require minor changes to the wording of the instruments to ensure that they are valid and enforceable under the laws of the state. The final rule requires submission of a letter by the Attorney General of a state verifying the validity and enforceability of the guarantee and surety bond before these mechanisms may be used to demonstrate financial responsibility.

4. *New Mechanisms.* Many commenters advocated adding a mechanism under which the Federal government provides some form of financial assurance. The suggested forms for this mechanism ranged from a Federal fund to some form of Federal insurance pool.

Several commenters advocated a Federal insurance program to offer liability insurance at a reasonable price. One commenter supported a program similar to the Federally-run Flood Insurance Program under which premiums are paid by member corporations. However, another commenter said this approach would not work, because insured parties would not want to subsidize other parties with USTs installed over vulnerable groundwater areas.

Several other commenters advocated various forms of Federal funds. One suggested approach was to establish a loan fund from which owners or operators could borrow at no interest and repay over a 25-year period. Another suggestion was to establish a fund to cover events that cost between some established amount that reflects average remedy costs and one million dollars. Under this approach, the fund would only be available to owners and operators who demonstrate responsible monitoring and leak prevention practices.

In the SARA amendments to Subtitle I, Congress has established a $500 million Leaking Underground Storage Tank (LUST) Trust Fund for addressing releases from petroleum USTs. However, after the effective date of the technical standards, use of the Trust Fund is authorized by RCRA section 9003(h) only in the following limited circumstances: (1) A responsible owner or operator capable of taking prompt and appropriate corrective action cannot be identified; (2) prompt action is required to protect human health and the environment; (3) the cost of the corrective action exceeds the financial responsibility requirements established under this rule and expenditure of additional funds is necessary; and (4) the owner or operator has failed or refused to comply with a corrective action order. (Uses of the Fund are discussed in more detail in Section IV.B.) The Fund may not be used for the purposes suggested by the commenters. Nor is EPA authorized under Subtitle I to develop another fund for any of the purposes suggested by the commenters.

In addition, one of the Agency's major goals reflected throughout the entire UST regulatory program is to encourage development of the UST program as a state-implemented program. EPA encourages states to consider developing the type of funds that commenters urged should be undertaken by the Federal government. Several different types of state funds or state-backed insurance programs can serve as assurance mechanisms to allow owners and operators to comply with the financial responsibility rule. In addition, state funds may provide valuable assistance and incentives to the regulated community to comply with the new tank performance standards.

5. *Specification of Tanks in Financial Assurance Instruments.* In the proposed rule, the Agency required that the financial assurance instruments list by identification number the specific tanks that they cover. Many commenters addressing specific mechanisms argued that this requirement is unnecessary and could in fact limit coverage or delay payment from the assurance mechanism. They felt that listing tanks individually could lead to contention as to which tanks was the source of release.

This final rule requires the listing of facilities where assured tanks are located rather than the tanks themselves. The Agency has concluded that listing of tanks at a facility where all tanks are assured under a single mechanism is unnecessary. A listing by facility should also provide greater certainty concerning which tanks at a given location are covered by the policy. Moreover, listing tanks by facility also prevents delays in payment that might arise if coverage were triggered only after identification of the particular tank that had caused the damage.

In today's rule the language of the assurance instruments is amended to strike the requirement for tank identification numbers and add a statement indicating that the required aggregate coverage levels have been purchased. Each instrument must identify each facility covered by the mechanism and the number of tanks at each facility. If separate mechanisms are used to cover different USTs at one location, the tanks covered by each mechanism must be identified in the wording of the mechanism.

F. Financial Test of Self-Insurance (§ 280.95)

1. Proposed Financial Test

As part of the underground storage tank requirements proposed on April 17, 1987, EPA included a financial test that could be used by owners and operators to self-insure. UST owners or operators able to meet the proposed financial test criteria would not be required to obtain insurance or another financial assurance mechanism to demonstrate evidence of their financial responsibility for corrective action and third-party claims arising from UST releases. The financial test of self-insurance was also proposed as a means to qualify guarantors and indemnitors of firms owning or operating USTs.

As originally proposed, the Subtitle I financial test consisted of the following criteria:

a. The firm must have a tangible net worth equal to at least 10 times the amount of aggregate assurance required for UST financial assurance. The proposed amount of required aggregate assurance ranged from $1 million to $6 million, depending on the number of tanks the owner or operator, guarantor, or indemnitor was assuring for EPA or an authorized state. If the firm was also using a financial test to meet the financial responsibility requirements for the costs of closure, post-closure care, liability coverage, and/or corrective action at a Subtitle C facility, or for the costs of plugging and abandonment at a Class I Hazardous Waste Injection Well, the firm was required to have a tangible net worth equal to at least 10 times the sum of these costs plus the required aggregated coverage for its USTs.

b. The firm must have a tangible net worth of at least $10 million.

c. The firm must either file annual financial statements with the SEC or annually report the firm's tangible net worth to Dun and Bradstreet (D&B), which must have assigned the firm a financial strength rating of 4A or 5A.

d. The firm's year-end financial statements, if independently audited, could not include an adverse auditor's opinion or a disclaimer of opinion.

In addition to these financial test criteria, the proposed requirements included procedures for financial test reporting and certification. Within 90 days after the close of each fiscal year, the chief financial officer of the firm owning, operating, guaranteeing, or indemnifying had to sign a letter reporting the year-end financial information supporting the firm's use of the financial test. If an owner or operator, guarantor, or indemnitor found at the end of the fiscal year that he was no longer eligible to use a financial test, the owner or operator was required to obtain an alternate mechanism within 120 days of the end of the fiscal year. Finally, the proposed rule authorized the Regional Administrator to disqualify a firm's use of the financial test if he found, based on reports of the firm's financial condition, that the firm no longer met the financial test requirements. The owner or operator would have 30 days after notification of such a finding to obtain another financial assurance mechanism.

The criteria for the proposed Subtitle I test reflected several key Agency objectives. First, the reliance of the test principally on a net worth measure was intended to keep the test relatively simple to administer and monitor, in view of the large number of firms to be regulated under Subtitle I requirements. At the same time, the net worth criteria were designed to ensure that virtually all firms able to pass the test would also be able to meet their UST obligations. In particular, the requirement that firms demonstrate a level of net worth 10 times the size of their potential UST obligations was based on an Agency analysis of failure rates among firms classified on the basis of their ratios of UST liabilities to net worth. The Agency found that, for those firms with UST liabilities equal to 10 percent or less of their net worth, the associated probability of bankruptcy was approximately one percent. Therefore, to achieve a level of assurance such that no more than one percent of financial test users would go bankrupt as a result of their UST obligations, the Agency decided to require that financial test users maintain their net worth at a level at least 10 times their environmental obligations.

By requiring that other environmental obligations assured by a financial test be aggregated with the required UST assurance when determining the amount of net worth to require, the Agency wished to prevent financial test users from diluting the degree of assurance provided by the test. Similarly, the requirement that there be no auditor's disclaimer of opinion or adverse opinion was also intended to increase the margin of security provided by the test. A disclaimer of opinion or an adverse opinion indicates that the auditor has found material uncertainties regarding the firm's valuation of its assets, current litigation or tax liabilities, or changes in accounting method. Therefore, because these opinions indicate that the reported net worth of a firm may be greater than its actual net worth, there is considerable doubt as to whether a firm receiving a disclaimer of opinion or an adverse opinion has sufficient resources to meet its UST obligations.

Finally, the requirement that firms either file their financial statements with the SEC or report to D&B and obtain a D&B financial strength rating of 4A or 5A was meant to ensure that the information used to support a financial test would be publicly available and therefore easily verified by EPA or state regulators. At the same time, by allowing a D&B rating as an alternative to filing with the SEC, the Agency wished to make the test available to the large number of privately-held UST owners and operators who would not otherwise be submitting their financial statements to the SEC.

2. Comments on the Proposed Financial Test

EPA received comments on its proposed Subtitle I financial test from a wide representation of firms and entities that will be affected by the UST requirements. These included both publicly- and privately-held firms, municipalities, trade associations, environmental groups, state regulatory agencies, and firms representing all aspects of UST ownership: owners of a single tank or many tanks, petroleum refiners and marketers, and firms engaged in businesses other than petroleum production, refining, or marketing. The majority of comments focused on (1) the net worth criteria of the financial test; (2) requirements for financial test certification and reporting; and (3) the ability of municipalities to use the test. Comments were also received on a number of miscellaneous issues, such as the aggregation of other environmental costs with the required level of UST coverage; the use of a binding guarantee to support the financial test; and the extension of the aggregate schedule for owners or operators using a financial test to assure a large number of USTs. The substance of the major comments received is briefly summarized below, followed by the Agency's rationale for accepting or rejecting commenters' recommendations in the final financial test requirements.

a. *Net Worth Criteria of the Financial Test.* Many commenters objected that the proposed financial test would not be available to any but the largest petroleum distributors or refiners and therefore recommended that the net worth criteria of the test be relaxed to allow smaller businesses to use the test. Other commenters argued that a lower net worth multiple was appropriate in view of the fact that the proposed per-occurrence and aggregate amounts of coverage were much higher than the average costs of UST releases. Commenters also questioned why a 10 times net worth multiple was proposed for Subtitle I, when a six times net worth multiple is required for the Subtitle C tests for closure and post-closure care and liability coverage.

The Agency agrees that the availability of the financial test will be limited to larger firms in the regulated community; nevertheless, EPA also believes that this restriction is necessary to increase the likelihood that a financial test user will be able to pay for its potential UST obligations. Because the incidence of bankruptcy among firms with less than $10 million in tangible net worth is approximately two times as great as the bankruptcy rate among firms with more than $10 million in tangible net worth, the Agency has decided to retain the minimum $10 million tangible net worth requirement in the final rule.

For similar reasons, the Agency has also decided to retain the requirement that tangible net worth be at least 10 times the required UST aggregate for any firm using the financial test. Lowering the net worth multiple would mean that more than one percent of financial test users would be predicted to fail without funding their UST obligations—a risk that the Agency does not believe should be accepted among financial test users, particularly since owners or operators who use any of the other financial assurance mechanisms allowable under Subtitle I (insurance, surety bond, etc.) pose little risk of incurring unfunded UST obligations.

Other changes are, however, being made in the final UST rule that should make the 10 times level of net worth somewhat less restrictive to potential financial test users. First, the schedule of required annual aggregates has been modified (see Section III.D), so that the maximum annual aggregate to be assured is $2 million rather than $6 million as originally proposed. Thus,

without changing the net worth requirement, the corresponding level of required net worth will nevertheless be lower for many firms owning and operating large numbers of USTs.

Second, the Agency has incorporated into the final rule (§ 280.95(c)) a second set of financial test criteria that may be used instead of the originally proposed "net worth" test. Owners or operators may now choose to use the financial test criteria of the Subtitle C test for liability coverage, as specified in § 264.147(f)(1) or § 265.147(f)(1), to demonstrate their ability to pay for their UST obligations. These criteria are included in the final rule as Alternative II, while the originally proposed financial test is retained as Alternative I. As a result of this addition, firms with a tangible net worth of $10 million and *six* times their UST obligations will be able to use a financial test under Alternative II, as long as they also have:

- At least 90 percent of their assets in the United States, or U.S. assets at least six times their UST obligations; and
- Net working capital at least six times the required amount of UST aggregate coverage; or
- A current Standard and Poor's bond rating of AAA, AA, A, or BBB, or a current Moody's bond rating of Aaa, Aa, A, or Ba.

As with Alternative I of the Subtitle I financial test, if the firm is using a financial test to assure the costs of closure, post-closure care, corrective action, liability coverage, and/or plugging and abandonment costs at a Class I Hazardous Waste Injection Well, then the multiple requirements of Alternative II must be applied to the sum of these costs plus the UST-required annual aggregate. EPA believes the two tests provide equivalent assurances of financial strength.

EPA has decided to adopt this Alternative II financial test in addition to Alternative I as a way of increasing the availability of the financial test without jeopardizing the level of assurance provided by the test. As designed for the Subtitle C liability test, and now for the UST Alternative II test, the requirement that either 90 percent of a firm's assets be in the United States or that U.S. assets be at least six times its UST obligation is intended to ensure the accessibility of these assets, should the firm require them to meet its UST costs. The net working capital requirement is designed to measure the adequacy of a firm's liquid resources, given the potential level of its environmental obligations. Because, however, the level of net working capital can vary significantly by industry, the Agency allows firms to meet the bond rating requirement as an alternative to the net working capital requirement. Thus, financially healthy firms that typically maintain relatively low levels of working capital due to the nature of their business can nevertheless use the bond rating alternative to demonstrate that they have adequate liquid resources to meet their obligations.

The Agency decided to use the financial test criteria of the Subtitle C test for liability coverage for the UST financial test because they were specifically designed for assurance of possible, rather than certain, costs. For this reason, these criteria are somewhat less stringent than the standards of the Subtitle C closure and post-closure test where future costs that are certain to be incurred are being assured. Furthermore, the criteria selected for the Alternative II test have the advantage of being easily obtained from public sources even for those firms that do not have audited financial statements or do not report to the SEC.

b. *Requirements for Certification and Reporting.* EPA received two comments endorsing the Agency's proposal not to require firms using the financial test to obtain a special auditor's report verifying the financial test information contained in the chief financial officer's report. Other commenters, however, objected to the proposed requirements for financial test certification and reporting on the grounds that such requirements were unnecessarily burdensome and restrictive. Specific objections to the reporting and certification requirements are summarized below, followed by the Agency's response to each of these objections.

- The requirement that the chief financial officer list in his annual letter every tank being assured by the financial test would be especially time-consuming for owners and operators of a large number of tanks.

EPA agrees that the requirement for individual tank listing in the chief financial officer's letter may impose an unnecessary recordkeeping burden on firms with many USTs or on firms that frequently change their inventory of USTs. The Agency has therefore adopted in the final rule the suggestion that financial test users list the sites or facilities where their tanks are located, rather than each tank. (This same suggestion has been adopted for all the financial assurance mechanisms in the final rule; see Section III.E.5.) If, however, separate mechanisms or combinations of mechanisms are used to assure different sets of USTs at a location, individual tanks must still be identified.

- Other ratings, such as a Moody's or a Standard and Poor's rating, should be allowed as a substitute for a D&B rating as part of the financial test criteria.

EPA has decided not to allow a bond rating from Moody's or Standard and Poor (S&P) as part of the Alternative I test, because these ratings cannot be used in the same way as D&B ratings or SEC reports—namely, to verify that a firm has at least $10 million in net worth. The Agency has, nevertheless, incorporated requirements for a Moody's or S&P bond rating in the Alternative II test: Under § 280.95(c)(1), a financial test user may either demonstrate that it has net working capital at least six times the required amount of UST aggregate coverage or that its most recent bond issue has received an investment grade bond rating from Moody's or S&P. As such, the bond ratings are intended to increase the availability of the test to those firms that are financially strong, but because of the nature of their business, do not routinely maintain high levels of working capital. The bond ratings are *not*, however, intended to provide evidence of the level of a firm's net worth. In the Alternative II test, this purpose is instead accomplished by the requirement that a firm either report to the SEC, the Energy Information Administration, or the Rural Electrification Administration, in which case its net worth can be easily verified in the reports publicly available from these agencies, or submit a special auditor's report, corroborating the firm's declaration that it has at least $10 million in tangible net worth.

- The annual reports filed by utilities with the Energy Information Administration and by rural electric cooperatives with the Rural Electrification Administration are publicly available. The Agency should allow reporting to one of these agencies as a substitute for reporting to the SEC.

The Agency agrees with these commenters. Because the annual reports filed by utilities with the Energy Information Administration and by rural electric cooperatives with the Rural Electrification Administration are publicly available and equivalent to annual reports filed with the SEC, the Agency will allow an annual report to one of these two agencies to substitute for reporting to the SEC.

- The 90-day deadline for filing financial test information after the firm's fiscal year end is inconvenient in view of other deadlines for filing with public agencies.

EPA recognizes that filing with the SEC is a time-consuming process, involving the compilation and

verification of large amounts of financial data. Because the UST financial test relies on the same information that is reported to the SEC, many firms will not be able to prepare their financial test submission until they have first completed the SEC filing. Furthermore, the deadline for the annual reports filed by utilities with the Energy Information Administration is April 30 (i.e., 119 days after the end of the calendar year), whereas there is no strict deadline for filing with the Rural Electrification Administration. In view of these considerations, the Agency has decided to extend the deadline for completing the UST financial test by an additional 30 days. This means that the financial test information is now required to be completed 120 days after the end of the firm's reporting year, rather than 90 days, as originally proposed. With this change, the preparation of the UST financial test information should not add significantly to the reporting burden of firms.

Given this extension of the reporting deadline, the Agency has also decided to extend the deadline for obtaining a new financial assurance mechanism for those firms that find that they can no longer use a financial test. The final rule now requires that firms must obtain alternative coverage within 150 days of the end of the year reported in their annual financial statements if these statements indicate that they no longer meet the financial test criteria (§ 280.95(e)). This 150-day period is based on the expectation that firms will need up to 120 days after the close of their reporting year to compile their financial information and an additional 30 days to find an alternate mechanism if this information does not support renewing their financial test.

• The proposed rule did not clearly define the authority given to the Regional Administrator to request further information from financial test users.

EPA has retained in the final rule the proposed provision authorizing the Director of the implementing agency to require reports of financial condition at any time from a financial test user and to disallow use of the financial test if these reports demonstrate that the financial test criteria are no longer being met (§ 280.95(f)). In response to commenters' concern that such authority could be used arbitrarily to disqualify the use of the test by some firms, the Agency emphasizes that the information requested by the Director of the Implementing Agency could be used only to verify compliance with the financial test requirements as they are promulgated under § 280.95 (b) or (c) and (d). Generally, such information would include unaudited interim financial statements (such as 10–Qs submitted to the SEC) or mid-year restatements of financial information (such as 8–Ks submitted to the SEC). Any information not bearing on the requirements specified in the financial test would not be used to disqualify an owner or operator. The Agency has modified the wording of this provision to make its intention clearer in this respect.

• Reporting of financial information to EPA could result in anti-competitive activity because EPA is under no obligation to keep such information confidential.

EPA does not believe that the financial test reporting requirements will in any way violate a financial test user's interest in keeping information confidential, because the test relies only on information that is already reported to other organizations that make this information publicly available. Furthermore, the financial assurance rules do not require regular reporting of information to EPA, but instead require that owners or operators maintain a record of this information at their place of business.

In summary, the Agency emphasizes that the reporting and certification requirements for the Alternative I financial test are designed to be minimally burdensome to firms, while still ensuring that financial test information can be verified through sources other than the owner or operator. Because firms will be allowed to meet the test requirements by reporting their net worth to Dun & Bradstreet as an alternative to reporting to the SEC, the Energy Information Administration, or the Rural Electrification Administration, financial test users will not necessarily be required to have audited financial statements. For owners and operators who opt for the Alternative II financial test, however, the reporting and certification requirements are stricter. Specifically, Alternative II requires that the financial statements of an owner or operator using the financial test be independently audited. EPA considers this requirement to be necessary in the case of Alternative II because of the type of information called for by the test—namely, the level of net working capital and the level of U.S. assets. The measurement of these variables can differ substantially according to the accounting method used to prepare financial statements. By requiring that the financial statements of Alternative II test users be independently audited, EPA has, at a minimum, the assurance that these variables will be measured in a relatively consistent and conservative fashion and in accordance with generally accepted accounting principles.

Furthermore, in the final rule, Alternative II requires a special auditor's report from those firms that do not file their statements with the SEC, the Energy Information Administration, or the Rural Electrification Administration. The reason for this requirement is to provide the Agency with some objective measure of the validity of the information reported by those firms whose financial information may not otherwise be publicly available. Thus, this requirement serves the same basic purposes as the D&B rating that is included as part of the Alternative I financial test.

c. *Availability of the Financial Test to Municipalities.* Many commenters on EPA's proposed financial test requirements pointed out that the test was designed for use by private corporations and not by municipalities or other governmental entities. In particular, the reliance of the test on measures of net worth makes it inappropriate for use by most municipalities since net worth is generally not a meaningful or readily measurable indicator of a government entity's ability to meet its obligations. Only for those special purpose municipalities, whose operations and accounting procedures are similar to those of a privately owned firm, is "net worth" a meaningful indicator of financial condition. Commenters also noted that the proposed financial test reporting requirements were inapplicable to those municipalities that do not file financial statements with the SEC or report their net worth to D&B.

As discussed in Section III.A.4., the Agency intends to propose a financial test for local government entities. Under this test, qualifying local government entities would be able to demonstrate that they are capable of self-insuring the costs of cleanup and third-party liability associated with UST releases, and thus do not need to obtain a separate financial assurance mechanism.

d. *Miscellaneous Issues Concerning the Proposed Financial Test.* In the preamble to the April 17, 1987, proposed Subtitle I financial test, EPA requested comments on two requirements under consideration for inclusion in the final rule: (1) A requirement that firms issue a binding written guarantee that they will pay for the corrective action and third-party obligations that they were assuring with a financial test or through provision of a guarantee or indemnity contract; and (2) a requirement

extending the aggregate schedule beyond the required maximum for financial test users.

One commenter objected to the proposal to incorporate a binding written guarantee into the financial test criteria on the grounds that it could result in lower bond ratings for firms and increased interest costs on their debt, which in turn would impair firms' abilities to demonstrate financial assurance. Commenters also questioned whether such a guarantee would materially improve EPA's ability to obtain the required funding for UST obligations in the event of a firm's bankruptcy. In view of these comments, EPA has decided not to incorporate a requirement for a binding guarantee in the financial test provisions of the final rule.

With respect to extending the aggregate schedule for financial test users, some commenters considered that this provision would be unfair to large, financially viable firms who seek to assure their obligations with a financial test. The Agency's original intention in making such a suggestion was to limit the ability of financial test users to assure thousands of tanks on the strength of a limited net worth. Because the required aggregate is capped, it would be possible for a firm to add to the number of tanks it was assuring by means of the financial test without having to increase its required level of net worth. The Agency, however, has decided that extending the aggregate schedule is not necessary for financial test users assuring large numbers of USTs. As indicated above in discussing the aggregate schedule, those few firms that assure hundreds or thousands of USTs are also firms with resources that are substantial and more than sufficient to cover their obligations. Moreover, these same firms are likely to have good loss prevention programs to limit their potentially large liability.

Other comments received on the proposed financial test criteria included objections to the Agency's proposal to require, for purposes of the Subtitle I financial test, that an owner or operator add to the required UST aggregate any other environmental costs for which a financial test is used to demonstrate financial assurance. Commenters questioned why a ten times net worth multiple would be applied to the sum of these costs under Subtitle I, while under the provisions of the Subtitle C test, a six times net worth multiple is required for coverage of all costs being assured by a financial test.

The Agency believes that this addition of costs is necessary to ensure that an UST owner or operator can meet all of its environmental obligations without jeopardizing the financial health of the firm. The financial tests used for closure and post-closure care, liability coverage, and corrective action all rely on a measure of a firm's net worth relative to the costs being assured. If, therefore, these costs were not added together in the UST financial test for purposes of determining the required amount of net worth, UST owners or operators would, in effect, be "double pledging" their financial resources, thereby reducing the likelihood that UST obligations could be met if they were also faced with other environmental costs.

One commenter recommended that a firm owning or operating USTs and using a financial test to assure Subtitle C obligations should be required to have a tangible net worth equal to the sum of *10* times the applicable UST aggregate plus *six* times the applicable Subtitle C costs, rather than a tangible net worth equal to 10 times the sum of all costs assured by a financial test, as the Agency proposed. It was argued that this procedure for determining the magnitude of net worth coverage for multiple environmental obligations was more consistent with the Subtitle C financial test requirements, which use a six times net worth multiple. However, for reasons discussed in Section III.F.2.a. above, the Agency continues to believe that, for the purposes of the Alternative I financial test, a requirement that net worth coverage be fully 10 times *all* costs being assured by a financial test is necessary to maintain the level of protection that the Agency has set as the standard for the Subtitle I test. The Alternative II financial test, by contract, requires that net worth coverage be at least six times all environmental costs being assured by a financial test. This lower net worth coverage is acceptable in the context of the Alternative II test because the test requires firms to meet other criteria indicative of financial strength that are not included in the Alternative I test.

Another set of recommendations received by EPA urged the Agency to make the Subtitle I test more consistent with the Subtitle C financial test. In one case, a commenter recommended that the Subtitle I test adopt the same procedure for calculating tangible net worth as is currently used for the Subtitle C test for closure and post-closure care (§ 264.151(f) and (g)). Under this procedure, any of the costs being assured by the test that have been incorporated in the measure of a firm's liabilities can be subtracted from the liability total and added to net worth. Because generally accepted accounting principles require that firms accrue as liabilities those future costs that are reasonably certain and measurable, those firms with known future environmental obligations are required to count these obligations as part of their liabilities. The net worth (or difference between total assets and total liabilities) of such firms will be decreased correspondingly by the amount of the accrued liability. Thus, generally accepted accounting procedures measure net worth as if known future obligations had already been paid for or discharged. However, the purpose of the net worth criteria in a financial test is to measure the net worth resources available to a firm *before* it incurs an environmental cost, and thereby to determine whether the firm can meet this cost without jeopardizing its ability to meet other unanticipated obligations. For the Subtitle C test, EPA therefore believed that the appropriate procedure for measuring a firm's available resources was to compute net worth before adjusting for those liabilities that the test is being used to assure. EPA believes that the same reasoning is applicable to the Subtitle I test and, therefore, allows in the final rule any UST costs that have been accrued as part of total liabilities to be subtracted from the sum of total liabilities and added back to net worth. The Agency has adopted this procedure for purposes of both the Alternative I and the Alternative II UST financial tests.

3. Summary of Changes in the Financial Test

As discussed in Section 2 above, the Agency has made a number of changes to the Subtitle I financial test, proposed on April 17, 1987, largely in response to the comments received on the proposal. These changes are briefly summarized below.

a. *Alternative Financial Test Option.* In addition to the originally proposed Subtitle I test, the Agency is allowing UST owners and operators who wish to use a financial test to meet the criteria of the Subtitle C test for liability coverage. Under this option, owners or operators, and/or guarantors, would be required to demonstrate the following:

- A tangible net worth of at least $10 million;
- A tangible net worth of at least six times the amount of the applicable UST aggregate;
- U.S. assets at least 90 percent of total assets, or U.S. assets at least six times the amount of the applicable UST aggregate; and

either:

- Net working capital at least six times the applicable UST aggregate, or
- A current bond rating for the most recent bond issue of AAA, AA, A, or BBB as issued

by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's.

In addition, firms using this alternative must have independently audited financial statements and cannot have an auditor's adverse opinion, disclaimer of opinion, or going concern qualification. For those firms that do not file their financial statements with the SEC, the Energy Information Administration or the Rural Electrification Administration, a special auditor's report, which compares the financial information reported in the test submission to the firm's financial statements and certifies that there are no material differences between the two, is also required.

b. *Disallowance of a Financial Test if a "Going Concern" Qualification Is Received on a Firm's Financial Statements.* In the proposal, the Agency stipulated that, if the financial statements of a financial test user had been independently audited, they could not carry an adverse opinion by an independent certified public accountant or a disclaimer of opinion. In the final rule, the Agency has decided to add a "going concern" qualification to the types of auditor's opinions that will disqualify a firm from using a financial test. Because a "going concern" qualification indicates that there is a question about the ability of a firm to stay in business, the Agency does not believe such firms should be allowed to rely on their own resources to cover their UST obligations.

c. *Reporting to the Energy Information Administration or the Rural Electrification Administration.* The final rule allows utilities filing annual reports with the Energy Information Administration and rural electric cooperatives filing annual reports with the Rural Electrification Administration to use the financial test.

d. *Listing of Locations of Covered USTs.* The financial test, like all of the financial assurance mechanisms in the final rule, does not require identification of individual tanks at the locations assured by the financial test unless the financial test is only being used to cover some of the USTs at one location.

e. *Extending the Deadline for Preparing the Financial Test.* The final rule allows firms using a financial test 120 days from the end of their reporting year to prepare their UST financial test. In EPA's original proposal, the chief financial officer of the firm had to sign the financial test documentation within 90 days of the close of the fiscal year. The final rule also allows owners or operators who can no longer use a financial test 150 days from the end of the reporting year to obtain alternative means of financial assurance. In the event that an owner or operator fails to obtain alternative assurance, he must notify the Director of the implementing agency within 10 days. In the proposed rule, only 120 days were allowed to obtain an alternative mechanism.

f. *Procedures for Determining Tangible Net Worth.* In the final rule, the Agency has adopted the procedure for calculating a firm's tangible net worth from the Subtitle C financial test for closure and post-closure care. With this procedure, firms are allowed to deduct from their total liabilities any accruals for costs that are being assured by the financial test. This deduction can then be added to the measure of tangible net worth.

G. Guarantee (§ 280.96) and Indemnity Contract

The final rule, unlike the proposed rule, allows only one form of financial assurance by which a firm promises to pay the specified amounts for corrective action or third-party liability for another firm: a guarantee (§ 280.96). Indemnities, which were included in the proposed rule, are not authorized in the final rule. EPA based its decision not to authorize the indemnity on the following rationale.

Many commenters on the proposed rule noted that authorization of an indemnity as an allowable mechanism to provide financial assurance in this regulatory context would seem to endorse practices which, in the past, required some petroleum product marketers to indemnify their suppliers. Although the Agency's proposed authorization was not intended to endorse any other use of indemnities, the Agency believes that dropping the indemnity will prevent any possible misunderstanding.

Moreover, in order to cover third-party liability, indemnities duplicate so closely the structure and operation of a guarantee contract that, in effect, no additional financial assurance option is added by including indemnities. In fact, their inclusion may create unnecessary confusion because, in the petroleum marketing industry, indemnities have been used in a very different context. Commenters on the proposal indicated that, in the past, petroleum product marketers have often been required by their contracts to indemnify their suppliers, rather than looking to them for indemnities and guarantees. Finally, because the same kinds of firms are likely to be guarantors and indemnitors, indemnities do not provide the regulated community with an additional group of potential financial assurance providers. For these reasons, the Agency authorizes guarantees in today's rule but not indemnities.

A guarantee is a promise by one party (the guarantor) to pay specified debts or satisfy the specified obligations of another party (the principal) in the event the principal fails to satisfy the debts or obligations. Under the final rule, a guarantee may be provided by related firms or by unrelated firms that have a substantial business relationship with the owner or operator. The obligation between the owner or operator (the principal), the implementing agency, or third parties rests on regulatory requirements and potential tort liability. If the owner or operator fails to perform corrective action or satisfy certified third-party claims, the guarantor agrees to fund a standby trust from which the implementing agency will direct the payment of corrective action costs or third-party claims.

Guarantors must demonstrate that they are qualified to provide financial assurance by satisfying the Alternative I or Alternative II financial test under § 280.95, described in Section III.F. Also, to ensure that state insurance laws do not call into question the enforceability or validity of the mechanism, the guarantee can be used only if it is certified as valid and enforceable by the Attorney General of the state where the USTs covered by the mechanism are located.

Many commenters questioned the availability of the guarantee, particularly to small- and medium-size firms. These commenters were concerned that such firms would not have the required relationship with a potential guarantor or that a potential provider would be unable to satisfy the financial test requirements. EPA's proposed rule included guarantees among a variety of alternative mechanisms to provide owners and operators a number of compliance options. Although some segments of the regulated community will be unable to use the guarantee because of the rule's business relationship and financial test requirements, the Agency continues to believe these requirements are necessary to ensure that the guarantee provides adequate financial assurance. These provisions, therefore, remain unchanged in today's rule.

The proposed rule allowed firms to provide a guarantee if they were related firms that own a controlling interest in the owner or operator (parent firms), firms that own a controlling interest in a parent firm of the owner of operator (grandparent firms), or affiliated firms that are controlled by a parent that also owns a controlling interest in the owner

or operator. As defined in § 280.92(c), "controlling interest" means direct ownership of at least 50 percent of the voting stock. The proposal also allowed a firm engaged in a "substantial business relationship" with the owner or operator to provide a guarantee as an act incidental to that business relationship. These firms were included to increase the number of potential financial assurance providers without sacrificing the validity or enforceability of the instrument. Section 280.91(j) of the proposed rule defined a "substantial business relationship" to mean the business relationship necessary under applicable state law to make a guarantee issued incident to the relationship valid and enforceable. A guarantee is considered incident to such a relationship if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

These required relationships between owners or operators and providers of guarantees were the subject of many comments. Several commenters praised the Agency for expanding the number and kinds of corporate affiliates that are authorized to provide guarantees of financial assurance and urged even further broadening in recognition of the variety of corporate structures that exist within some sectors of the regulated community such as electric utilities. One commenter suggested the broader definition of corporate affiliates used in Federal securities law, which would include any firm that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the owner or operator.

EPA's concern is to ensure that guarantees from corporate affiliates are valid under appropriate state law and that sufficient unity of interest exists between the guarantor and the owner or operator to provide adequate assurance of financial responsibility. The proposed relationship requirements are those that seem most likely to result in adequate assurance. A firm engaged in a substantial business relationship with the owner or operator can, however, provide a guarantee regardless of its position within the corporate structure. Thus, the Agency will allow affiliates, such as those enumerated in the securities definition, that satisfy this criterion to provide financial assurance as guarantors.

The proposed rule required providers to use the contractual language specified in the rule for the guarantee. Some commenters expressed concern that the proposed wording of the guarantee instrument did not sufficiently limit the providers' liability, particularly in the event of the bankruptcy of the owner or operator. The Agency believes that the required language explicitly limits the obligation of the provider to the per-occurrence and aggregate amounts for corrective action and third-party liability as stated on the face of the instrument and that the wording, therefore, need not be modified. In addition, as discussed in Section III.V.2 of this preamble, the Agency is incorporating certain exclusionary language into the terms of the guarantee to more clearly limit the type and circumstances of third-party liability for which this mechanism can be used. A provider may, however, have incurred obligations outside those of the guarantee contract, under state law or other contractual agreements with the owner or operator. Such legal obligations will not be changed by the limitations in the guarantee.

H. Insurance and Risk Retention Group Coverage (§ 280.97)

1. Availability

Today's rule allows UST owners and operators to demonstrate financial responsibility through the purchase of insurance. The Agency believes that for many owners and operators, insurance will be the private mechanism of choice because it will be less costly and more available to most owners and operators than the other commercial mechanisms. Many commenters expressed concern, however, that insurance would not be readily available, and many felt that coverage, if available, would not be offered at the levels required by EPA and that it would not be available to particular groups of owners and operators.

The Agency recognizes that the liability insurance market, particularly the market for pollution liability coverage, has become restricted in recent years. As many commenters pointed out, a number of factors have contributed to the current limited availability of liability insurance.

The Agency also believes that despite the tight market, some insurance is available for USTs and more may become available in the near future. Evidence from the commenters suggests that UST coverage is currently available from a small number of specialty insurers, although some policies do not provide the level and scope of coverage required in the rule. One major provider of UST coverage insures over 80,000 tanks at 25,000 locations. A major insurance broker has obtained coverage for over 1,500 petroleum marketers with more than 90,000 tanks at over 26,000 locations. Effective July 1, 1987, the company that wrote policies for this broker stopped writing new policies or renewing existing policies. However, the broker is continuing to offer coverage through a RRG which has recently become licensed and which is currently offering policies. In addition to the petroleum marketers currently covered through existing policies, the RRG intends to extend coverage eventually to many of the 78,000 open dealers who currently find it difficult to obtain insurance.

Although UST insurance is most readily available to petroleum wholesalers and distributors, some non-marketers (e.g., auto dealers) have also been able to purchase coverage. Many insurance companies that do not specialize in pollution insurance nevertheless offer UST coverage to their policyholders who purchase other lines of commercial liability coverage. A major supplier of insurance to petroleum marketers also issues policies to non-marketers purchasing other liability lines. Three other major insurers also reported that they provide UST coverage to some non-marketers.

The market for UST coverage has improved somewhat since the financial responsibility regulations were proposed on April 17, 1987. Two new UST insurers have entered the market (one of whom offers coverage to non-marketers) and an existing insurer, who had provided coverage in only a few states, has expanded to offer coverage in all fifty states. This insurer also offers coverage to single station owners. Two insurers already offering other pollution liability lines have indicated that they are considering offering UST coverage as well.

The Agency is aware that the availability of coverage at the per-occurrence limits required in the statute and today's rule is limited. Recently, one major insurer lowered its per-occurrence limits from $1 million to $500,000. Its aggregate coverage levels remain at $2 million, enough aggregate coverage for owners and operators with any number of tanks to meet the aggregate requirement in the rule. The RRG discussed above has begun offering policies with $750,000 per-occurrence limits and plans to offer $1 million limits when it becomes sufficiently capitalized. In addition, a number of insurers not specializing in pollution liability coverage continue to offer coverage with $1 million per-occurrence limits. While some of these insurers offer aggregate limits of only $1 million, in most cases these insurers provide coverage to

owners or operators with fewer tanks for whom $1 million would be adequate to meet the Agency's requirement. In some cases, owners and operators may have to combine policies and other mechanisms to obtain the required coverage.

While the current insurance supply is inadequate to cover all members of the regulated community, the Agency hopes that the supply will expand in the months between the promulgation of the regulations and the compliance dates for the majority of unassured USTs. As noted above, a slight expansion has already occurred. The requirement to demonstrate financial responsibility should significantly increase the demand by owners and operators for UST insurance. At the same time, promulgation of UST technical standards should increase the ability of the insurance industry to predict its risk in offering UST coverage. These two factors may increase the certainty of the profitability of insuring USTs and should encourage new entrants into the marketplace.

The Agency further believes that 12 to 18 months is a reasonable time in which to expect the insurance industry to respond to the increased demand for coverage and for alternatives to conventional insurance, like RRGs or state funds, to develop. Estimates of the time frames for establishing new insurance programs and RRGs range from 12 to 36 months. Commenters on the Supplemental Notice generally agreed with the estimates, with only one commenter suggesting that it might take as long as 5 years for a RRG to form.

Nevertheless, the Agency recognizes that some owners and operators may have difficulty obtaining insurance after the date set for compliance with the rule. In particular, individual service station dealers who are not part of an industry association may face such difficulties because UST policies are often sold through such associations, making it difficult for unaffiliated owners or operators to obtain insurance on their own. Individual service station dealers and other UST owners and operators not currently members of larger groups or trade associations may have to form or join a group to facilitate purchase of UST coverage or the formation of a RRG. Alternatively they may be able to rely on a state fund.

2. Insurance Cost and Its Impact

Many commenters felt that the cost of insurance for USTs would be prohibitively high and suggested that in considering the impact of the rule, the Agency had underestimated the cost of UST pollution liability policy premiums. Other commenters addressed issues concerning the high cost of insurance in general and felt that particular groups of owners and operators, especially small businesses and local governments, would be adversely affected by the regulations.

The Agency believes that its projection of average premium costs of $2,000 to $4,000 per facility is accurate. The estimate was developed based on current and projected premiums using data supplied by insurers. The information received in the comments supports this estimate. The proposed RRG noted above reported that its average premium for $1 million peroccurrence coverage is expected to be $2,000 per site. Other current providers reported premiums of $500 to $2,000 for coverage of one to twelve tanks. The largest average premiums were reported by the National Association of Convenience Stores (NACS) and the Society of Independent Gasoline Marketers of America (SIGMA). These trade associations reported average premiums of $13,600 and $32,000 per member respectively. NACS and SIGMA members tend to own several locations, however, and there is likely to be more than one tank at each location. Forty percent of NACS members own more than 10 stores, while 47 percent of SIGMA members own 11 to 50 outlets and 39 percent own 51 or more. Given the large numbers of sites covered, the high NACS and SIGMA average premiums are also in line with the Agency's original estimate.

Reported claims data suggest that UST claims have been predictable and not extremely costly. Most claims have been under $100,000. In addition, insurers can expect the risks of UST coverage to become more predictable in the future. While the cost of insurance for USTs could be relatively high initially, particularly when the regulations first go into effect, the increased predictability and decreased risk that the technical regulations are likely to promote should help to limit costs.

The Agency recognizes that the cost of liability insurance in general may pose a hardship upon some members of the regulated community. However, average premiums of about $2,000 are small compared to the costs of corrective action which, if incurred, would certainly pose a much greater economic hardship.

The Agency received several comments with specific suggestions for alternative requirements that might reduce the cost of obtaining insurance coverage for USTs. One commenter suggested that a tank manufacturer's product liability policy might be extended to provide indemnification for tank owners or operators. However, such a mechanism would present a number of difficulties in meeting the financial responsibility requirements. Among the difficulties would be setting a level of product liability insurance that would ensure indemnification of each tank purchaser at a level of $1 million. In addition, it is likely that the scope of product liability insurance coverage would be unacceptably low (e.g., it would only cover releases caused by tank defects). Also, administrative difficulties connected with securing payment through a manufacturer's policy might delay cleanup. For example, a claim might have to be made by first contacting the manufacturer who would then contact the insurer. Therefore, the Agency declines to authorize such a mechanism as a means of compliance with the regulations. The Agency recognizes, however, that tank manufacturers may act as guarantors for tank owners or operators provided that they comply with the applicable requirements of § 280.96.

3. Viability of Risk Retention Groups

Commenters raised a number of issues concerning the viability of risk retention groups (RRGs) as an alternative to traditional insurance coverage. Among the issues were: Difficulty of organization, cost of capitalization, instability of RRGs, and conflicts between current state laws and regulations and the Liability Risk Retention Act of 1986 (RRA), 15 U.S.C. 3901 *et seq.*

The Agency recognizes that forming an RRG requires considerable effort. Evidence from the comments suggests that it would take at least one year to establish a group. However, such groups are currently being organized to offer environmental impairment liability insurance. One of these RRGs is now offering coverage to a number of UST owners and operators, including owners of single outlets for retail motor fuel marketing.

A number of commenters were concerned that costs of capitalization could be high for RRGs. The Agency recognizes that capitalization costs could be a significant barrier to RRG development. At present, however, there is little evidence available to indicate what typical capitalization costs per owner or operator are likely to be. The recently formed RRG mentioned above requires a capital contribution of $2,000 or an amount equivalent to the annual premium, whichever is less. Premiums

are currently around $1,600 per site and are expected to increase to about $2,000.

Broader questions of general RRG stability and solvency, along with issues concerning the regulation of RRGs by states, are questions connected with the RRA and go beyond issues directly related to financial responsibility for underground storage tanks. Therefore, it is not within the scope of this rulemaking to address these broader RRG issues. Such issues, however, are being addressed by other agencies of the federal government. The Commerce Department has recently issued a report evaluating the effectiveness of the RRA.[6] The report found no major problems with RRGs themselves (in terms of solvency and potential risk to the public), but noted conflicts between state insurance laws and regulations and the provisions of the RRA. Such conflicts are matters for the states to address.

RRGs may be unavailable to some owners or operators due to an inability to organize into a group or raise the necessary capital. Regulation may also limit the formation of such groups in some states. While some UST owners and operators may be unable to form RRGs, however, the Agency believes the groups may provide an alternative to insurance for a number of owners and operators of USTs.

4. Specific Requirements for Insurance and Risk Retention Group Coverage

A number of commenters questioned specific policy conditions that insurance mechanisms must include under this rule. In general, commenters questioned the effect of these requirements on the availability of insurance. The Agency recognizes that the limited availability of insurance, in part, reflects the significant uncertainties regarding the risk that insurance providers may be undertaking and that various policy language has been developed to minimize uncertainty. Therefore, in specifying certain policy conditions the Agency attempted to meet two objectives: (1) The need to ensure that insurance coverage will provide the same level of protection as other mechanisms; and (2) the need to preserve flexibility in policy specifications to allow insurers to develop acceptable policies and to avoid unnecessarily constructing the availability of insurance.

a. *On-Site Cleanup.* Several commenters questioned the availability of insurance for on-site cleanup and suggested that financial responsibility for these costs not be required. The statute clearly requires financial assurance for corrective action. Corrective action involves cleanup of contamination caused by a release. While a release may, for an initial period of time, be confined to the property of an owner or operator of an UST, there is no way to ensure, without corrective action, that the release will not eventually affect the health or property of others. Financial responsibility for corrective action will ensure that cleanup may be undertaken promptly, thus minimizing third-party and environmental damage.

The Agency recognizes that some insurers are reluctant to provide on-site coverage because of the "moral hazard" involved. In other words, insurers fear that coverage of on-site corrective action could provide a disincentive to the owner or operator of an UST to maintain his site properly or may encourage negligence and thus may result in more releases and more claims to the insurance provider. Insurers also fear that coverage for on-site cleanup might make them responsible for the costs of routine maintenance or site restoration. First party coverage (i.e., coverage of damages to the insured) has traditionally been offered as a separate type of coverage.

Some insurers, however, provide on-site coverage in order to limit their exposure to more expensive third-party claims. Currently, the two primary sources of insurance for petroleum USTs cover on-site cleanup of UST releases. A recent entrant into the market also provides on-site cleanup coverage. In addition, some other insurance providers will cover on-site cleanup if it will prevent more costly third-party damages. The comments suggesting that on-site coverage is not generally available referred to policies covering environmental impairment liability in general and do not reflect the standard practice of the specialized market for UST coverage. The Agency received only one comment regarding the recent entry into the UST market of an insurer who will not cover on-site cleanup.

One commenter suggested that coverage for cleanup be mandated whether or not the corrective action is ordered by the government. Such a requirement could be interpreted to mean that policies must cover response actions that the owner or operator might perform as a general operating practice. Although the Agency is requiring that on-site corrective action be covered by all financial responsibility mechanisms, it does not intend to require policies that make insurers responsible for activities that are clearly the day-to-day responsibility of the owner or operator. Therefore, the Agency wishes to clarify that EPA is not mandating that acceptable insurance policies cover response actions that are part of routine maintenance of the tank site, site restoration and enhancement. Corrective action coverage will be required only for cleanup of releases required by §§ 280.60 to 280.66 and 280.72 of the technical standards or ordered by the implementing agency. The Agency believes that this requirement will ensure that adequate financial resources are available to perform necessary corrective action.

b. *Non-Sudden Accidental Occurrences.* Several commenters also suggested that insurance companies would not be willing to provide coverage for non-sudden occurrences as required by today's proposal. The statute requires, however, that all releases, whether sudden or non-sudden, be covered. This is particularly necessary to ensure adequate coverage for USTs, because it is often difficult to determine whether an UST release is sudden or gradual. Therefore, to ensure adequate protection of human health and the environment, both types of coverage are necessary. Comments indicate that coverage for non-sudden releases is currently offered by the major providers. In the event that an owner or operator could not obtain insurance for non-sudden releases, a separate mechanism could be used. Both mechanisms, however, must provide $1 million worth of coverage (see Section III.D.3).

c. *Agency Specification of Various Policy Terms.* A number of commenters from the insurance industry felt that EPA-proposed coverage terms did not precisely follow insurance industry standards and would limit availability of insurance coverage for USTs. However, it was also clear from industry comments that adoption of the recommended language would not, by itself, increase the availability of pollution insurance. The objections of the commenters centered on the definitions of the terms occurrence, accidental release, and bodily injury; on the prohibition of certain exclusions (those for non-sudden releases and on-site coverage); and the requirement that 120-day notice be given to an insured in the event of a cancellation. The commenters recommended that the Agency defer to standard industry practice in establishing policy language. One commenter suggested specific terms

[6] U.S. Department of Commerce, *Liability Risk Retention Act of 1986 Implementation Report*, September 1987

that he felt would more strictly define appropriate insurance coverage.

The Agency has two reasons for clearly delineating the terms of insurance policies that are acceptable to meet financial responsibility requirements. The first is that, given an insurance market with widely varying types and scopes of coverage, the Agency is concerned that the insurance provided to an UST owner or operator in fact provides a sufficient level of financial assurance. Second, because the Agency has mandated that proof of financial responsibility be demonstrated only in the event of a release or if specifically requested by the implementing agency, the Agency wants to define very clearly the terms of acceptable coverage so that both the insurer and the owner or operator can determine whether the policy is adequate to comply with the regulations.

Several commenters took issue with the Agency's use of the terms "occurrence" and "accidental release," preferring instead the combined term "pollution incident," a term widely used in the insurance industry. Commenters also suggested that the term "bodily injury" be defined in a manner consistent with the standard established in ISO's new CGL policy. These issues apply to all the instruments and have been addressed in Section III.C above.

Commenters also requested that the 120-day notification period for cancellation of insurance be shortened. The Agency agrees that a shorter time period will still give owners and operators adequate time to locate another mechanism for financial responsibility, and that the 120-day requirement may put too severe a burden on insurers by exposing them to the risk that the insured will fail to pay the premium in those 120 days. Thus, the 120-day notification period may limit the availability of UST insurance. The Agency is therefore shortening the notification period to 60 days (see also Section III.P below regarding cancellation of mechanisms). The notification period for other terminations of insurance policies has also been shortened to 60 days.

Commenters made a number of very specific recommendations regarding the terms of insurance policies. Several commenters suggested that acceptable policies be required to include a provision specifying that the insurer pay on behalf of the insured, rather than reimburse the owner or operator for cleanup costs or third-party damage payments. The Agency has considered these comments and has determined that specification that insurance policies pay on behalf of rather than indemnify the insured is not necessary to ensure that insurance will provide adequate assurance for corrective action and third-party liability costs. Many policies currently in use already specify that the insurer will pay on behalf of the insured, especially in cases of third-party liability. In some cases of corrective action, the implementing agency may undertake response activities to clean up a release in a timely manner. In such cases the implementing agency would receive reimbursement by the insurer.

One commenter recommended that lower premiums be mandated for tanks brought into compliance with tank performance standards in advance of their compliance dates. The Agency does not need to mandate particular premium levels because the market itself should respond to tank improvements by offering lower premiums for safer tanks.

d. First Dollar Coverage. Many commenters felt that the provision requiring policies that make insurers liable for amounts within the deductible applicable to the insurance policy would be unfair to insurers, and ultimately force them to bear the cost of the deductible. The Agency disagrees with these comments. The Agency developed this requirement to ensure that disputes (between the insurer and the insured) over who is responsible for paying amounts within deductible limits will not interfere with prompt performance of corrective action measures or with payment of third-party claims. The Agency does not intend to require policies that limit the right of insurers to specify deductibles applicable to particular policies and to receive these costs from insureds. Therefore, the first dollar coverage requirement should not hinder development of a pollution liability insurance market. If an owner or operator is in bankruptcy at the time of a release and therefore cannot pay the deductible, the insurer, as a creditor, could seek payment through the bankruptcy proceeding, just as any other creditor would.

Commenters suggested that the LUST Trust Fund might be used to guarantee payment of deductibles to the insurer. However, the statute establishing the LUST Trust Fund specifically defines those cases in which the Fund will pay corrective action costs and does not include payment of deductible amounts. In addition, the Trust Fund cannot be used to pay third-party damages.

Pollution liability policies frequently have high deductibles in order to keep premium costs down, and commenters suggested that paying amounts within these deductibles may not be affordable by the insured. The first dollar coverage requirement will prevent delay of cleanup or payment for third-party damages in such cases and will meet the Agency's goals of protecting human health and the environment. The insurer will still be entitled to recover costs within deductible limits from policyholders, although in such cases payment arrangements would have to be made.

e. Policy Retroactive Dates and Exclusions for Pre-Existing Conditions. Several commenters expressed concern that the Agency's acceptance of claims-made policies would limit protection of the insured and, consequently, the degree of financial assurance. Claims-made policies typically provide coverage only for releases reported during the policy period and that begin subsequent to the policy's retroactive date. The retroactive date is generally the same as the effective date of the policy.

One commenter suggested requiring the retroactive date to be 18 months prior to the effective date of the policy. The Agency understands the concern of the commenters and realizes that use of claims-made policies could result in occasional gaps in coverage, particularly with respect to releases occurring prior to the retroactive date. The Agency considered a requirement that claims-made policies have retroactive dates 6 months prior to the issue date of the policy but decided against such a requirement because few, if any, insurers are willing to offer such a policy. Given that insurance is likely to be the "mechanism of choice" of most UST owners and operators (especially smaller businesses), the Agency feels that its goals of protecting human health and the environment will not be served by specifying policy provisions which will prevent most otherwise qualified UST owners and operators from being able to obtain insurance. Prohibiting the use of claims-made policies or requiring a retroactive date prior to the policy effective date is likely to severely limit insurance availability.

In addition, the problem of gaps occurring in coverage prior to the retroactive date is likely to be a significant problem primarily at the outset of the UST financial responsibility requirements, when large numbers of previously uninsured owners and operators purchase insurance for the first time. After that initial time period, most owners or operators should be able to maintain continuous coverage, given the advance notice of cancellation that the Agency is requiring as well as the use of extended reporting periods for claims-made contracts.

Extended reporting periods allow the insured to report a release occurring during the policy period after the termination date of the new policy. This "tail" coverage helps prevent gaps in coverage that could arise because the replacement policy will not cover releases that occur prior to the retroactive date of the policy. In the case of policy renewal as opposed to policy replacement, most policies should provide continuous coverage over time because the retroactive date of the policy is generally the original issue date and not subsequent renewal dates.

As the technical requirements for leak detection are phased in, owners and operators are likely to identify a number of USTs that are leaking and are not covered by a financial assurance mechanism. When the owners or operators of these tanks obtain insurance, these identified leaks are likely to be excluded from coverage as "pre-existing conditions." The Agency realizes that insurance is not appropriate to meet the cost of known releases and is not requiring that insurance policies purchased to comply with today's rule cover known pre-existing conditions. Any requirement for coverage of known conditions would be likely to severely limit UST insurance availability because insurers will not be willing to issue policies obligating payment for damages that have already occurred. UST owners and operators are responsible for cleanup and third-party liability costs that are not covered by financial assurance mechanisms. In some instances the LUST Trust Fund or state funding programs may be appropriate means to fund cleanup of those pre-existing conditions. (Under the LUST Trust Fund, however, owners and operators are liable for any funds expended to clean up pre-existing conditions.)

An insurance representative expressed concern that implementation of the technical regulations would result in discovery of more releases in the early years of the regulation and lead insurers to avoid the UST market until compliance with the technical regulations is complete. While it is likely that more releases will be discovered in the early years of regulation, this fact alone should not reduce insurance availability. Insurers will establish their own pre-conditions for tank coverage. Such pre-conditions may include inspections, audits or other measures to identify existing leaks. Tanks that are insurable are likely to remain so. Tanks that are discovered to be leaking are likely to need corrective action and appropriate repair, upgrading, or replacement before an insurer will accept them for coverage. These measures will also be required by the technical standards. Phased implementation of the technical requirements should not adversely affect insurance availability, because insurers will be able to require correction of existing releases as a condition for coverage.

f. *Endorsement and Certificate of Insurance.* The Agency received a number of comments regarding the specific wording of the Endorsement and Certificate of Insurance required for users of insurance and RRG coverage. All commenters on this issue agreed that the requirement that tanks be listed by identification numbers on the certificate of insurance or endorsement would result in more limited insurance coverage than the standard industry practice of listing covered tanks by site. As described in Section III.E.5, the Agency agrees with these comments. For the purpose of determining the appropriate aggregate coverage, however, a statement indicating that the mechanism assures 100 or fewer or more than 100 USTs is necessary. In today's rule, the endorsement and certificate language (§§ 280.97(b)(1) and 280.97(b)(2)) has been amended to strike the requirement for tank serial numbers and instead requires a listing of the number of tanks at each facility insured and the name and address of each facility.

Commenters also suggested that the issue date of the policy is unnecessary for the endorsement and certificate of insurance, given that the policy effective date, which defines the date on which coverage begins, is also required. The Agency again agrees with the commenters that inclusion of the issue date is unnecessary and that the scope of coverage provided is clearer when the endorsement and certificate of insurance contain only the effective date of the policy. In policies without an effective date, the issue date is considered to be the same as the effective date. However, in cases in which policies include effective dates, coverage is generally considered to begin on the effective date. In most cases, the issue date and the effective date of the policy will be the same, but in those cases in which they are not, the difference could be a source of dispute concerning whether a particular release is covered. Listing only the effective date on the endorsement and certificate will eliminate such a dispute. Today's rule does not include the issue date of the policy in the endorsement or certificate (§§ 280.97 (b)(1) and (b)(2)), but does continue to require listing of the policy effective date.

g. *Six Months Extended Reporting Period.* As indicated in the April 1987, proposal, the Agency is concerned that a claims-made contract may leave gaps in coverage if, for example, a claim is reported after the expiration of a policy for a release that began prior to the expiration date. Such claims may not be covered by a replacement financial assurance mechanism (see retroactive date discussion, Section III.G.4.e above). Originally, the Agency proposed a one year "extended discovery" period to address this concern. Under this provision, claims made during the extended discovery period for losses that occurred during the policy period would be covered. In today's rule, the Agency has changed the term to "extended reporting period" and reduced the time frame to six months. These changes were made for several reasons.

Commenters suggested replacing the term "extended discovery period" with the term "extended reporting period" to clarify that the period only covers incidents which took place during the actual policy period and were reported during the extended reporting period. The Agency agrees with commenters that the insurance industry suggestion more accurately describes the coverage that the Agency intends. The Agency intends to require that only releases beginning during the policy period itself be covered during the extension and agrees with commenters that the term "extended discovery period" could cause confusion over whether a policy would cover occurrences beginning during the extended discovery period or only those beginning under the actual policy period and reported during the discovery period. Therefore, the Agency has changed the term to "extended reporting period." The Agency also agrees with the comment that it would be unnecessary to include an extended reporting period clause in an occurrence-based contract because by definition, such policies cover losses occurring during the policy period regardless of when they are reported. Therefore paragraph 2(e) of the endorsement and certificate of insurance (§§ 280.97(b)(1) and 280.97(b)(2)) are required only in the case of a claims-made contract.

The Agency also reconsidered the proposed one-year time frame for extended reporting. Several commenters addressed this issue. One suggested a reporting period of three years. Others urged that EPA should not establish a mandatory time frame. While the

Agency recognizes that a three-year reporting period may afford even greater assurance by allowing an owner or operator more time in which to report damages caused by a release, the Agency has declined to mandate such a lengthy reporting period. Insurers are unlikely to be willing to offer "tail" coverage as long as three years due to the continuing risk to which such coverage would expose them. Also, even if insurers were willing to offer long reporting periods, the cost of the coverage could be prohibitively expensive. Because the Agency believes that an extended reporting period is essential to ensure adequate coverage by claims-made policies, the Agency has decided not to mandate a reporting period of such length that the insurance would be unavailable or unaffordable to otherwise qualified UST owners and operators. The significant reduction in insurance coverage created by such a provision would result in lesser protection of human health and the environment.

At the same time, the Agency does not believe that the length of the reporting period should be entirely discretionary. Therefore, the Agency has decided to set a shorter minimum length of six months for the extended reporting period.

The Agency has decided that six months is a reasonable time frame in which to identify and report a release following termination of a policy for the following reasons. First, implementation of leak detection requirements should result in prompt detection of releases. Six months should be sufficient time to report releases occurring during the policy period. The Agency is making such a reporting period mandatory for all claims-made contracts used to demonstrate compliance with today's rule, regardless of the reason for termination. Although the extended reporting period differs from the industry standard, it is important to bridge the potential gap between the end of a claims-made insurance policy and the initiation of another assurance mechanism.

Second, commenters estimated that the cost of the extended reporting period could range from half the premium cost to more than the cost of a yearly premium. This reflects the difficulty in establishing proof of when releases reported during this extension actually occurred. The Agency feels that the cost of a six-month period would be affordable for more owners or operators than the cost of a one-year period, thus increasing total insurance coverage. This is especially true because the owner or operator must also pay the cost of a new financial assurance mechanism to remain in compliance with the rule.

The change of the reporting period requirement from one year to six months may help to address two other issues raised by commenters. The first issue raised by commenters concerned potential conflicts over responsibility for coverage during the reporting period. A release discovered during the reporting period could either be covered by the old insurance policy if it began prior to policy termination or by the new replacement mechanism if it began later. There could be a delay in payment for corrective action and third-party damages while the date of the release was determined. As the reporting period was extended the potential for conflict would increase. By reducing the reporting period to six months, the Agency intends to minimize the potential for conflict between mechanisms and thus the potential for delay in meeting the costs of a release.

Second, members of the insurance industry noted that the extended reporting period required by the Agency differed from the reporting period in common use in the industry in that it was an "upfront" requirement, not an option to be purchased only in the event that a policy was cancelled for reasons other than non-payment of premium. Insurers feared that mandatory reporting periods would expose them to the possibility of supplying coverage for one year to an insured who had not paid his premium, or who voluntarily cancelled, thus essentially receiving "free" coverage for one year. The Agency wishes to stress that it is only requiring an extended *reporting* period during which insureds may report releases that occurred while their policy was in effect, not an extended *coverage* period during which insurers would be liable for releases occurring after the policy's termination. Insureds who voluntarily cancel their policies, therefore, would not receive "free" coverage for any period of time. Futhermore, by establishing an appropriate schedule of premium payment, insurers can best protect themselves against providing "free" coverage to insureds whose policies they ultimately would cancel due to nonpayment of premium.

One commenter recommended that forfeiture of insurance coverage due to delayed notice of a claim be prohibited. The Agency believes, however, that the extended reporting provisions of the rule adequately ensure that claims will be covered even if not reported immediately to the insurer. The reporting period would allow an insured covered by a claims-made policy extra time to report any releases which may have occurred during the policy period, but which were not immediately discovered.

h. *Legal Defense Costs.* The Agency's proposal to exclude legal defense costs from the coverage limits of insurance policies used to comply with financial responsibility requirements was opposed by many commenters. The commenters argued that insurers will not provide coverage exclusive of legal defense costs. The Agency has reviewed these comments and decided to continue to require exclusion of coverage for legal defense costs from insurance policy indemnity limits.

The exclusion was originally proposed for several reasons: (1) To ensure that legal defense costs would not absorb too great a portion of coverage limits and thus leave little coverage available for corrective action and third-party liability; (2) to conform to the general insurance industry standard practice for comprehensive general liability of paying all legal defense costs outside policy limits until the indemnity limits have been exhausted; and (3) to provide the same level of financial assurance to cover both third-party claims and corrective action as the other mechanisms (none of the other mechanisms for demonstrating financial responsibility under the rule covers legal defense costs).

In general, the above reasons for the exclusion are still valid. Legal defense costs could amount to a significant portion of policy limits now and in the future. A study by the ISO indicates that legal defense costs have increased three times faster than indemnity losses since 1960.[7] Defense costs per one dollar of loss tripled between 1956 and 1984. This trend is not limited to any one particular area, but rather is common throughout the general liability field. There are few actual data on defense costs for liability suits brought in cases of pollution releases, but an Agency analysis of general liability, Superfund, and asbestos claims suggests that legal defense costs in cases involving pollution liability could constitute as much as 36 to 42 percent of policy liability limits.

The insurance industry standard for commercial general liability coverage continues to be payment for all legal defense costs outside general liability policy limits until the limits have been

[7] *The Rising Costs of General Liability Legal Defense*, Insurance Services Office, 1986.

exhausted by indemnity payments. Only about 25 percent of commercial general liability policies include payment of legal defense costs within policy limits and ISO's standard CGL policy includes a clause obligating the insurer to provide payment for legal defense until coverage is exhausted by indemnity payments. EIL policies are more likely than CGL policies to include legal defense costs within policy limits; however, industry practice even within the smaller universe of EIL policies is not uniform. EIL policies are available that provide indemnity limits exclusive of legal defense costs.

The Agency recognizes that the insurance industry attitude toward legal defense costs may be changing. Some members of the industry, in response to the spiralling costs of legal defense, have begun examining ways to contain defense costs, feeling that the insurer's traditionally unlimited "duty to defend" may be a disincentive to policyholders to keep legal defense costs down. At the same time, it does not appear that the industry is moving toward inclusion of legal defense costs within policy limits as a solution to the problem. While ISO proposed at one time that some portion of legal defense costs be included within policy limits, it withdrew that proposal and has more recently put forward a plan to limit legal defense costs outside of policy limits.

Although the Agency's reasoning on costs of legal defense and standard insurance practice continue in general to hold true, EPA recognizes that legal defense costs are sometimes handled differently in the specialized market of insurance USTs. The consensus of commenters is that insurance policies for USTs generally include legal defense costs within the policy limits. All policies issued through one major broker were written inclusive of legal defense costs. A number of other insurance providers similarly indicated that UST coverage would only be available if legal defense costs were included. One major insurer, however, has excluded, and will continue to exclude, legal defense costs for policy limits. Thus, while many current UST policies include legal defense in policy limits, the Agency does not feel that the exclusion or inclusion of legal defense costs will affect the availability of insurance coverage over the long term.

The Agency considered two other approaches to dealing with legal defense costs. The first would be to allow insurers to include legal defense costs within the limits. Because few UST insurers currently offer coverage exclusive of defense costs, this option would at least reinforce currently available insurance policies as a means of compliance with financial responsibility regulations. In addition, while it is clear that RRGs may cover legal defense costs (section 3901(a)(2)(A) of the RRA explicitly legal defense costs within the definition of allowable liability coverage), it is not clear that RRGs will generate enough capital to cover legal defense costs above and beyond policy limits. Inclusion of defense costs in the limits could facilitate RRG formation. The second approach would be to allow insurers to include legal defense costs within policy limits higher than the $1 million requirement. This approach would address insurer concerns regarding defense cost limitation, but probably would not address issues of RRG capitalization.

The Agency believes, however, that arguments for continued exclusion are compelling and that development of higher insurance policy limits allowing defense costs to be included would not guarantee that insurance would provide adequate financial assurance. The final rule continues to require that policy limits be exclusive of legal defense costs. The statutory requirement is $1 million of per-occurrence coverage for the costs of corrective action and third-party liability for USTs at facilities engaged in petroleum production, refining, or marketing. If insurance policy limits included defense costs, in effect, insurance policies would be providing financial assurance at a level lower than that required by the statute. Exclusion of legal defense costs from policy limits is also consistent with RCRA Subtitle C liability coverage regulations.

The Agency recognizes that in many cases legal defense costs may not be high enough to significantly affect the adequacy of insurance policies to provide the coverage required, particularly that for corrective action. However, if defense costs for petroleum USTs are low, then the insurance industry will not be excessively burdened if it must cover these costs outside of policy limits. Alternatively, if defense costs for petroleum USTs are high, then coverage for these costs outside policy limits is necessary to ensure adequate financial assurance for corrective action and third-party liability costs. While this may place a greater burden on the insurer, the insurer is free, as many insurers are currently doing, to limit defense costs in some way outside of policy limits.

i. *Insurer Qualifications.* The April 1987, proposal required that insurers eligible to provide policies in compliance with UST financial responsibility requirements be licensed to transact the business of insurance or as an excess or surplus lines insurer in each State where a covered UST is located. Commenters suggested that the proposed qualifications were too limiting and one commenter suggested substituting Department of Transportation regulations that allow insurers licensed or approved by a foreign government to provide coverage in addition to those licensed in any state or eligible to provide coverage as an excess or surplus lines insurer.

The Agency does not, however, feel that its qualifications for insurers are overly stringent. Foreign insurers offering coverage in the United States are generally licensed to provide coverage in at least one state which would, in most cases, qualify them to provide coverage as an excess lines insurer. Therefore, the EPA qualifications requirements should not necessarily prevent UST owners or operators from purchasing insurance from a foreign insurer. The Agency does not, however, wish to allow UST owners and operators to purchase insurance to meet financial responsibility requirements from an insurer who may not be a stable source of coverage. An insurer who is licensed only by a foreign government may not be subject to the same reserve requirements that help to ensure that an insurer can meet his obligations.

The Agency has, however, decided to make other changes to the qualifications for RRGs and insurers. Today's rule does not include separate qualification for RRGs and insurers as originally proposed, but instead imposes the same qualifications for both. Because a RRG is a type of insurer, it is simpler and more appropriate to delete the separate requirements for RRGs. The Agency has also decided to delete from the insurer qualifications the requirement that insurers be licensed or eligible in "each state where a covered underground storage tank is located." The final rule requires instead that insurers and RRGs be licensed to transact the business of insurance or eligible as an excess or surplus lines insurer in "one or more states." This change was made because the Agency decided that the proposed requirements might too severely limit insurance coverage available to owners and operators with USTs in more than one state. While the Agency continues to believe that it is essential that insurers and RRGs supplying financial assurance under today's rule be subject to adequate regulatory oversight, it

believes that a requirement that insurers be licensed or eligible in one or more states will ensure that insurers and RRGs are sufficiently qualified to provide UST coverage. This ensures that the insurance provider meets the qualifications of the state in which it is writing policies. If a provider writes a policy for a large firm with USTs in more than one state, the provider must meet the eligibility requirements in the state where the firm buys the policy, but does not need to meet licensing requirements in every state where an UST may be located.

j. *Other Comments.* Commenters suggested specific changes regarding the manner in which insurance policies are interpreted by the courts, specifically, questions of joint and several liability and use of retroactive damages. These comments go beyond the scope of this rulemaking and are appropriately left to private insurance law. Note, however, that under RCRA section 9003(h)(6), liability is strict, joint and several for government costs incurred in responding to a release of petroleum from an UST under section 9003(h).

Commenters also suggested that the potential for direct action against a provider of financial assurance would deter insurers from entering the market. The statutory provisions of RCRA section 9003(d)(2), however, specifically allow direct action against any provider of financial assurance. It is, therefore, beyond the authority of the Agency to prevent such direct action.

Other commenters suggested that private insurers provide guidance to states on the structure of state programs, that insurance be used to fill gaps in state fund coverage for third-party liability, and that EPA develop outreach programs and programs to encourage entry of private insurers into the market. The Agency agrees that private insurers can provide guidance on the structure of state funds and states may choose to consult with private insurers in the development of state funds. This rule allows several mechanisms and combinations of those mechanisms to achieve compliance. For example, traditional insurance may be used in combination with some other mechanism (like a state fund) to demonstrate financial responsibility.

To encourage the entry of private insurance carriers, the Agency is currently working with the insurance industry to develop a better understanding of the UST population and how UST insurance works. Several insurance companies currently provide UST coverage and there are indications that other insurers are planning to enter the market. In addition, the Agency believes that the implementation of the technical regulations will make UST risks more predictable and thus make the market more attractive to insurers.

I. Surety Bond (§ 280.98)

The final rule, like the proposed rule, allows owners or operators to use surety bonds to satisfy their financial responsibility obligations. Section 9003(d)(1) specifically lists surety bonds as mechanisms to be considered in establishing financial responsibility requirements. Several commenters expressed concern about the availability, terms, and costs of surety bonds. These commenters did not object to the use of surety bonds as a financial mechanism, but questioned whether owners or operators would be able to obtain surety bonds at a reasonable cost. They cited several factors affecting availability. Some commenters felt that surety companies would be reluctant to provide coverage because they believe the implementing agency would have absolute discretion over the control of the funds. For this reason, one commenter objected to the cancellation provision, which requires the surety to fund a standby trust in the event the principal fails to obtain an alternative mechanism and the Director of the implementing agency knows or suspects that a release has occurred. A large number of commenters stated generally that surety bonds will be unavailable for third-party liability and corrective action. Finally, some commenters stated that if surety bonds are available, only those companies able to meet the financial test could afford the bond. Along these lines, one commenter explained that, in attempting to meet the collateral requirements of a surety bond, petroleum marketers would reduce or eliminate their financial ability to puchase their products and equipment or to upgrade or monitor their equipment.

The agency recognizes that certain terms of the proposed performance bond (e.g., the cancellation provision) may limit the availability of the bond. The Agency believes, however, that the terms of the surety bond as proposed are necessary to ensure that coverage is available when needed to take corrective action and compensate third parties. For example, without the cancellation provision, sureties could cancel coverage when a release is suspected and the costs would be unfunded.

The commenters who objected to the discretionary authority of the Director of the implementing agency to control the funds appear to misunderstand the proposed regulations. The performance bond clearly describes the situations in which funds may be drawn; the Director does not have unlimited discretion to draw on the funds. (See also Section III.N of the preamble for discussion of the standby trust.)

The Agency acknowledges that many companies will be unable to afford surety bonds, or meet collateral requirements. EPA has authorized the use of those bonds in order to allow those persons who can secure surety bonds the option of using them to comply with these requirements. The rule continues to allow use of a surety bond.

In addition, as discussed in Section III.V.2. the Agency is incorporating certain exclusionary language into the terms of the instrument to more clearly limit the type and circumstances of third-party liability for which this mechanism can be used.

J. Letter of Credit (§ 280.99)

The final rule, like the proposed rule, allows owners or operators to use letters of credit to satisfy their financial responsibility obligations. Section 9003(d)(1) specifically lists letters of credit as a mechanism to be considered in establishing financial responsibility requirements. Many commenters on this mechanism did not object to the use of letters of credit, but were concerned about whether this mechanism would be available. For example, many commenters believed that letters of credit are not viable options for smaller entities. Commenters pointed out that smaller companies cannot meet collateral or liquidity requirements necessary to obtain letters of credit.

Other commenters pointed out that the costs of letters of credit are much higher than the costs of insurance, and that tying up capital or collateral to purchase letters of credit would prevent owners or operators from using letters of credit to purchase equipment for their businesses, including monitoring equipment and equipment for upgrading or replacing tanks. One commenter noted that the letter of credit would be unavailable to many governmental bodies because some lending institutions refuse to issue them to governmental bodies, and some city codes prevent governmental entities from securing letters of credit.

The Agency acknowledges that the collateral requirements for letters of credit may approach or exceed the face value of the letter of credit, and will be prohibitively expensive for many owners and operators. The Agency is allowing the use of letters of credit,

however, as an option for those owners and operators who can afford them.

One commenter objected to the language in the letter of credit because he believed that it requires the issuer to examine the legitimacy of the conditions precedent to presentation of the sight draft. This commenter suggested that the sight draft and the statement that the Director of the implementing agency must provide to the bank should identify the purpose for which the letter is being issued (corrective action and/or third-party liability for sudden and/or non-sudden releases). This commenter also suggested that these documents should specify the tank identification number and name and address of each facility location.

The letter of credit does not require the issuer to examine the legitimacy of the conditions precedent to presentation of the sight draft. The letter of credit is payable upon presentation of a sight draft and a signed statement certifying that the letter is payable pursuant to these regulations.

A number of commenters, in addressing specific mechanisms, disagreed with the proposed requirement to identify individual tanks that are assured by the mechanisms. They all felt that identification of the facilities covered by the mechanism would ensure that releases from the facilities are covered, without delays and needless paperwork to determine which tank was the source of the release. The Agency agrees, and has revised the language of the mechanisms to specify coverage by facility, rather than by individual tank. Individual tanks must be identified if separate mechanisms are being used to cover different USTs. The letter of credit does allow the parties to specify the purpose for which the letter is being issued ("corrective action" and/or "compensating third-parties for bodily injury and property damage").

In addition, as discussed in Section III.V.2., the Agency is incorporating certain exclusionary language into the terms of the instrument to more clearly limit the type and circumstances of third-party liability for which this mechanism can be used.

K. Use of State-Required Mechanisms (§ 280.100)

EPA proposed that, in those states that have not obtained UST regulatory program approval, UST owners and operators may use state-required financial assurance mechanisms to meet the federal financial responsibility requirements. However, the proposed rule required the EPA Regional Administrator to determine that such mechanisms provide assurances that are at least equivalent to those of mechanisms specified in the Federal requirements.

Several commenters noted that allowing use of state-required mechanisms will do little to help UST owners or operators because not all states have established or will establish their own financial responsibility requirements. Another commenter supported EPA's proposal that state-required mechanisms used to determine financial responsibility while EPA reviews the state program will be considered to be at least equivalent to other required mechanisms and thus in compliance with Subpart I for the amount and types of costs covered by the mechanisms.

In response, the Agency agrees that some states without authorized UST programs may not have state-implemented financial responsibility requirements for USTs. However, owners or operators in states that do not have authorized programs, but which do have financial responsibility requirements, will be able to use equivalent state-required mechanisms. These owner or operators will not have to procure additional mechanisms to satisfy the Federal requirements. The final rule regarding the use of state-required mechanisms retains the language in the proposed rule.

L. State Fund or Other State Assurance (§ 280.101)

EPA proposed that UST owners or operators may use state funds or other state assurance programs to meet the financial responsibility requirements. RCRA section 9004(c)(1) authorizes the use of "corrective action and compensation programs administered by state or local agencies" as mechanisms to provide evidence of financial responsibility for state program approval.

Although several commenters supported the use of state assurance programs as an acceptable financial assurance mechanism, commenters remarked that state assurance programs are generally not available and, even where available, often do not provide sufficient coverage. Several states remarked that they did not plan to establish funds or that the Federal government should not rely on states to demonstrate financial responsibility for UST owners and operators.

The Agency recognizes that state assurance programs are not widely available to date. However, funds have been established in several states, including Virginia, Delaware, and Minnesota. Other states are also in the process of attempting to establish funds. The Agency does not require any state to establish an assurance program.

In addition, EPA is aware state assurance programs may not provide complete financial responsibility for UST owners or operators. For example, funds may not cover third-party compensation or all corrective action costs. Therefore, UST owners and operators using these types of programs must use other financial assurance mechanisms in combination with a state fund to demonstrate compliance with the financial assurance requirements.

Several commenters suggested that states use particular program structures or particular financing mechanisms. For example, several commenters suggested that state funds cover corrective action costs above $100,000 and third-party compensation costs above $300,000, up $1 million per occurrence. Other commenters suggested that state funds be structured to encourage entry of private insurers into the UST insurance market.

The Agency believes that the structure and means of financing programs is at the discretion of each state. EPA will not dictate the approach states should take in establishing assurance programs. However, for those states interested in establishing assurance programs, EPA will provide assistance in designing and evaluating such programs. In addition, EPA has developed a handbook providing guidance on establishing state assurance programs.

The Agency also does not intend to mandate a particular program structure in states that currently use funds to cover UST release costs. For example, the Agency would not require a state with a fund that only covered corrective action costs to alter its fund structure (e.g., to add coverage for third-party compensation) in order to qualify under this section. The owner or operator would have to obtain additional assurance to cover third-party liability requirements.

M. Trust Fund (§ 280.102)

A trust fund was not included in the proposed rule as an allowable financial assurance mechanism. As stated in the preamble to the proposed rule, the Agency believed that a trust fund with a pay-in period would provide inadequate financial assurance early in the period, and a fully-funded trust fund would be unaffordable to the owners or operators most likely to need to use the trust fund. Moreover, the Agency felt that a trust fund used in combination with an insurance policy would probably be more costly than paying the additional

premium for first-dollar insurance coverage because: (1) Unlike the costs of other mechanisms, trust fund deposits are not business expenses for federal tax purposes; and (2) insurance policies for USTs may be written to include coverage of a deductible that is later recovered from the insured.

The Agency received a comment requesting that a trust fund be allowed as a financial assurance mechanism. This commenter maintained that some firms may wish to use a trust fund to cover multiple tanks if other mechanisms are not available, and advocated allowing either a fully-funded trust fund or a partially-funded trust fund if combined with another mechanism that provides the remaining amount of required coverage.

In light of this comment, the Agency decided to allow trust funds in the final rule. Although the Agency believes that trust funds will in general cost more than other mechanisms and in many cases will be unaffordable, trust funds are allowed to provide more flexibility to owners or operators in providing financial assurance. To ensure that the trust fund will provide adequate financial assurance, the Agency requires the trust fund to be fully-funded for the amount of required coverage, or partially-funded and used in combination with another allowable mechanism that provides the remaining amount of required coverage.

The language of the trust fund instrument is identical to the language of the standby trust fund used to manage funds paid from other mechanisms (e.g., letter of credit). The amount of the trust fund is determined by the owner or operator, as long as the remaining amount of required coverage is provided by another mechanism.

In addition, as discussed in Section III.V.2. of the preamble, the Agency is incorporating certain exclusionary language, into the terms of the instrument to more clearly limit the type and circumstances of third-party liability for which this mechanism can be used.

N. Standby Trust Fund (§ 280.103)

Under the proposed and final rule, EPA establishes the standby trust fund as the depository mechanism that an owner or operator must put in place upon acquiring one of the following financial assurance instruments: Guarantee (§ 280.96), surety bond (§ 280.98), or letter of credit (§ 280.99). Funds drawn under any of these instruments, pursuant to the instruction of the Director of the implementing agency, must be deposited directly into the standby trust fund by the institution making the payment. The use of a standby trust is necessary because without such a depository mechanism, any funds drawn under those instruments that are payable to the Regional Administrator would have to be paid into the U.S. Treasury and could not be used specifically to pay for the UST corrective action or third-party liability claims for which the funds were intended without Congressional action (see 31 U.S.C. 3302). Similarly, funds payable to the state Director may have to be paid into the state treasury.

The rule requires that the trustee must have the authority to act as a trustee and its trust operations must be regulated and examined by a federal or state agency. This trustee qualification requirement is the same as the trustee qualification requirement under the Subtitle C regulations. If the trust operations are not regulated and examined by a federal agency, the trust operations must be regulated and examined by a state agency in each state in which a standby trust fund is established.

All commenters on the proposed standby trust requirement argued that the provision is unnecessary. In the case where a guarantee is used to provide financial assurance, several commenters asserted that the use of the guarantee is comparable to self-insurance, which does not require a standby trust because, in each instance, funds are assured from existing corporate assets. The Agency recognizes that corporate assets are the source of the funds for both self-insurance and guarantees, but does not believe that the similarity obviates the need to establish the standby trust when a guarantee is used to provide financial assurance.

The standby trust fund is necessary to ensure access to funds when they are required and to ensure that the implementing agency can address corrective action requirements promptly and preclude further damage to health or the environment.

The financial test of self-insurance is a direct mechanism for providing finanical assurance. When it is used, the owner or operator ensures that he will take prompt, corrective action and pay valid third-party claims from existing corporate assets—evidenced by satisfaction of the financial test.

A payment guarantee, such as the guarantee in the proposed rule and today's rule, is an indirect mechanism. When it is used, the guarantor does not ensure that it will take prompt corrective action or pay third-party claims if the owner or operator does not. Rather, the guarantor contracts with the implementing agency that, if the owner or operator fails to undertake required activities, the guarantor will provide the necessary funds to undertake the activities from its corporate assets. EPA cannot hold the funds directly because of the prohibitions of 31 U.S.C. 3302, as discussed above. It is necessary, because of the prohibition, that the funds be placed in an existing depository mechanism, the standby trust, from which the implementing agency can direct funding of required actions as promptly as possible. Therefore the standby trust requirement for a guarantee remains a provision of today's rule.

Other commenters disagreed with the provision that the standby trust must be established at the same time as the financial assurance mechanism, noting that, under RCRA Subtitle C, the trust is established only when assured funds are required. The commenters misstate the requirements of Subtitle C. The standby trust requirement in today's rule differs from the Subtitle C model because its purpose is different. In the Subtitle C rule, guarantees are recognized to assure funds for closure and post-closure and third-party liability. No standby trust is required for the guarantee for liability because valid third-party claims, if not paid by the owner or operator, are paid by the guarantor directly to the claimants. If an owner or operator fails to perform closure or post-closure care whenever required to do so, the guarantor can perform the required activities itself or establish a trust from which EPA can fund the activities. Today's rule provides financial assurance for both corrective action and third-party liability. A release from an UST may or may not occur. If a release does occur and corrective action is necessary, it should not be delayed while a standby trust is put in place. Prompt action will prevent further damage to human health and the environment. In addition, because under Subtitle I one assurance mechanism covers both corrective action and third-party liability, the standby trust provides a mechanism for the Director of the implementing agency to ensure that funds are available first to pay for corrective action (see Section III.S). The Agency, therefore, has not changed the requirement that a standby trust be established when a guarantee, letter of credit, or surety bond is acquired to provide financial assurance in compliance with this rule.

The wording of the standby trust agreement must be identical to the wording provided by § 280.103(b). Uniform wording of the agreement minimizes the administrative burden on

the implementing agency by eliminating case-by-case review of standby trust agreements and provides owners and operators with the assurance that the agreements will satisfy the regulatory requirements. In addition, as discussed in Section III.V.2. of the preamble, the Agency is incorporating certain exclusionary language into the terms of the instrument to more clearly limit the use of the mechanism only to costs associated with releases from USTs.

Commenters on the standby trust were also concerned about the costs of trusts, particularly if the owner or operator has several facilities in several states for which standby trusts must be established and maintained. The Agency evaluated the costs related to establishing and maintaining a standby trust fund when today's rule was proposed. The primary costs are the costs of managing the funds; other relatively minor costs include the administrative fee charged to establish the trust fund and fixed fees for simply maintaining the account. The incremental costs of establishing a standby trust at the time the instrument is established will be minimal, since there will be no funds in the trust. The Agency believes, therefore, that the requirement to establish the standby trust fund at the time a financial assurance instrument is acquired will not be particularly burdensome to UST owners or operators.

In addition, the final rule allows the owner or operator to establish one trust as the depository mechanism for all funds assured in compliance with this rule. Owners and operators with a number of facilities in various states may, therefore, establish one standby trust into which funds can be deposited if and when required. States authorized to implement this program may adopt this policy or may require the owner or operator to establish a standby trust in their own jurisdictions.

O. Substitution of Financial Assurance Mechanisms by an Owner or Operator (§ 280.104)

Under § 280.104 of the proposed and final rule, the Agency allowed an owner or operator to substitute alternate financial assurance, provided that an effective financial assurance mechanism or combination of mechanisms that satisfy the financial responsibility requirements existed at all times. After obtaining alternate financial assurance, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance. The owner or operator must maintain continuous coverage with a financial assurance mechanism to ensure the availability of funds at all times for corrective action and third-party liability claims, should a release occur from an UST containing petroleum.

The Agency received no comments on provisions regarding the substitution of financial assurance mechanisms by an owner or operator, and thus promulgates these provisions as proposed.

P. Cancellation or Nonrenewal by a Provider of Financial Assurance (§ 280.105)

1. Length of Notice Period

In the April 17, 1987, proposal, the Agency required insurers to provide owners or operators 120 days notice before cancelling (i.e., failing to renew) insurance coverage and 90 days before terminating a policy under other circumstances (e.g., non-payment of premium by an insured). Other providers of financial assurance were permitted to cancel, refuse to renew, or otherwise terminate an instrument only if the provider first notified the owner or operator at least 120 days in advance. Further, EPA required any owner or operator failing to obtain an alternate mechanism within 60 days after receiving a notice of cancellation or termination to notify the implementing agency of such failure and submit evidence of the existing financial assurance mechanism, the name and address of the provider of financial assurance, and the date of cancellation. In the sixty days remaining until termination of coverage, the implementing agency would then have the opportunity to inspect the affected tanks to determine if any releases had occurred, thus assuring that the still viable mechanism could be drawn upon to provide any necessary funds. Moreover, the 120-day requirement reflected the Agency's concern that providers of financial assurance might want to cancel their mechanisms upon the discovery of an UST release, leaving the owner or operator without assurance when it is most needed.

Several commenters, primarily from the insurance industry, urged EPA to reduce the number of days' notice required for cancellation to 60 days. The commenters presented several arguments supporting their request. First, they argued that 60 days is an adequate amount of time for owners or operators to search for and obtain any other type of available assurance, or to determine that none is available and report this to the implementing agency. Second, commenters noted that a 60-day notice period is becoming a standard insurance practice in many states. Third, commenters viewed the 120-day provision as punitive to insurers, and predicted that reducing the notice period to 60 days would result in the greater availability of affordable coverage. Finally, two commenters warned that if 90 days or more notice were required, insurers would automatically send out cancellation notices on an annual basis to every insured party, thereby giving them the time to review accounts at a point closer to the beginning of a new policy year.

Based on these comments, the Agency has concluded that the 120-day notice period is unnecessary for insurance, RRG coverage, and state fund coverage. In the 60 days following an owner's or operator's determination that no other financial assurance is available, the Director of the implementing agency has the authority to require a guarantor, surety, or issuer of a letter of credit to fund a standby trust. However, the Director of the implementing agency does not have the authority to require insurers, RRGs, and state funds to fund a standby trust should a leak be suspected or confirmed. Consequently, an additional 60-day period following the determination by an owner or operator that no alternate financial assurance is available would not benefit an owner or operator using insurance, RRG coverage, or state fund coverage in the manner intended by the Agency.

Other circumstances unique to insurance, RRG coverage, and state funds also support the conclusion that a 120-day notice period for cancellation is inappropriate for these mechanisms. In cases where insurance or RRG coverage is cancelled, for example, an owner or operator has an incentive to submit any claims if there is a release. In addition, the extended reporting period for claims-made policies allows an owner or operator to file a claim six months after the policy has been cancelled. Finally, states are not likely to abruptly withdraw financial assurance in case of an UST leak.

Consequently, EPA has decided that providers of insurance, RRG coverage, and state-backed coverage need only provide a 60-day notice period for cancellation or termination of coverage. Owners or operators who fail to obtain alternate coverage after these mechanisms are cancelled are still required to notify the implementing agency 60 days after being notified of cancellation or termination of financial assurance (i.e., when coverage expires). Reporting at this time can trigger an evaluation of the USTs for releases which should be reported during the extended reporting period.

Nevertheless, the Agency, for the reasons noted above, believes that the proposed 120-day period is essential in cases where an owner or operator has obtained a guarantee, letter of credit, or surety bond. Therefore, providers of these financial assurance mechanisms must still provide a 120-day advance notice of cancellation or termination of coverage.

2. Termination for Non-Payment of Premium

A number of commenters, primarily from the insurance industry, argued that the provisions should allow for a quick termination of coverage in the event of non-payment of premium by an insured. Most suggested that this period be 10 days. Under the proposed provisions, commenters noted that the insurance agent or insurer would have to provide 90 days worth of coverage on behalf of an insured who fails to pay his premium. Some commenters warned that should the 90-day period be maintained in all cases, they might protect themselves from this contingency by requiring full payment of premium prior to the issuance of coverage. Moreover, commenters asserted that termination with 10 days notice for non-payment of premium conforms with standard industry practice on other types of insurance.

While sympathetic to industry concerns, EPA is unwilling to accept a 10-day notice period in these cases. First, the Agency calculates that such a brief notice period will not allow UST owners or operators sufficient time to obtain alternate assurance mechanisms, and hence will result in unacceptable gaps in coverage.

Second, the Agency remains convinced that the shortened 60-day notice period will fulfill the needs of providers. As noted earlier, a 60-day notice period is standard in many states. In addition, insurers, for example, could protect themselves by establishing an appropriate schedule of premium payment. Insurers could require payment 90 days before the expiration date of coverage for the maintenance or renewal of the policy. An insurer could then terminate the policy with 60 days notice if an insured does not meet the schedule of payment within 30 days of the premium due date.

The Agency therefore is requiring a 60-day notice period for termination of coverage even in the event of non-payment of premium by an insured.

Q. Reporting by Owner or Operator (§ 280.106)

The April 17, 1987, proposal required each UST owner or operator to keep evidence of financial responsibility at his UST site or at his place of business. (Section III.R of this preamble describes the nature of the records that the owner or operator must maintain.) In addition, the proposed rule required an owner or operator to submit the appropriate documentation of financial responsibility to the implementing agency in the following circumstances:

(1) When the owner or operator notifies the Regional Administrator of the existence of a new petroleum underground storage tank under § 280.22;

(2) Within 30 days after the owner or operator has a known or suspected release from a petroleum underground storage tank required to be reported under § 280.74;

(3) If the owner or operator fails to obtain alternate coverage as required by this subpart within 30 days after the owner or operator receives notice of:

- Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,
- Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,
- Failure of a guarantor to meet the requirements of the financial test, or
- Other incapacity of a provider of financial assurance;

(4) If an owner or operator is unable to obtain alternate assurance within 60 days after receiving a notice of termination of a mechanism, as required by § 280.105(b); or

(5) If the owner or operator using the financial test fails to meet the requirements of the test, as required by § 280.94.

The Agency received several comments supporting the proposed reporting requirements. Two commenters, both representative of large segments of the regulated community, noted that an annual reporting requirement would impose excessive administrative burdens on small businesses. Moreover, a number of state government commenters expressed concern that they might be unable to administer a mandatory reporting requirement. The commenters supported their position by citing the large size of the regulated community, the lack of state financial and personnel resources, and the excessive paperwork burdens that would accompany such an effort.

Other commenters, however, urged EPA to mandate more extensive reporting requirements. Two commenters suggested an annual demonstration of financial responsibility. The commenters cited several benefits of enhanced requirements, including: (1) Greater incentives for proper tank management and rapid release detection and response; (2) the Agency's ability to target enforcement efforts towards owners or operators who fail to submit evidence; and (3) greater assurance that funds will be available to pay the costs of UST releases.

There are other potential advantages of more stringent reporting requirements. Stringent reporting could increase the level of compliance with the regulations, since owners or operators would be required to demonstrate on an annual basis that they have obtained financial assurance required under this subpart.

Despite these considerations, the Agency has decided that the advantages of more frequent reporting are outweighed by several factors unique to the UST financial responsibility program. First, the regulated UST community, consisting of an estimated 1.7 million USTs located at 500,000 facilities, is extremely large. Receiving and processing financial assurance certifications from all these UST owners or operators on an annual basis could place substantial administrative burdens on implementing agencies. In fact, the sheer volume of reports could overwhelm implementing agencies and mask the more critical information, i.e., cancellation or release notices. However, the Agency intends to develop non-traditional approaches to compliance monitoring and enforcement and will initiate pilot projects in states to test these approaches.

In addition, provisions in SARA for the LUST Trust Fund create incentives for owners and operators to comply with the regulations, since the fund may be used to pay for costs in excess of the required amount of financial responsibility if the owner or operator has maintained evidence of financial responsibility. To increase awareness of and compliance with UST rules, EPA is preparing a public outreach program aimed at providing UST owners and operators with information on all UST requirements. Moreover, many UST owners and operators are already obtaining insurance to limit their exposure to future liability due to UST costs.

Finally, the alternative of reporting by postcard, while minimizing costs for owners and operators, would still inundate implementing agencies with the same number of reports, and thus would not alleviate the critical problem created by annual reporting.

The Agency has thus decided not to impose more stringent reporting requirements on the regulated community.

The Agency also received comments opposing certain provisions of the proposed reporting requirements. Several commenters disagreed with the

requirement to submit financial responsibility documentation for new, and not old, tanks, arguing that new tanks are less likely to leak than older tanks.

The Agency has retained this provision in the final rule. As noted above, the proposed requirement builds upon existing notification requirements mandated under section 9002(a) of Subtitle I and codified in the UST technical standards (53 FR 37082, September 23, 1988). Specifically, § 280.22 requires owners or operators who bring a new tank into use to notify the appropriate state or local agency or department of the existence, age, size, type, location, and uses of the new tanks as well as to obtain an installation certification. Including financial assurance information in these reports involves a minimal increase in the cost of these reports for the regulated community and provides valuable compliance monitoring information to the implementing agency.

Another commenter argued that owners or operators should not be required to submit financial assurance documentation for new tanks to both the EPA Regions and the states. The Agency agrees with the commenter. While the proposed rule required owners or operators to submit this documentation to the Regional Administrator, today's rule relies on submittal of the new tank notification to the appropriate state or local agency or department, as required in § 280.22 and RCRA section 9002(a).

Another commenter found the wording of § 280.106(a)(2) unclear, and inquired whether financial responsibility documentation should be submitted for a suspected release or only in the event of a confirmed release. The financial assurance reporting requirements, which have been revised to reflect provisions for reporting releases for corrective action in §§ 280.53 and 280.61 of the UST technical standards, now require submittals in the event of the confirmed releases. (These provisions are discussed in further detail in Section IV.F of the UST technical standards preamble.)

The same commenter urged EPA to allow entities installing large numbers of tanks the option of submitting financial responsibility documentation annually to the Regional Administrator rather than submitting multiple documentation for each new tank. The Agency sees no reason to adopt this approach. Section 280.22 requires that owners or operators certify in the new tank notification form that they are in compliance with the financial responsibility provisions as well as provide information on compliance with other technical requirements.

R. Recordkeeping (§ 280.107)

Under the proposed rule, owners or operators were required to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart until one year after closure or one year after the completion of closure and corrective action. An owner or operator was required to maintain at his UST site or place of business the following types of evidence for mechanisms used to demonstrate financial responsibility:

(1) Copies of assurance mechanisms specified in §§ 280.94 through 280.100, worded as specified.

(2) Letters of certification from the chief financial officer of firms using the financial test of self-insurance or providing guarantees, based on year-end financial statements for the last completed fiscal year. Such evidence must be on file no later than 120 days after the close of each fiscal year.

(3) Originally-signed duplicates of the standby trust funds worded as specified in § 280.103(b) for guarantees, surety bonds, or letters of credit.

(4) Originally-signed duplicates of the insurance policies or RRG coverage policies with the endorsements or certificates of insurance and any amendments.

(5) Copies of letters or certificates from states regarding coverage by state funds or other state assurances.

The proposed rule also required the owner or operator to maintain a certification that the financial assurance mechanism used to demonstrate financial responsibility is in compliance with the requirements of the rule.

The Agency received a number of comments concerning the recordkeeping requirements of owners or operators of petroleum USTs. Some commenters expressed unconditional support for the provisions.

Several commenters, however, were dissatisfied with the requirements. One commenter urged EPA to delete the recordkeeping requirements and instead require owners or operators to submit evidence of financial responsibility directly to the Agency. Since the Agency, as noted in Section III.Q, does not require the automatic submission of financial responsibility documentation, it has decided to retain the recordkeeping requirements under § 280.107.

Another commenter suggested that the certification of compliance be kept at the UST site, rather than at the place of business, and that it include the address of the corporate office where details would be maintained. The provisions of this section allow UST owners or operators to choose this recordkeeping option. However, as with the technical standard rule, off-site records must be made available on request of the implementing agency.

One commenter noted that compiling the annual letter from the chief financial officer supporting the use of financial tests or guarantees is unnecessary. The commenter suggested that this annual letter should not be required, especially since the certification of financial responsibility presents essentially the same information. Another commenter asserted that the certification of financial responsibility is unnecessary.

The Agency has decided to retain both requirements. Because EPA is not receiving financial responsibility reports on a regular basis, the Agency believes that requiring an annual letter from the chief financial officer may be necessary to further ensure the validity of various financial responsibility mechanisms. Moreover, the Agency notes that large firms, as a matter of standard business practice, routinely maintain the information required in the annual letter. Similarly, requiring the certification of financial responsibility will provide additional incentives for owners or operators to comply with the regulations at all times, and will not entail a substantial administrative burden.

One commenter argued that sending the chief financial officer's annual letter to all UST sites will present significant administrative burdens on some firms. The Agency agrees, and notes that the commenter might have misread the proposed rule, which allows owners or operators to maintain all documentation at either the UST site or the owner's or operator's place of business. However, off-site records must be made available upon request of the implementing agency.

One commenter questioned the need to maintain an originally-signed duplicate of the standby trust agreement at each UST location or place of business when it is adequate to maintain only a copy of the guarantee, surety bond, or letter of credit. Similarly, the commenter questioned the need to maintain an originally-signed duplicate of the insurance policy when it is adequate to maintain a copy of the certificate of insurance, especially since the commenter's policy contains confidential information not intended for widespread distribution. Requiring originals, the commenter asserted, would increase the paperwork burden exponentially for firms with large numbers of facilities. As an alternative, the commenter recommended that the Agency allow owners or operators to

keep copies at each location and be required to submit originals only in accordance with proposed (§ 280.106 or within 15 days of a written request by the Agency.

The Agency agrees with the commenter that requiring an originally-signed duplicate of the standby trust agreement and the insurance policy to be maintained at each facility is unnecessary. An owner or operator need not maintain an originally-signed duplicate of an insurance policy in order to draw on the policy; similarly, an owner or operator need not present an originally-signed copy of a standby trust in order to exercise the trust.

Consequently, the Agency has revised the final rule to require an owner or operator using a guarantee, surety bond, or letter of credit to maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement. In addition, an owner or operator using an insurance policy or RRG coverage is now required to maintain a copy of the signed insurance policy or RRG coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

The Agency also received two comments suggesting that including a list of specific tanks and tank numbers in the financial assurance mechanism is unnecessary. The Agency agrees with these comments and has revised the required wording of all mechanisms to reference each facility where covered USTs are located rather than a tank-specific list of USTs at each facility (see discussion under Section III.E of this preamble).

Pursuant to the changes outlined in Section III.T, owners or operators will not be required to maintain evidence of financial responsibility for one year after closure. Rather, owners or operators need only maintain such evidence until the date of closure or until corrective action is completed if a release is found at the time of closure.

S. Drawing on Financial Assurance Mechanisms (§ 280.108)

The proposed rule provided special procedures for funding and drawing on the trust fund and on the standby trust fund for those financial assurance mechanisms (guarantees, indemnity contracts, surety bonds, and letters of credit) that require action by EPA to initiate payment. The rule proposed procedures for EPA to follow in funding corrective action and paying valid third-party claims, while minimizing the administrative burdens on the Agency and owners, operators, and claimants.

For corrective action claims, the proposed rule required that an owner or operator who notifies the Regional Administrator of a release in accordance with proposed notification requirements (Subpart F of 40 CFR Part 280) must provide evidence of financial assurance within 30 days. Once EPA possessed the evidence of the assurance mechanism, the Regional Administrator would be able to prepare and submit the appropriate instructions to the provider of financial assurance to fund the standby trust, if necessary. If the owner or operator fails to conduct any necessary corrective action, the Regional Administrator can direct the provider to fund the standby trust and can direct payments from the fund.

The proposal provided different procedures for third-party compensation claims in § 280.108(b)(2) than were established for corrective action claims, because the UST owner or operator may contest a third-party compensation claim as invalid or inaccurate. In order to avoid EPA being placed in the role of a claims adjuster, the proposal required the owner or operator and the third-party claimant to submit a document signed by each party and by attorneys representing each party certifying the validity and amount of the claims. If the parties cannot agree on the claims or amount underlying the signed certificate, a lawsuit may be required to adjudicate the validity of the claim and any amount due.

In addition, § 280.108(c) of the proposed rule established procedures for the Regional Administrator to draw on the financial assurance mechanisms once estimates or known costs of corrective action and third-party claims are available. The rule required the Regional Administrator to instruct the trustee to pay corrective action costs before paying third-party claims in order to minimize further threats to human health and the environment and additional third-party claims caused by the release.

A number of commenters criticized the Regional Administrator's discretionary authority to fund the standby trust fund as too vague, especially in light of the Regional Administrator's apparent lack of training in technical and financial issues, his vulnerability as a political appointee to political pressures, and the lack of a mechanism by which a guarantor or indemnitor can appeal the Administrator's decision to fund the amount awarded. Some commenters thought that this loss of control over funds by financial institutions or other entities will discourage participation by such entities in providing financial assurance.

One commenter argued that providers of financial assurance will be reluctant to issue instruments if they believe they will have to process paperwork and follow the funding protocol even when their customers are financially capable of performing corrective action or paying third-party claims, or are able to obtain a substitute instrument. Apparently, providers of surety bonds and letters of credit carefully screen customers in order to minimize the likelihood that the instrument will ever be drawn upon; that is, these are truly intended to be "standby" instruments. As a solution, the commenter recommended that the 120-day cancellation provision be shortened, and that the instrument be drawn on only if substitute coverage has not been provided five working days before the instrument expires. This timeframe would lessen the probability that unnecessary paperwork and processing would commence and that cash would sit needlessly in trust funds requiring management by the trustee.

The essence of these comments is that the mechanism for funding the standby trust will diminish the availability of the financial assurance vehicles requiring establishment of a standby trust. In responding to these comments, as well as those discussed below, it should be noted that the Agency's desire to encourage the availability of a wide array of financial assurance vehicles under this rule is secondary to the Agency's mandate to assure that all financial vehicles will be readily available when a leaking UST is discovered. Thus, assuring the availability of funds for corrective actions must take precedence over marginally enhancing the availability of any one mechanism.

With respect to the commenters who thought that the Regional Administrator's role in ordering the funding of the standby trust or the disbursement of funds would impair availability or, worse, compromise the integrity of the financial assurance program, these comments greatly overstate the discretion accorded to the Director of the implementing agency (either the Regional Administrator or the state Agency director) under these regulations. The Director of the implementing agency is required to act only under clearly defined circumstances, and, other than for cancellations, only when the owner or operator does not cover the costs of corrective action and third-party liabilities. For example, the Director will require funding of and draw on the standby trust in three situations: (1) If

the owner or operator fails to establish alternative financial assurance within 60 days of notice of cancellation, and the Director of the implementing agency determines or suspects that a release has occurred and so notifies the owner or operator (evidence of a suspected release under § 280.50 includes positive monitoring results from testing, monitoring and sampling, unusual operating conditions, or the discovery of regulated substances in the environment); (2) if the Director determines that there is a release and the owner or operator fails to undertake necessary corrective action; or (3) if the Director receives proper certification of a third-party liability claim or a valid final court order for a third-party liability claim that the owner or operator fails to pay (§ 280.108(a)(2) in the final rule). Thus, while the Director is a critical participant, the provider of financial assurance and the owner or operator are intimately involved in the actions triggering funding of the trust, and ample notification accompanies each step.

One commenter seemed to argue that availability does not hinge on the Director's role so much as it is a function of the provider of assurance's aversion to risk and paperwork. According to this arugment, these mechanisms will be available only to owners and operators who have the ability to undertake corrective action and meet demands for third-party damages, but be jeopardized if it is likely that the standby trust might be funded, necessitating cost and paperwork.

In response, EPA notes that payment into the standby trust fund is not easily triggered, but occurs when cancellation of the financial assurance vehicle coincides with the likelihood of certainty of a release from an UST or when the owner or operator fails to carry out or pay for the actual costs of corrective action or fails to pay valid third-party claims. When an instrument is cancelled and there is a known or suspected release, questions of aversion to handling costs or red tape are clearly secondary to securing the availability of funds for corrective action. The only other circumstances under which the standby trust would be drawn upon are consistent with the commenter's concern; that is when the owner or operator truly fails to cover the assured costs. Further discussion of cancellation and notice is provided in Section III.P, above.

One commenter objected to the specific langauge in the proposed § 280.108(a)(1)(ii) that empowers the Regional Administrator to require funding of the standby trust if the financial assurance mechanism is cancelled and not replaced and if the Regional Administrator "determine or suspects that a release . . . has occurred," arguing that mere "suspicion" on the part of the Regional Administrator was not adequate ground for funding the trust. The commenter would amend this language to prevent the Regional Administrator from acting unless a determination has been made that a release has actually occurred.

The Agency cannot accept this restriction on the Director's authority to act on the suspicion that a release has occurred. EPA intends that this suspicion be based on objective evidence, such as failure of a tank tightness test, discovery of free product in adjacent sewer and utility lines, notice by the owner or operator, or other clear but unverified evidence. Further, the suspicion must be coupled with the cancellation and nonreplacement of the financial assurance mechanism as described above. In this case, there would be no new assurance mechanism to take over when the cancellation becomes effective, leaving the owner or operator potentially unable to fund corrective action and third-party liabilities arising from release that occurred before the cancellation.

Finally, a number of commenters misunderstood the workings of the provision. One commenter thought that EPA should not propose procedures to evaluate third-party claims, but, rather, should allow the parties themselves or the courts to settle claims. An insurance company association commented that the language suggested that the owner or operator may settle a claim with a potential claimant without consultation with the insurer, thus placing the insurer in the position of indemnifying any claim, no matter how frivolous, if the owner or operator chooses to settle. An insurance company commenter requested that the standby trust provision be clarified to prevent its application to insurance entirely.

In response, the Agency notes that the claims for third-party damages are settled by the parties themselves, with full access to the courts if unresolved issues remain. The regulations simply provide a mechanism that expedites settlement of claims made against the funds held in trust if the parties agree on the details of the settlement. It is unlikely that insurance companies will be providing surety bonds, guarantees, or letters of credit, but if they do, issues concerning any alleged breach of duty by parties to the agreement are the province of the legal system, not the Director. Finally, the regulations state clearly that the provisions of the standby trust do not apply to insurance policies.

After reviewing all of the comments on drawing on the financial assurance mechanisms, EPA has concluded that only two changes should be made to § 280.108 as proposed. All references to the Regional Administrator have been changed to the Director to clarify that these responsibilities are delegated to the Director of the state implementing agency in authorized states. In addition, the standby trust is only required for guarantees, letters of credit, and surety bonds because indemnity contracts are not included as an allowable mechanism in the final rule.

T. Release From the Requirements (§ 280.109)

Under the proposed rule, owners and operators were released from the requirements after completion of closure or, if corrective action was required, after the tank was properly closed and after completion of corrective action. The preamble to the rule, however, discussed the Agency's intention to require owners and operators to comply with the requirements for one year after closure. Many commenters objected to the possibility that owners or operators who properly close their tanks would be subject to the requirements for one year after closure. These commenters pointed out that there is no need to require coverage after closure because corrective action, when required, must be taken before closure, and because they believe that insurers are unlikely to insure owners and operators after tanks are closed.

Commenters indicated that it is unlikely that financial assurance providers will provide coverage after tank closure. The Agency recognizes that this is the case. The closure requirements in Subpart G of the technical standards specify a closure process that requires owners and operators to notify the Director of the implementing agency before closure, and conduct a site assessment. If releases are identified, the owner or operator must conduct corrective action and the tanks cannot be closed until corrective action is completed. This process will ensure that closure is not completed until any releases from the petroleum UST system have been cleaned up.

Therefore, the Agency has determined that the need for financial assurance will be greatly diminished after corrective action and closure are

completed and will not require owners and operators to maintain financial assurance after proper closure of their tanks. Under the final rule, owners and operators are released from the requirements after completion of closure or of corrective action and closure, when required.

U. Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance (§ 208.110)

The proposed rule required that any owner or operator named as a debtor in voluntary or involuntary bankruptcy proceedings (under Title 11 of the U.S. Code) notify the Regional Administrator within 10 days after commencement of such proceeding. In addition, the proposed rule required a guarantor or indemnitor to notify the owner or operator by certified mail within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the U.S. Code that names such guarantor or indemnitor as debtor. The proposed rule stipulated, furthermore, that any owner who demonstrated financial responsibility using a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of a provider to issue a guarantee, indemnity contract, surety bond, insurance policy, risk retention group coverage policy, letter of credit, or state-required mechanism. Finally, proposed § 280.110 required states to notify the Regional Administrator and owners and operators covered by a state fund or other state assurance within 30 days after the assurance mechanism becomes incapable of covering assured costs. The proposed rule adopted the provision in Subtitle C rules for the incapacity of owners or operators, guarantors, or financial institutions (see §§ 264.148 and 265.148), but amended the language to make it more applicable to the requirements for Subtitle I financial responsibility.

One commenter doubted whether an owner or operator would be informed within 10 days after the commencement of bankruptcy of a provider of assurance to notify EPA of the bankruptcy. The commenter suggested that this requirement be eliminated.

The commenter appears to have misread the rule. Proposed § 280.110 required a guarantor or indemnitor to notify the owner or operator by certified mail within 10 days after commencement of a voluntary or involuntary bankruptcy proceeding naming the guarantor or indemnitor as a debtor. (As noted in Section III. G of today's preamble, indemnity contracts cannot be used to satisfy the financial responsibility requirements.) An owner or operrator, in accordance with § 280.106, must notify the Director of the implementing agency of the incapacity (e.g., bankruptcy) of a provider of financial assurance only if the owner or operator fails to obtain alternate assurance within 30 days of receiving notice of such incapacity.

The Agency, therefore, has decided to promulgate these provisions as proposed.

V. Provisions Pertaining to Other Instruments (§ 280.111)

1. Maintaining Other Instruments at Required Levels of Coverage

If the Director of the implementing agency requires funding of the standby trust where financial assurance is provided by a guarantee, letter of credit, or a surety bond, and draws on the standby trust or on a trust fund to pay the cost of corrective action or third-party damages, the full amount of assurance required by § 280.93 will no longer be available. The proposed regulations did not specify the steps the owner or operator had to take to assure that his financial responsibility obligations were being met after one of these mechanisms had been used. While the need to take these steps was implicit in the proposed rule, the Agency is making a technical addition to the rule to clarify precisely how the mechanisms would be implemented. Accordingly, a new section has been added to the final financial responsibility regulation (§ 280.111) establishing requirements for replenishing a guarantee, letter of credit, surety bond, or trust fund if the assurance these mechanisms provide falls below the required amount.

These new provisions provide that, if the amount in the standby trust is reduced below the full amount of assurance required, the owner or operator shall:

(1) By the anniversary date of the financial mechanism from which the funds were drawn.

(2) Replenish the value of financial assurance to equal the full amount of assurance required, *or*

(3) Acquire another financial assurance mechaism for the amount by which funds in the standby trust have been reduced.

If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms. This new section provides needed instruction for the Director of the implementing agency and the owner or operator, and, more importantly, ensures that an adequate level of funding will be available for corrective action and payment of third-party damage claims.

2. Exclusionary Language for Other Instruments

The language of the instruments for guarantees, letters of credit, surety bonds and trust funds in today's rule contains a provision that they do not apply to certain categories of damages or obligations. These exclusions are patterned on existing standard exclusions found in insurance coverage, and are intended to ensure that the coverage is not exhausted by the payment of claims that are covered by other compensation systems or that are otherwise not intended to be included within the scope of coverage. The five exclusions do not represent all common insurance policy exclusions, but were selected because they were considered most relevant to the financial assurance mechanisms for liability required under Subtitle I. In commenting on specific mechanisms, some commenters were concerned about the possible uses for the mechanisms or the Director's perceived discretion in ordering payments from the standby trust. Incorporating this exclusionary language will ensure more certainty for the owner or operator and for the provider that these mechanisms will be used only for costs associated with UST releases, as the rule requires.

The exclusions, with one exception, parallel exclusions that are being proposed for instruments under Subtitle C. The purpose of adding these exclusions to Subtitle C instruments is similar to the purpose under Subtitle I, to ensure that coverage provided by the instruments will be available only to respond to corrective action and third-party claims related to releases from underground storage tanks and will not be available to cover routine accidents not related to USt releases or claims for damage to the owner or operator, or to meet other liabilities assumed by the owner or operator which are unrelated to UST releases. The Subtitle C exclusion, however, excludes damage to the property of the owner or operator. While permissible for Subtitle C liability requirements because only third-party damages must be covered, such an exclusion would be inappropriate for Subtitle I because coverage for corrective action is explicitly required. Accordingly, EPA is providing a limited form of on-site exclusion which prevents use of funds to cover non-required

corrective action (e.g., cleanup which would be part of routine maintenance and not subject to Subpart F of the technical standards).

Exclusion (a), for obligations under workers' compensation, disability benefits, or unemployment compensation law or similar law, is intended to prevent the use of Subtitle I financial assurance mechanisms to cover such claims.

Exclusion (b), for bodily injury to the employees of the owner or operator, is also intended to ensure that such claims are not covered by assurance mechanisms obtained to comply with this rule.

Exclusion (c), for bodily injury or property damage arising out of the ownership or use of any aircraft, motor vehicle, or watercraft, is to prevent use of an authorized financial assurance mechanism for routine accidents that are not directly related to management of underground storage tanks.

Exclusion (d), for property damage other than that related to cleanup as required by under Subpart F of the technical standards, is intended to prevent use of the instruments' funds to meet other on-site cleanup costs such as those for routine maintenance.

Exclusion (e), for bodily injury or property damage for which the owner or operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement, is intended to exclude liabilities assumed by contract that do not involve the ownership or operation of the underground storage tank. It does not exclude settlements or other agreements to pay damages in connection with accidental occurrences resulting in bodily injury or property damage caused by releases from underground storage tanks.

W. Suspension of Enforcement (§ 280.112)

1. Statutory Authority

RCRA section 9003(d)(5)(D) authorizes the Administrator to suspend enforcement of the financial responsibility requirements for particular classes or categories of USTs. Suspensions of enforcement may allow time for owners and operators of USTs in particular classes or categories or located in particular states to obtain assurance for corrective action and third-party compensation costs. Because some owners or operators of certain classes or categories of USTs may find that financial assurance mechanisms are not generally available on the date set for compliance in the rule, suspensions would allow these owners and operators time to comply with the requirements through the formation of RRGs or the establishment of state funds.

The statute requires that, to suspend enforcement, the Administrator must determine that (1) methods of financial responsibility are not generally available for USTs in the class or category; and (2) either steps are being taken to establish a RRG for that class of tanks or a state is taking steps to establish a corrective action and compensation fund under RCRA section 9004(c)(1). A suspension of enforcement may not exceed 180 days. The Administrator has the discretion to suspend enforcement for a period of less than 180 days.

After an initial suspension expires, the Administrator may again suspend enforcement of financial responsibility requirements, but only if (1) methods of financial responsibility are still not generally available, and (2) either (a) "substantial progress" has been made in establishing a RRG; or (b) the owners or operators of USTs belonging to the class or category demonstrate, and the Administrator finds, that the state is unable or unwilling to establish a fund *and* formation of a RRG is not possible.

EPS proposed relatively detailed procedures and criteria for its consideration of suspension applications. EPA requested comment on all aspects of the proposed suspension of enforcement procedures and on any alternative procedures.

2. Suspension of Enforcement Process

A number of commenters stated that the proposed requirements were unnecessarily complex and burdensome. They urged the Agency to simplify the procedural requirements associated with suspension of enforcement. (A detailed summary of these comments is contained in the Response to Comments document, Section II.T., in the docket.) Based on these comments and the enormous uncertainty over the number of suspension applications the Agency will receive on the dates set for compliance, the Agency has decided to defer promulgation of the final procedures for suspension of enforcement. Therefore, this section is not included in today's final rule; EPA intends to promulgate final suspension procedures as necessary in the future.

As noted earlier, the regulated community subject to these rules is extremely large. Due to current constraints in the insurance industry and the assurance risks associated with the existing tank universe, there is also a correspondingly large universe of USTs for which financial assurance is currently available. However, EPA is today phasing in these requirements over two years and recognizes that the availability of certain financial assuance mechanisms (particularly state funds) may change dramatically during that time. Moreover, some states may receive approval to operate their programs in lieu of the Federal UST program as the compliance dates arrive. As a result of these factors, there is significant uncertainty over whether, and to what extent, suspension of enforcement will be necessary in the future. Thus, it is impossible for the Agency to craft appropriate procedures for implementing the provision in a manner that is at the same time consistent with statutory requirements, responsive to the regulated community, and not an overwhelming burden on the Agency.

During the phase-in period, the Agency will gain experience with implementation of the UST financial responsibility program and gather additional information on the form that suspension of enforcement petitions should take. This will serve as the basis for adopting procedures, if necessary, before the scheduled compliance dates for the largest group of UST owners and operators. Until such procedures are promulgated, however, the Agency does not intend to exercise its discretionary suspension authority.

IV. Integration with Other EPA Programs

In promulgating the Subtitle I financial responsibility requirements, the Agency received a number of comments concerning integration of these requirements with other EPA program, including other Subtitle I rulemakings and the LUST Trust Fund programs.

A. Other Subtitle I Rulemakings

The proposal noted that certain requirements in other Subtitle I rulemakings were relevant to UST financial responsibility requirements. One set of relationships raised in the preamble was the influence of UST technical standards on the cost of corrective action and third third-party liability, and on the amounts of aggregate coverage needed. Early detection or reduction in the probability of release will reduce the occurrence and extent of harm, thus influencing coverage. These relationships were the subject of numerous comments addressed in Section III.D of this preamble concerning aggregate levels of coverage.

Numerous comments raised other significant concerns about the relationship between the technical and financial responsibility requirements. Commenters were concerned about the

impact providers of financial assurance would have on tank upgrading and replacement vis-a-vis the proposed phasing of requirements in the technical standards rule. For example, several state and local governments addressed the relationship between the content and timing of the proposed technical UST requirements and the financial requirements, primarily the securing of insurance. They thought that insurance would become more readily available and less expensive if tank inspection and certification were required first since insurance companies generally attached these conditions to coverage. However, they were surprised that the Agency's timeframe for bringing tanks into compliance with new tank standards was so long in view of the relationship between tank upgrading and inspection and availability of insurance.

Some went further, stating that the insurance industry via the financial responsibility requirements would be determining the technical tank standards, and that this incongruity was a major philosophical and logical flaw in the regulations. Rather, technical considerations should drive the construction and monitoring standards; then, with tougher tank standards, the financial responsibility requirements cna be significantly curtailed. Furthermore, they argued that the heavy reliance placed by Congress and EPA on financial responsibility was not consistent with the goal of Subtitle I to prevent contamination of ground water. Instead, consideration should be given to expanding efforts in preventing contamination, which should be the objective of regulation, rather than environmental reclamation after the fact.

Commenters from the regulated community made approximately the same comment as the above, noting that meeting conditions imposed by insurers for tank tightness and leak detection will force tank owners and operators to meet technical standards when the financial responsibility requirements become effective, despite the later compliance schedules under the technical standards.

Drawing a blunter economic relationship between the financial responsibility and the technical requirements, these commenters stated that the money spent on insurance would be unavailable for tank upgrading where, they reasoned, it would be better spent. One commenter concluded that a conservative UST technical program and the state-of-the-art UST manufacturing and installation techniques currently available will substantially reduce, if not eliminate, the need for excessive financial responsibility in most cases.

Commenters from states and the regulated community argued that the timing and content of the technical and financial responsibility regulations will result in remediation, rather than prevention, being the dominant consideration behind UST control, and in the providers of financial assurance specifying the technical requirements for tank owners and operators as a condition for coverage. The states and owners and operators apparently differ on how each would correct this situation. The states would strengthen the technical requirements and reduce the financial responsibility requirements, whereas commenters from the regulated community would substitute state-of-the-art technical requirements for all financial assurance requirements.

EPA does not believe either correction is necessary. EPA does not agree with the assumption that the technical and financial responsibility rules are necessarily competing alternatives, and in its final rules has attempted to interrelate the two more clearly.

Congress specified that financial responsibility under section 9003 (c) and (d) of RCRA could be required at the discretion of the Administrator. SARA amended these provisions to mandate financial responsibility coverage and to provide a response program for petroleum UST releases. Congress did not present these amendments as alternatives to technical specifications for USTs. The sections of this comprehensive legislation cannot be viewed in isolation, but must be viewed as a whole; the overall goal of the legislation is to reduce the unacceptable risk to human health and the environment posed by thousands of UST leaks through prevention and assuring quick response when leaks occur.

Both the technical and financial responsibility requirements are preventive in nature. Neither would be totally preventive of harm to the public health and environment in itself, but in conjunction they will assure a high degree of protection. The direct control of leakage from USTs is obviously a preventive strategy, but is not foolproof. The funds assured through the various mechanisms permitted in this rulemaking establish a safety net that finances immediate and thorough corrective action when a release does occur and before the spread of contamination. If the provider of assurance also places demands on the owner or operator for technical controls, this strengthens protection of public health and the environment by increasing the incentive for tank upgrading and replacement as well as assuring funds for corrective action and third-party liability.

Phasing in compliance for the financial responsibility requirements brings this compliance schedule more into balance with the compliance schedule for the technical requirements. The Agency projects that many owners and operators will begin to comply with the technical standards early in the phased-in schedule for tank testing and upgrading or replacement. These tanks will represent low-risk USTs and thus financial assurance, particularly insurance, should be available for them at a lower cost than for pre-regulation tanks.

The Agency recognizes that there might be continuing concern because the timeframes for the two regulations are not the same; however, EPA cannot wait until all technical requirements are in place before imposing the financial responsibility rules. The result of further delay would be an unduly long period of time during which many members of the regulated community would have no financial assurance and could be unable to afford the cost of cleanup or liability. Moreover, longer delay would provide little incentive to states and insurance providers to develop mechanisms that will be needed to comply with the rule.

Several commenters claimed that the burden of complying with financial responsibility requirements would force owners and operators to move tanks aboveground and, thus, that the final rules should contain criteria that help the changeover to aboveground systems. For example, commenters suggested that an owner or operator's commitment to move tanks aboveground over a specified period of time should trigger an exemption from interim requirements for leak detection. Small businesses would be especially likely to install aboveground petroleum tanks in place of USTs. Because these tanks would pose significant hazards to facility personnel, local communities, and the environment, the commenters went on to urge the Agency to assess the consequences of this scenario before promulgating a final rule, and, meanwhile, to exempt small businesses not involved in petroleum marketing from financial responsibility requirements.

The Agency feels that moving tanks aboveground is not necessarily a problem if done in compliance with applicable state and local requirements.

Any tank removed from underground to aboveground must meet the same closure requirements under Subpart G as any other tank that is taken out of service or permanently closed. No reasons have been put forth by commenters for why financial assurance requirements should be waived for owners and operators who intend to withdraw tanks from coverage under these regulations in the future. In addition, because numerous jurisdictions already stringently regulate or prohibit aboveground tanks, the Agency suspects that moving tanks will not present as appealing an alternative to leaving the tanks underground and providing mandated protection. Therefore, EPA has not provided an exemption from these requirements for tanks that may be moved aboveground.

Finally, two suggestions were submitted that would relate technical and financial requirements. One commenter suggested that a financial credit should be available to owners and operators who installed secondary containment with continuous interstitial monitoring, thereby minimizing the potential for leak occurrence and attendant cleanup costs and third-party damages. However, EPA has rejected the use of such credits, as discussed in Section III.D, above.

The second mechanism consists of a new federal fund, financed by a sales tax on petroleum products, to be collected and used by states as a state cleanup fund. One condition on the fund is that owners and operators would have to register tanks with the state environmental department within 90 days, with failure to comply triggering the need to supply proof of insurance and/or net worth as prescribed in the proposed financial responsibility regulations. However, the only available federal fund, the LUST Trust Fund under section 9003(h), was created to provide cleanup of UST releases in particular circumstances. Congress did not authorize its use as a financial assurance mechanism. Rather the fund is intended to "stand behind" the owner or operator who has obtained financial responsibility in the required amounts. SARA Conference Report H. Rep. 99-962, 99th Cong., 2nd Sess. at 271.

B. Leaking Underground Storage Tank (LUST) Trust Fund and Response Program

Because the LUST Trust Fund and the financial responsibility program are closely related, the comments proposed a wide range of uses for the Fund. Several commenters stated that the final regulation should require states to use the Trust Fund to cover costs in excess of financial responsibility limits where the owner or operator has complied with all regulatory and financial responsibility requirements. In support, the commenters cited the Agency's discretion to forego full cost-recovery in section 9003(h)(6)(B) and the potential incentive this provision might give owners and operators to secure financial responsibility and report leaks promptly, as reasons why the final rules should specify such a condition on use of the Trust Fund.

Several additional uses of the Trust Fund were suggested. One commenter encouraged EPA to allow use of Trust Fund monies in cases where a leak occurs at the site of an owner or operator who belongs to a class against which enforcement has been suspended. Another commenter suggested that the Trust Fund could be used to repay RRGs for payments for deductibles. To offset these costs to the Fund, the RRG would require protection beyond that required by the final regulations (e.g., secondary containment). Another commenter objected to the requirement that an insurance company must pay the deductible for a company in bankruptcy, because if the Trust Fund were used for such purposes, the U.S. Government would be a preferred creditor in bankruptcy, whereas an insurance company making the payment would be non-preferred.

A state commenter argued that Trust Fund money should not be given only to states with approved UST regulatory programs. The commenter stated that the Trust Fund and the regulatory program were created separately and should remain so; that the loss of Fund monies would place a major financial burden on states with marginal capability to fund the base program; and, furthermore, that the environment and public health would be jeopardized by not using the Trust Fund separately from the regulatory program, as designed by Congress. Mayors could tap into the Fund if EPA would require, as part of state program approval, that the state program provide direct municipal access to the Trust Fund for cleanup and oblige the state to address other local concerns. In addition, the commenter urged EPA to seek authority to use the Fund as a source of grants to develop local programs.

With respect to the numerous and varied uses of the LUST Trust Fund offered in the comments, as noted earlier, Congress has authorized use of the Fund to pay corrective action costs only under limited and specifically defined circumstances. After final regulations on the technical standards and financial responsibility go into effect, Fund monies can be used to pay for corrective action only in the following situations:

(1) An owner or operator who is required to undertake the corrective action and who is capable of carrying out corrective action properly does not exist or cannot be identified;

(2) Prompt action by the Administrator (or state) is necessary to protect human health and the environment;

(3) The financial resources of the owner or operator, including any UST financial assurance, are inadequate to pay the entire cost of the corrective action, and expenditures from the Fund are necessary to assure effective corrective action; or

(4) An owner or operator has failed or refused to comply with an order to perform corrective action.

Section 9003(h)(11) explicitly prohibits the expenditure of Fund monies for corrective action at any facility where the owner or operator has failed to maintain evidence of financial responsibility in the required amounts, except (1) in cases where there is no solvent owner or operator, or (2) in cases where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment, or (3) to undertake an "allowable corrective action" to protect human health. (Section 9003(h)(5) defines these allowable corrective actions to include "temporary or permanent relocation of residents and alternative water supplies" and exposure assessments undertaken to protect human health.)

One result of these requirements is the preclusion of many of the alternative uses for the Fund suggested by commenters. Specifically, EPA does not agree that the state should be required to use the Trust Fund to cover costs in excess of the financial responsibility requirement. While the statute clearly allows the state to use the Trust Fund in such a situation, the decision should be made on a case-by-case basis at the discretion of the state. EPA also does not agree with commenters who suggested that the Trust Fund be used to (1) repay RRGs for payments for deductibles, and (2) to pay deductibles for companies in bankruptcy. Owners and operators are expected to maintain evidence of financial responsibility and pay the costs of their releases. Congress intended the Trust Fund to stand behind an owner or operator who obtained assurance to meet the financial responsibility requirement and, as indicated above, is to be used in instances where the cost of corrective action exceeds the level of financial responsibility required to be maintained.

In response to the comment that Trust Fund money should not be given to states that do not have approved UST regulatory programs, the Agency wants to emphasize that the negotiation of state cooperative agreements for use of the LUST Trust Fund is proceeding on a path separate from the approval of state programs. However, EPA has decided to make a link between the LUST Trust Fund and UST regulatory program to ensure that future contamination is minimized. After the effective date of today's final rule, a state's success in making reasonable progress toward submitting a completed application for state program approval may be grounds for increasing state access to the Trust Fund in fiscal year 1990 and thereafter.

In response to the commenters urging that the Trust Fund be made directly available to local governments, EPA's cooperative agreement process involves states negotiating arrangements for proper use, recovery, and accounting of Trust Fund money with EPA. The municipalities are not parties to these negotiations and will need to rely on the state to implement a sound and effective program for the use of the Trust Fund for corrective action. The statute does not provide for any direct EPA/municipality arrangement.

Finally, as discussed in Section III.W of this preamble, the Agency has decided to defer promulgation of final procedures for suspension of enforcement. Until such procedures are promulgated, the Agency does not intend to exercise its discretionary suspension of enforcement authority. At that time, the Agency will address the use of LUST Trust Fund monies to respond to releases from tanks whose owner or operator is a member of a class which has been granted a suspension of enforcement.

V. State Program Approval

A. Background

Section 9004 of RCRA allows any state to submit an underground storage tank regulatory program for review and approval by EPA. An EPA-approved state UST regulatory program will operate "in lieu of" the Federal program. The Agency may approve the state program if the state demonstrates that its program (1) imposes requirements that are "no less stringent" than the Federal release detection, prevention, correction, and financial responsibility requirements, and (2) provides for adequate enforcement of compliance with such requirements.

B. Financial Responsibility Objective (§ 281.37)

In its final State Program Approval rule (53 FR 37212, September 23, 1988), EPA promulgated criteria for state program approval in the form of objectives for seven of the technical program elements in the final technical standards rule (53 FR 37082, September 23, 1988): New UST system design, construction, installation and notification; upgrading existing UST systems; general operating requirements; release detection; release reporting and investigation; corrective action; and out-of-service and closed UST systems. The eighth objective for financial responsibility of owners and operators of petroleum UST systems is promulgated in today's rule.

These objectives represent the Agency's expectations of what constitutes a no-less-stringent state program. By requiring the state to achieve the objectives underlying the detailed Federal requirements in each element rather than match each regulatory detail of the Federal requirements, EPA provides a performance-based measure for evaluating programs and recognizes that the precise details in the Federal program are not the only feasible approach to UST regulation. By establishing these objectives, EPA also provides a framework for approval that guarantees that each state UST program provides a minimum level of protection.

An important objective of the Federal program is that owners and operators of UST systems containing petroleum have adequate financial responsibility to undertake corrective action and meet third-party liability claims. The Federal law mandates $1 million per occurrence with appropriate aggregate amounts as the minimum level of assurance needed by most owners and operators of petroleum UST systems to meet cleanup and liability costs. Today's Federal financial responsibility rule allows an exception for certain classes of owners and operators who store small quantities of petroleum for purposes other than selling it as a product. More specifically, owners and operators not engaged in petroleum production, refining, or marketing and who have a throughput of 10,000 gallons or less per month are required to have only $500,000 per occurrence for corrective action and third-party liability claims. In addition, the financial responsibility rule sets the aggregate amounts at $2 million for owners and operators with more than 100 UST systems, and $1 million for those who have 100 or fewer UST systems. Finally, the financial responsibility requirements will be phased-in over a 24-month period from the date of promulgation for different groups of owners and operators. In order to be no less stringent than the Federal requirements for financial responsibility for USTs containing petroleum, the state must have requirements for owners and operators to have financial assurance and for the types of mechanisms used to provide that financial assurance.

The Agency received comments in support of the holistic approach to determining no less stringent state programs, particularly because such an approach would enable a state to trade-off more stringent technical requirements with less stringent financial requirements, for example, lower amounts of financial responsibility. While the Agency understands that states may experience difficulty in obtaining statutory or regulatory authority to require $1 million in coverage, that amount was established by Congress in Subtitle I and EPA believes it does not have the flexibility to lower that level of coverage as part of the Federal program or as part of state program approval.

The first aspect of this objective (§ 281.37(a)) concerns the amount of financial assurance, both per occurrence and in aggregate, that an owner or operator must have. First, the state must have a statute or regulations that require an owner or operator to have at least $1 million or $500,000 per occurrence and $1 million or $2 million in aggregate, depending on the size and type of the operation. This requirement follows directly from the Federal financial responsibility regulations for petroleum-containing UST systems.

The Supplemental Notice published on December 23, 1987 (52 FR 48644) included an objective for financial responsibility; however, aggregate levels were not included in the proposed objective. To remain consistent with the Federal requirements for financial responsibility, the Agency today is promulgating the final objective with a requirement that the owner or operator have financial assurance in appropriate aggregate levels. Addition of the aggregate is necessary to ensure that approved states require an adequate level of coverage. The aggregate level varies depending on the number of tanks owned or operated. Owners and operators with 1 to 100 tanks must have an aggregate level of coverage of $1 million and those with more than 100 tanks must have an aggregate level of coverage of $2 million. The final objective establishes the same levels of coverage. Further discussion on pre-

occurrence and aggregate levels of coverage can be found in today's preamble at Section III.D.

The second aspect of this objective (§ 281.37(b)) concerns the phase-in compliance schedule for owners and operators. The objective proposed on December 23, 1987 (52 FR 48644) did not include a provision for a phase-in schedule. This provision is being added to be consistent with decisions made following the Supplemental Notice to the proposed rule for financial responsibility for petroleum USTs that was published in the Federal Register on March 31, 1988 (53 FR 10401). In today's final financial responsibility rule, EPA has decided to phase-in compliance over 24 months from the date of promulgation at all UST systems following a schedule based on net worth and the number of tanks owned. Although EPA recommends that a similar approach be used by state programs, the Agency has decided to allow flexibility in the objective for states to use other phase-in approaches provided that the schedule is completed in 24 months. Approaches that allow all of the regulated community to wait until the end of the 24-month period would not be accepted as an orderly schedule.

The third aspect of this objective (§ 281.37(c)) concerns the variety of financial mechanisms that may be used by owners and operators to demonstrate adequate financial responsibility. The Federal financial responsibility rule allows a wide variety of mechanisms and combinations of mechanisms to be used. The state may also allow a variety of financial mechanisms to be used. To determine whether state-allowed or required mechanisms are no less stringent than the Federal requirement, general criteria have been established that are applicable to all financial mechanisms. By establishing these criteria in the Federal objective, the Agency believes that it is unnecessary for the state to have detailed requirements for each mechanism affected by these criteria for purposes of state program approval. However, EPA encourages states to adopt the financial responsibility regulation, especially the language of each mechanism, since they have been developed and tested to ensure that adequate financial responsibility will be available when necessary. For example, the state will not be expected to demonstrate that its regulations require a surety company to state in a bond that the bond cannot be cancelled during a 120-day period following notice of cancellation of the bond to the owner or operator. The state must, however, be able to draw on the funds assured by the bond before cancellation occurs. The state regulations must ensure that the time period before the effective cancellation of the bond provides ample opportunity for the state to assess the facility, determine if a release has occurred, and, if needed, draw funds from the instrument. In this way, the Federal objectives for financial responsibility for UST systems containing petroleum are met.

Section 9004(c)(1) of Subtitle I allows states to set up a fund that may be used to meet the no less stringent requirement for financial responsibility. The state may choose to establish a state fund to provide financial assurance for certain classes of owners and operators or for all owners and operators. The general criteria for state funds are represented in the objective (§ 281.37(a) and (c)); these criteria are essentially the same as the requirements for state funds set out in the Federal financial responsibility rule in § 280.100. Further discussion on state funds and their use in providing financial assurance will be available in guidance due to be issued this fall by EPA. A briefer discussion can also be found in EPA's *State Program Approval Handbook.*

Some commenters expressed concern that the requirement that states have a financial responsibility program that is no less stringent than the Federal program in order to receive state program approval will delay approval of state programs. The commenters stated that complex financial responsibility requirements could discourage states from submitting UST programs for approval. They urged that EPA promulgate a simple financial responsibility framework and provide guidance to the states.

As explained above, the requirement that an approved state program contain financial responsibility requirements that are no less stringent than those under the Federal program is required by RCRA Section 9004. However, EPA has developed an approach to state program approval that provides states as much latitude as possible consistent with the statute in adopting approaches to fulfill the requirement. The Agency recognizes the difficulties for states in developing financial responsibility programs and is preparing detailed guidance and outreach assistance to states to help them develop their programs.

A more complete analysis of issues regarding state program approval is presented in the preamble to that rule (53 FR 37212, September 23, 1988).

VI. Compliance Monitoring and Enforcement

Although not raised as an issue in the proposal, implications of the proposed rules for compliance monitoring and enforcement activities received considerable comment. Many of the comments were submitted by states.

In general, the comments note that performing compliance monitoring and enforcement for financial responsibility rules will place a heavy resource burden on the states. Moreover, some states are currently understaffed while others apparently have little experience with the options for demonstrating financial responsibility and would have difficulty evaluating them. Also, the proposed requirement for maintaining financial responsibility for one year after tank closure would be difficult to enforce, especially if the business is sold, closes, or goes bankrupt.

Some states noted that, if the states will be responsible for implementation of the financial responsibility program and will not be provided funding, then EPA should not have a strong oversight role or stringent requirements for state program approval. Another state commenter reads the proposed section on reporting, which requires owners or operators to send evidence of financial responsibility to the Regional Administrator, to mean that EPA will administer the entire financial responsibility program.

A number of non-governmental commenters also noted the enormous burden that ensuring compliance for such a large universe would entail, with some offering approaches to enhance compliance and enforcement. One approach suggested by several commenters is that EPA collect evidence of financial responsibility from all owners or operators through periodic reporting; for example, using the Tank Notification Program to provide the basis for annual notification of compliance with financial responsibility requirements. Other commenters suggested that proof of financial responsibility be made a condition to obtain an annual operating permit. Another suggested that enforcement would be enhanced if the scope of these complicated rules could be clarified using the following techniques: (1) Workshops, (2) fact sheets, (3) more detailed summaries, and (4) condensed versions of the regulations.

Virtually all of the comments evidence both justifiable concern that performing compliance monitoring and enforcement for such an enormous regulated community presents a formidable

challenge and considerable confusion about EPA's program for dealing with this challenge. The Agency believes that UST requirements can best be implemented if the program is delegated to the states and localities. In a companion rule to the financial responsibility rules, EPA has set forth the requirements and approval procedures for state UST programs (53 FR 37212, September 23, 1988). States with approved programs will have primary enforcement responsibility for their own UST programs. Under this rule, EPA has provided states as much flexibility as possible to develop their own approach to UST regulation and implementation consistent with statutory requirements.

Thus, in response to state concerns, the Agency will be allowing each state seeking program approval considerable latitude in establishing the details of an enforcement program. Although Federal law mandates certain elements of the financial responsibility requirements (e.g., the one million dollar minimum level of assurance), the Federal program not only allows a wide variety of mechanisms, but allows the states to develop their own financial mechanisms (e.g., state funds) to meet these requirements. In short, contrary to the concerns expressed in the comments, EPA intends that, over time, states will assume primary responsibility for the UST program and will also have considerable ability to tailor their programs to each state's experiences and resources.

States could adopt more stringent provisions, such as reporting requirements, than are established in the Federal requirements, or they could adopt any of the mechanisms for assuring compliance that have been submitted in comments. Although EPA believes that the event-based reporting requirements finalized today are sufficient to ensure compliance by the regulated community and to provide timely information to the implementing agency for compliance monitoring, states can and, in many instances, have imposed annual notification requirements on owners or operators.

In addition to assisting the states seeking approval with the development of their programs, EPA will be providing the regulated community with extensive compliance outreach materials, which should include materials targeted to the needs of the large and diverse UST population. A secondary benefit of compliance outreach should be a higher degree of awareness of these regulations and a greater level of voluntary compliance, thus easing the enforcement burden on the states.

VII. Economic and Regulatory Impacts

A. Regulatory Impact Analysis

1. Compliance with Executive Order 12291

Sections 2 and 3 of Executive Order 12291 (46 FR 131393, February 19, 1981) require that a regulatory agency determine whether a new regulation will be "major" and, if so, that a regulatory impact analysis (RIA) be conducted. A major rule is defined as one that is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has conducted an RIA of the Subtitle I financial responsibility requirements for petroleum-containing underground storage tanks. Based on this analysis, the Agency has concluded that this regulation may have annual costs of greater than $100 million. Therefore, the regulation promulgated today is a major rule, as defined by E.O. 12291. The following six sections summarize the results of the RIA: Section 2 describes the integration of the technical standards and financial responsibility RIAs; section 3 describes the regulated community affected by this regulation; section 4 presents some of the methods and assumptions used to produce the financial responsibility RIA; section 5 presents EPA's estimates of the present value of real resource costs; section 6 discusses the regulation's economic impacts; and section 7 describes its potential benefits.

2. Integration of the Financial Responsibility and Technical Standards Regulatory Impact Analyses

Under section 9003 of Subtitle I of RCRA, the Administrator of EPA is required to promulgate both technical and financial responsibility requirements for USTs. The RIA described here presents the costs, economic impacts, and benefits associated with the UST financial responsibility requirements. A separate RIA assesses the costs, economic impacts, and benefits of the technical standards (53 FR 37212, September 23, 1988).

The results of the RIA for the financial responsibility regulation are presented both in terms of the incremental costs and economic impacts of the financial responsibility requirements (the additional costs and impacts that owners or operators complying with the technical standards will absorb to comply with the financial responsibility requirements) and in terms of the total costs and economic impacts associated with the imposition of the technical standards and the financial responsibility requirements. (The benefits of the technical standards and the financial responsibility requirements were not integrated because these two regulations have different types of benefits that are not additive.)

Methodology—There are two important differences between the regulated community for the technical standards rules and that for the financial responsibility requirements. First, the technical standards apply to petroleum-containing and hazardous-substance-containing USTs. The financial responsibility requirements only apply to petroleum-containing USTs. Owners or operators of hazardous-substance-containing USTs are not yet required to demonstrate evidence of financial responsibility. Second, all owners or operators of USTs falling within the scope of the technical standards rule will incur costs to comply with the technical standards. States and the Federal government, however, will not incur costs to comply with the financial responsibility requirements, because they are not required to *demonstrate* evidence of financial responsibility for their USTs. Therefore, the regulatory impact analysis for the financial responsibility requirements applies to a smaller universe of USTs (approximately 1.5 million) than does the regulatory impact analysis for the technical standards (approximately 1.7 million). The combined costs and economic impacts of both rules apply to the entire universe of 1.7 million USTs.

The technical standards will require firms to improve their methods of leak detection within 2 to 5 years after these rules are promulgated; in addition, firms are allowed up to 10 years to replace or upgrade their UST systems to meet UST system performance requirements. To comply with the financial responsibility requirements, many firms will similarly have to improve their methods of leak detection and replace or upgrade UST system components, although within a faster timeframe. This is because, to demonstrate evidence of financial responsibility, many firms that cannot self-insure and that do not currently have insurance will have to attempt to get insurance within two years of the

financial responsibility rule's effective date. Insurers will generally require upgrading of UST systems as a prerequisite to coverage.

For the financial responsibility RIA, EPA assumed that insurers would require that:

- Tanks be less than 15 years old or retrofitted to meet new tank performance standards; and
- Leak detection measures taken by tank owners or operators be at least as stringent as those required by the technical standards.

To avoid double-counting leak detection and tank upgrading costs, the combined costs of the technical standards and the financial responsibility requirements are estimated by attributing to the financial responsibility requirements the *difference* between the present value of the costs of meeting insurers' criteria and the present value of the costs of meeting the technical standards. The only other cost elements added by the financial responsibility requirements to the total costs of both rules are the costs of procuring and maintaining financial assurance mechanisms.

The financial responsibility RIA compares the economic impacts of the technical standards alone to the combined economic impacts of the technical standards and the financial responsibility requirements. While the combined impacts of both requirements are, in all cases, more severe than the impacts of the technical standards alone, in individual cases, the financial responsibility requirements actually help to mitigate the economic impacts of the technical standards. Quicker detection of UST releases and the availability of insurance to pay UST corrective action costs will lessen, for some firms, the economic impacts of having to comply with corrective action requirements.

3. The Regulated Community

This regulation is estimated to apply to 1.5 million underground storage tanks (USTs) containing petroleum located at 468,000 separate facilities. For the purpose of this analysis, the regulated community was divided into four major sectors: Retail motor fuel marketing, agriculture, local government entities, and general industry. Retail motor fuel marketing is the largest single affected sector and includes 193,000 retail motor fuel outlets owned by approximately 90,000 firms. This sector has been further subdivided into three segments: Refiners, multi-outlet retail chains, and open dealers (defined as firms owning and operating a single retail motor fuel outlet). The agricultural sector includes all farms owning USTs with capacities of more than 1,100 gallons; approximately 46,000 USTs located at 30,500 farms meet this definition. Local government entities own approximately 62,000 USTs at 29,000 facilities. For the purposes of this analysis, the general industry sector includes all other sectors (i.e., sectors other than retail motor fuel marketing, government, and agriculture) where USTs are located. Firms in the general industry sector range from large manufacturing concerns to small retail operations. USTs in this sector usually are used to provide motor fuel for fleets of vehicles (e.g., at trucking firms and automobile rental agencies) or to provide convenient access to motor fuel for off-the-road vehicles (e.g., construction equipment). The general industry sector is estimated to contain 642,000 USTs at 192,000 facilities owned by approximately 137,000 firms.

4. Assumptions and Methodology Used in the RIA

Following are the key assumptions used to estimate the costs and other impacts of this regulations:

- The costs and economic impacts of the technical standards are the baseline from which the costs and economic impacts of the financial responsibility requirements will be measured.
- Owners, rather than operators, satisfy and pay the costs of financial responsibility requirements, except when the owner is a private individual and the operator is a business corporation.
- All owners who qualify for self-insurance use this mechanism to satisfy their financial responsibility requirements and incur real resource costs for developing and maintaining the required records and reports.
- All firms or local governments currently insured for corrective action and compensation of third-parties will maintain their insurance to comply with this regulation.
- Firms or local governments that are not currently insured and that cannot use the financial test of self-insurance will attempt to obtain insurance (rather than other financial assurance mechanisms) to comply with this regulation.
- Insurance will only be available to firms or local governments meeting insurers' criteria for insurability. The RIA presents regulatory costs assuming that all firms and local governments that do not currently have insurance or pass the financial test are able to get insurance by meeting insurers' criteria for insurability (i.e., upgrading or replacing tanks greater than 15 years old and instituting suitable leak detection measures). Using this assumption results in higher costs than assuming that firms and local governments that do not currently have insurance or meet the financial test cannot get insurance. Obtaining a suspension of enforcement should be less expensive than meeting insurers' eligibility requirements within 2 years and paying insurance premiums thereafter.
- Insurance premium costs are estimated by assuming that premiums will be double the expected value of corrective action and third-party liability costs for the USTs covered. The expected value of costs of corrective action and third-party liability are based on the UST model developed for the technical standards RIA.

5. Annual Real Resource Costs

There are three main cost elements in the combined total costs of the financial responsibility and technical standards requirements: Costs related to the tank replacement and upgrading and to leak detection; costs related to performing corrective action; and the costs of procuring financial assurance mechanisms. The costs of procuring financial assurance mechanisms do not include the costs related to performing corrective action because these costs are accounted for separately. They also do not include the costs of satisfying third-party liability awards because such costs would be incurred even if the technical standards and the financial responsibility requirements were not promulgated. The cost of insurance, for example, does not include that portion of insurance premiums used to pay the costs of corrective action and third-party liability awards. It does include the cost of insurers' profits, administraive costs, and sales costs.

These costs (the *real resource costs* of insurance) are equal to approximately 40 percent of the total insurance premium cost.

The present value of the combined real resource costs of the technical standards and the financial responsibility requirements over 30 years is $70.28 billion. $38.83 billion of these costs represent the costs of tank replacement, tank upgrading, and leak detection. $29.49 billion of these costs represent the costs of performing corrective action. $1.96 billion of these costs represent the real resource costs of financial assurance mechanisms. A portion of these costs (e.g., the costs of tank upgrading and replacement, and the costs of procuring insurance) would be incurred even if the technical standards and financial responsibility requirements were not promulgated. The present value of the total incremental costs of both rules (the costs of the technical standards and the financial responsibility requirements attributable to the promulgation of these rules) is $49.63 billion. $18.50 billion of these costs are attributable to tank replacement, tank upgrading, and leak detection; $29.49 billion are attributable

to corrective action; and $1.64 billion are attributable to procuring financial assurance mechanisms.

The incremental costs of complying with the financial responsibility requirements represent a minor portion of the combined incremental costs of the technical standards and financial responsibility rules. The incremental costs of the financial responsibility requirements alone are $701 million. These incremental costs include $1.55 billion for accelerated tank replacement, tank upgrading, and leak detection (to meet insurers' criteria for insurance); $1.64 billion for financial assurance mechanisms (for firms that do not currently have them); and a $2.49 billion *cost savings* in the cost of corrective action. This savings results from the earlier application of improved leak detection, and earlier tank upgrading than would be required if only the technical standards were promulgated.

6. Economic Impacts

The economic impacts of the regulations are assessed for all firms in the retail motor fuel marketing sector, except refiners, and for firms in the general industry sector for which the expected annual insurance premium costs are more than 10 percent of the before-tax-profits.

In the retail motor fuel marketing sector, economic impacts are measured in terms of the percentage of existing outlets surviving 5, 10, and 15 years after the imposition of regulations. Through year 5, 57 percent of existing small-firm-owned outlets would survive if only the technical requirements were imposed. (Small firms are defined as firms with less than $4.6 million in annual sales. This corresponds to the Small Business Administration's definition of small firms in this sector.) Assuming the imposition of technical and financial responsibility requirements, 55 percent of existing outlets survive, if all small firms obtain insurance. By year 15, 34 percent of outlets would survive the imposition of technical requirements and 47 percent would survive the imposition of both technical and financial responsibility requirements, if all small firms obtain insurance. Thus, by year 15, the imposition of the financial responsibility requirements has a beneficial impact on the survival of small-firm-owners and operators.

Small-firm-owned outlets that do not have existing releases and that can afford improved leak detection and tank upgrading or replacement costs are better able to survive with insurance than without it. Those small-firm-owned outlets with existing releases and outlets owned by financially-marginal small firms will exit the industy more quickly with the imposition of the financial responsibility requirements than with the imposition of the technical standards alone.

The technical standards RIA does not account for the fact that many large firms in the retail motor fuel marketing sector have insurance which can mitigate the economic impacts of having to perform corrective action. It thus presents a worst case economic impact scenario. The technical standards RIA estimates that 73 percent of existing retail motor fuel marketing outlets owned by large firms (other than refiners) would survive through year 5. The financial responsibility RIA, which accounts for the fact that many of these firms have insurance, estimates that 83 percent of large-firm-owned outlets survive through year 5. By year 15, only 50 percent of large-firm-owned outlets would survive the imposition of the technical standards if they did not have insurance. When insurance is considered, 78 percent of large-firm-owned outlets survive through year 15.

In the general industry sector, EPA examined financial data for firms in 65 four-digit SIC code categories that contain firms that own USTs. In only 4 of these SIC code categories would the value of premiums exceed 10 percent of the before-tax profits of average firms in those categories having less than $1 million in assets, and the impact of these premium costs on the pre-tax returns on assets for these firms ranged between 0.1 and 0.9 percent. Most firms in these SIC code categories do not use USTs, and it is impossible that, if the costs of today's regulation imposed severe impacts on those firms in those sectors that do use them, they could avoid these costs by closing their UST facilities.

7. Benefits

Today's rule is associated with a variety of potential economic benefits that are discussed in qualitative terms in the RIA. Potential economic benefits from the financial responsibility requirements can be placed in three categories:

- Resource allocation;
- Willingness to pay for distributional goals; and
- Reductions in cleanup costs, environmental and health damage, UST releases, and business disruptions.

If the financial responsibility requirements induce firms to consider the full costs of UST releases as part of their real production costs (i.e., cost internalization), the result may be an improvement in the allocative efficiency of UST users. Since allocative efficiency improvements result in improvements for the population in the aggregate, the population can be expected to be willing to pay for this improvement. Similarly, the population also could be willing to pay for progress toward distributional goals (i.e., be willing to incur some cost to ensure that the UST owners and operators and the consumers of goods whose production involves the use of USTs and who benefit from the use of the USTs also bear the costs of that activity).

Small firms that use insurance to meet their financial responsibility requirements may be more inclined to report releases from their USTs promptly, whereas firms without insurance may be reluctant to report releases out of a fear that the costs associated with the release could force the firms out of business. In addition, firms having to obtain insurance will have to meet insurers' eligibility requirements (e.g., improved leak detection and tank upgrading), thus reducing the likelihood of releases.

As reported above, meeting insurers' eligibility criteria is estimated to save $2.49 billion in corrective action costs over 30 years. Over the long term, the imposition of the financial responsibility requirements also reduces the economic disruptions caused by the bankruptcy of firms unable to meet the costs of performing corrective action or satisfying third-party liability awards. After 15 years, the number of surviving outlets is 14 percentage points higher if financial responsibility requirements are imposed.

The RIA also estimates the quantitative benefits of the financial responsibility rule. It provides a comparison of the value of unfunded financial responsibility obligations that would occur if the technical standards alone were implemented, to the value of unfunded financial responsibility obligations if all businesses in the retail motor fuel marketing sector meet financial responsibility requirements using insurance or the financial test. In making this comparison, the RIA finds that the promulgation of the financial responsibility, in addition to the technical, standards saves $391 million, or $494 per UST, over a 30-year period.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small

entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA has conducted an analysis of the impacts of this regulation on small businesses as part of its regulatory impact analysis (RIA) and has concluded that this regulation may have a significant economic impact on some small businesses. EPA examined the economic impacts of financial responsibility requirements on the small business segments of the retail motor fuel marketing industry and on the general industry sectors for which expected annual insurance premium costs are more than 10 percent of before-tax profits.

In the retail motor fuel marketing sector, economic impacts are measured in terms of the percentage of existing outlets surviving 5, 10, and 15 years after the imposition of regulations. Through year 5, 57 percent of existing small-firm-owned outlets would survive if only the technical requirements were imposed. Assuming the imposition of technical and financial responsibility requirements, 55 percent of existing outlets survive, if all small firms can obtain insurance. By year 15, 34 percent of outlets would survive the imposition of technical requirements and 47 percent would survive the imposition of both technical and financial responsibility requirements, if all small firms can obtain insurance. Thus, by year 15, the imposition of the financial responsibility requirements has a beneficial impact on the survival of small-firm-owned outlets.

In the general industry sector, EPA found that the costs of insurance premiums represent 10 percent or more of the before-tax profits of firms that have less than $1 million in assets in 4 of the 65 four-digit SIC codes examined. The impact of these premium costs on the pre-tax returns on assets for these firms ranged between 0.1 and 0.9 percent.

The RIA does not examine the possibility that all corrective action costs and third-party liability awards might be paid by state funds financed by taxes on gasoline. Such funds would minimize economic impacts on small businesses and transfer the costs of these financial responsibility requirements to the consumers of motor fuel.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2050–0066. The reporting and recordkeeping burden on the public for this collection is estimated at 65,707 hours for the 265,534 respondents, with an average of 0.1 hours per response. These burden estimates include all aspects of the collection effort and may include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, etc.

If you wish to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, or if you would like a copy of the information collection request (please reference ICR #1359), contact Rick Westland, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 (202–382–2745); and Marcus Peacock, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 40 CFR Parts 280 and 281

Administrative practice and procedure, Environmental protection, Hazardous materials insurance, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control.

Lee M. Thomas,

Administrator.

Dated: October 14, 1988.

For the reasons set out in the preamble, Parts 280 and 281 of Title 40 of the Code of Federal Regulations are amended as follows:

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

1. The authority citation for Part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), and 6991(h).

2. Appendices I through III following Subpart G are designated as Appendices I through III to Part 280.

3. 40 CFR Part 280 is amended to add a new Subpart H as follows:

* * * * *

Subpart H—Financial Responsibility

Sec.

* * * * *

Subpart H—Financial Responsibility

§ 280.90 Applicability.

(a) This subpart applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this section.

(b) Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the date for compliance established in § 280.91.

(c) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subpart.

(d) The requirements of this subpart do not apply to owners and operators of any UST system described in § 280.10 (b) or (c).

(e) If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in § 280.91.

§ 280.91 Compliance dates.

Owners of petroleum underground storage tanks are required to comply with the requirements of this subpart by the following dates:

(a) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of $20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration; January 24, 1989.

(b) All petroleum marketing firms owning 100–999 USTs; October 26, 1989.

(c) All petroleum marketing firms owning 13–99 USTs at more than one facility; April 26, 1990.

(d) All petroleum UST owners not described in paragraphs (a), (b), or (c) of this section, including all local government entities; October 26, 1990.

§ 280.92 Definition of terms.

When used in this subpart, the following terms shall have the meanings given below:

(a) "Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

(b) "Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(c) "Controlling interest" means direct ownership of at least 50 percent of the voting stock of another entity.

(d) "Director of the Implementing Agency" means the EPA Regional Administrator, or, in the case of a state with a program approved under section 9004, the Director of the designated state or local agency responsible for carrying out an approved UST program.

(e) "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

(1) a 10–K report submitted to the SEC;

(2) an annual report of tangible net worth submitted to Dun and Bradstreet; or

(3) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

(f) "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought,

(1) By EPA or a state to require corrective action or to recover the costs of corrective action;

(2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(3) By any person to enforce the terms of a financial assurance mechanism.

(g) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

Note: This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

(h) "Owner or operator," when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

(i) "Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(j) "Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(k) "Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

(l) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in §§ 280.95–280.103, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

(m) "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

(n) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

§ 280.93 Amount and scope of required financial responsibility.

(a) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

(1) For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; $1 million.

(2) For all other owners or operators of petroleum underground storage tanks; $500,000.

(b) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

(1) For owners or operators of 1 to 100 petroleum underground storage tanks, $1 million; and

(2) For owners or operators of 101 or more petroleum underground storage tanks, $2 million.

(c) For the purposes of paragraphs (b) and (f) of this section, only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in paragraph (e) of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(1) Taking corrective action;

(2) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

(3) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in paragraphs (a) and (b) of this section.

(e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least $2 million of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least $2 million of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(g) The amounts of assurance required under this section exclude legal defense costs.

(h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

§ 280.94 Allowable mechanisms and combinations of mechanisms.

(a) Subject to the limitations of paragraphs (b) and (c) of this section, an owner or operator may use any one or combination of the mechanisms listed in §§ 280.95 through 280.103 to demonstrate financial responsibility under this subpart for one or more underground storage tanks.

(b) An owner or operator may use a guarantee or surety bond to establish financial responsibility only if the Attorney(s) General of the state(s) in which the underground storage tanks are located has (have) submitted a written statement to the implementing agency that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in that state.

(c) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

§ 280.95 Financial test of self-insurance.

(a) An owner or operator, and/or guarantor, may satisfy the requirements of § 280.93 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of paragraph (b) or (c) of this section based on year-end financial statements for the latest completed fiscal year.

(b)(1) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(i) The total of the applicable aggregate amount required by § 280.93, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to EPA under this section or to a state implementing agency under a state program approved by EPA under 40 CFR Part 281;

(ii) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 264.101, 264.143, 264.145, 265.143, 165.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and

(iii) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.

(2) The owner or operator, and/or guarantor, must have a tangible net worth of at least $10 million.

(3) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in paragraph (d) of this section.

(4) The owner or operator, and/or guarantor, must either:

(i) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(ii) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

(5) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(c)(1) The owner or operator, and/or guarantor must meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in § 280.93 (b)(1) and (b)(2) for the "amount of liability coverage" each time specified in that section.

(2) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(3) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(4) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in paragraph (d) of this section.

(5) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(i) He has compared the data that the letter form the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and

(ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(d) To demonstrate that it meets the financial test under paragraph (b) or (c) of this section, the chief financial officer of the owner or operator, or guarantor, must sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to

support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "suddent accidential releases" and/or "nonsudden accidential releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [an] underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test or a financial test under an authorized State program by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or a financial test under a State program approved under 40 CFR Part 281. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test or a financial test under a State program authorized under 40 CFR Part 281 by the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22 or the corresponding State requirements.]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulations	*Amount*
Closure (§§ 264.143 and 265.143)	$
Post-Closure Care (§§ 264.145 and 265.145)	$
Liability Coverage (§§ 264.147 and 265.147)	$
Corrective Action (§§ 264.101(b))	$
Plugging and Abandonment (§ 144.63)	$
Closure	$
Post-Closure Care	$
Liabilitly Coverage	$
Corrective Action	$
Plugging and Abandonment	$
Total	$

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of paragraph (b) of § 280.95 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of paragraph (c) of § 280.95 are being used to demonstrate compliance with the financial test requirements.]

Alternative I

1.	Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee	$
2.	Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	$
3.	Sum of lines 1 and 2	$
4.	Total tangible assets	$
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	$
6.	Tangible net worth [subtract line 5 from line 4]	$
		Yes / No
7.	Is line 6 at least $10 million?	___ / ___
8.	Is line 6 at least 10 times line 3?	___ / ___
9.	Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission?	___ / ___
10.	Have financial statements for the latest fiscal year been filed with the Energy Information Administration?	___ / ___
11.	Have financial statements for the lastest fiscal year been filed with the Rural Electrification Administration?	___ / ___
12.	Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.]	___ / ___

Alternative II

1.	Amount of annual UST aggregate coverage being assured by a test, and/or guarantee	$
2.	Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	$
3.	Sum of lines 1 and 2	$
4.	Total tangible assets	$
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	$
6.	Tangible net worth [subtract line 5 from line 4]	$

Alternative I—Continued

7.	Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.]	$
		Yes / No
8.	Is line 6 at least $10 million?	$ ___ / ___
9.	Is line 6 at least 6 times line 3?	___ / ___
10.	Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11.]	___ / ___
11.	Is line 7 at least 6 times line 3?	___ / ___
	[Fill in either lines 12–15 or lines 16–18:]	
12.	Current assets	$
13.	Current liabilities	
14.	Net working capital [subtract line 13 from line 12]	
		Yes / No
15.	Is line 14 at least 6 times line 3?	___ / ___
16.	Current bond rating of most recent bond issue	___ / ___
17.	Name of rating service	___ / ___
18.	Date of maturity of bond	___ / ___
19.	Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration?	___ / ___

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4–18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR Part 280.95(d) as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(e) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(f) The Director of the implementing agency may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the Director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of § 280.95(b) or (c) and (d), the owner or operator must obtain

alternate coverage within 30 days after notification of such a finding.

(g) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Director of the implementing agency that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Director of such failure within 10 days.

§ 280.96 Guarantee.

(a) An owner or operator may satisfy the requirements of § 280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

(1) A firm that (i) possesses a controlling interest in the owner or operator; (ii) possesses a controlling interest in a firm described under paragraph (a)(1)(i) of this section; or, (iii) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or,

(2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(b) Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of § 280.95 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in § 280.95(d) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the Director of the implementing agency notifies the guarantor that he no longer meets the requirements of the financial test of § 280.95 (b) or (c) and (d), the guarantor must notify the owner or operator within 10 days of receiving such notification from the Director. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in § 280.110(c).

(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of 40 CFR 280.95 (b) or (c) and (d) and agrees to comply with the requirements for guarantors as specified in 40 CFR 280.96(b).

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR Part 280, Subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to [implementing agency] and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the [Director], shall fund a standby trust fund in accordance with the provisions of 40 CFR 280.108, in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR Part 280, Subpart F, the guarantor upon written instructions from the [Director] shall fund a standby trust in accordance with the provisions of 40 CFR 280.108, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidential releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall fund a standby trust in accordance with the provisions of 40 CFR 280.108 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 40 CFR 280.95 (b) or (c) and (d), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR Part 280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR Part 280, Subpart H for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated

to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 280.96(c) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

(d) An owner or operator who uses a guarantee to satisfy the requirements of § 280.93 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Director of the implementing agency under § 280.108. This standby trust fund must meet the requirements specified in § 280.103.

§ 280.97 Insurance and risk retention group coverage.

(a) An owner or operator may satisfy the requirements of § 290.93 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in paragraph (b)(1) of this section, or evidenced by a certificate of insurance worded as specified in paragraph (b)(2) of this section, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) Endorsement

Name: [name of each covered location] _____

Address: [address of each covered location] _____

Policy Number: _____

Period of Coverage: [current policy period] _____

Name of [Insurer or Risk Retention Group]: _____

Address of [Insurer or Risk Retention Group]: _____

Name of Insured: _____

Address of Insured: _____

_____

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95–280.102.

c. Whenever requested by [a Director of an implementing agency], the ["Insurer" or "Group"] agrees to furnish to [the Director] a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in 40 CFR 280.97(b)(1) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(2) Certificate of Insurance

Name: [name of each covered location] _____

Address: [address of each covered location] _____

Policy Number: _____

Endorsement (if applicable): _____

Period of Coverage: [current policy period] _____

Name of [Insurer or Risk Retention Group]: _____

Address of [Insurer or Risk Retention Group]: _____

Name of Insured: _____

Address of Insured: _____

_____

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations,

indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95–280.102.

c. Whenever requested by [a Director of an implementing agency], the ["Insurer" or "Group"] agrees to furnish to [the Director] a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or other termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in 40 CFR 280.97(b)(2) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of authorized representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

(c) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

§ 280.98 Surety bond.

(a) An owner or operator may satisfy the requirements of § 280.93 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

Performance Bond

Date bond executed: _____
Period of coverage: _____
Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable):

Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:
Per occurrence $ _____
Annual aggregate $ _____
Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to [the implementing agency], in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with 40 CFR Part 280, Subpart F and the Director of the state implementing agency's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) indentified above, or if the Principal shall provide alternate financial assurance, as specified in 40 CFR Part 280, Subpart H, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by [the Director of the implementing agency] that the Principal has failed to ["take corrective action, in accordance with 40 CFR Part 280, Subpart F and the Director's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with 40 CFR Part 280 and the Director's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by [the Regional Administrator or the Director] under 40 CFR 280.108.

Upon notification by [the Director] that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that [the Director] has determined or suspects that

a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by [the Director] under 40 CFR 280.108.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 280.98(b) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]
[Names(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and address]
[State of Incorporation: _____
[Liability limit: $_____
[Signature(s)]
[Names(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $_____

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of § 280.93 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Director under § 280.108. This standby trust fund must meet the requirements specified in § 280.103.

§ 280.99 Letter of credit.

(a) An owner or operator may satisfy the requirements of § 280.93 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

[Name and address of issuing institution]
[Name and address of Director(s) of state implementing agency(ies)]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. —— in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars ($[insert dollar amount]), available upon presentation [insert, if more than one Director of a state implementing agency is a beneficiary, "by any one of you"] of

(1) your sight draft, bearing reference to this letter of credit, No. ——, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable persuant to regulations issued under authority of Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] $[insert dollar amount] per occurrence and [in words] $[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the curent expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 280.99(b) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of § 280.93 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Director of the implementing agency will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director under § 280.108. This standby trust fund must meet the requirements specified in § 280.103.

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit

must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

§ 280.100 Use of state-required mechanism.

(a) For underground storage tanks located in a state that does not have an approved program, and where the state requires owners or operators of underground storage tanks to demonstrate financial responsibility for taking corrective action and/or for compensating third parties for bodily injury and property damage, an owner or operator may use a state-required financial mechanism to meet the requirements of § 280.93 if the Regional Administrator determines that the state mechanism is at least equivalent to the financial mechanisms specified in this subpart.

(b) The Regional Administrator will evaluate the equivalency of a state-required mechanism principally in terms of: certainty of the availability of funds for taking corrective action and/or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The Regional Administrator may also consider other factors as is necessary.

(c) The state, an owner or operator, or any other interested party may submit to the Regional Administrator a written petition requesting that one or more of the state-required mechanisms be considered acceptable for meeting the requirements of § 280.93. The submission must include copies of the appropriate state statutory and regulatory requirements and must show the amount of funds for corrective action and/or for compensating third parties assured by the mechanism(s). The Regional Administrator may require the petition to submit additional information as is deemed necessary to make this determination.

(d) Any petition under this section may be submitted on behalf of all of the state's underground storage tank owners and operators.

(e) The Regional Administrator will notify the petitioner of his determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this subpart. Pending this determination, the owners and operators using such mechanisms will be deemed to be in compliance with the requirements of § 280.93 for underground storage tanks located in the state for the amounts and types of costs covered by such mechanisms.

§ 280.101 State fund or other state assurance.

(a) An owner or operator may satisfy the requirements of § 280.93 for underground storage tanks located in a state, where EPA is administering the requirements of this subpart, which assures that monies will be available from a state fund or state assurance program to cover costs up to the limits specified in § 280.93 or otherwise assures that such costs will be paid if the Regional Administrator determines that the state's assurance is at least equivalent to the financial mechanisms specified in this subpart.

(b) The Regional Administrator will evaluate the equivalency of a state fund or other state assurance principally in terms of: Certainty of the availability of funds for taking corrective action and/or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The Regional Administrator may also consider other factors as is necessary.

(c) The state must submit to the Regional Administrator a description of the state fund or other state assurance to be supplied as financial assurance, along with a list of the classes of underground storage tanks to which the funds may be applied. The Regional Administrator may require the state to submit additional information as is deemed necessary to make a determination regarding the acceptability of the state fund or other state assurance. Pending the determination by the Regional Administrator, the owner or operator of a covered class of USTs will be deemed to be in compliance with the requirements of § 280.93 for the amounts and types of costs covered by the state fund or other state assurance.

(d) The Regional Administrator will notify the state of his determination regarding the acceptability of the state's fund or other assurance in lieu of financial mechanisms specified in this subpart. Within 60 days after the Regional Administrator notifies a state that a state fund or other state assurance is acceptable, the state must provide to each owner or operator for which it is assuming financial responsibility a letter or certificate describing the nature of the state's assumption of responsibility. The letter or certificate from the state must include, or have attached to it, the following information: the facility's name and address and the amount of funds for corrective action and/or for compensating third parties that is assured by the state. The owner or operator must maintain this letter or certificate on file as proof of financial responsibility in accordance with § 280.107(b)(5).

§ 280.102 Trust fund.

(a) An owner or operator may satisfy the requirements of § 280.93 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(b) The wording of the trust agreement must be identical to the wording specified in § 280.103(b)(1), and must be accompanied by a formal certification of acknowledgement as specified in § 280.103(b)(2).

(c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the Director of the implementing agency for release of the excess.

(e) If other financial assurance as specified in this subpart is substituted for all or part of the trust fund, the owner or operator may submit a written request to the Director of the implementing agency for release of the excess.

(f) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraph (d) or (e) of this section, the Director of the implementing agency will instruct the trustee to release to the owner or operator such funds as the Director specifies in writing.

§ 280.103 Standby trust fund.

(a) An owner or operator using any one of the mechanisms authorized by §§ 280.96, 280.98, or 280.99 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal agency or an agency of the state in which the fund is established.

(b)(1) The standby trust agreement must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of _____" or "a national bank"], the "Trustee."

[Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank (This paragraph is only applicable to the standby trust agreement.)];

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.)];

[Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions

As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of [implementing agency]. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to [the Director of the implementing agency's] instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by [the state implementing agency].

Section 4. Payment for ["Corrective Action" and/or Third-Party Liability Claims"].

The Trustee shall make payments from the Fund as [the Director of the implementing agency] shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

The Trustee shall reimburse the Grantor, or other persons as specified by [the Director], from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as [the Director] shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as [the Director] specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with

certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by [the Director of the implementing agency] to the Trustee shall be in writing, signed by [the Director], and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or [the director] hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or [the Director], except as provided for herein.

Section 14. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and [the Director of the implementing agency] if the Grantor ceases to exist.

Section 15. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and [the Director of the implementing agency], if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or [the Director of the implementing agency] issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the state of [insert name of state], or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 280.103(b)(1) as such regulations were constituted on the date written above.

[Signature of Grantor]
[Name of the Grantor]
[Title]

Attest:

[Signature of Trustee]
[Name of the Trustee]
[Title]
[Seal]
[Signature of Witness]
[Name of the Witness]
[Title]
[Seal]

(2) The standby trust agreement must be accompanied by a formal certification of acknowledgment similar to the following. State requirements may differ on the proper content of this acknowledgment.

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]
[Name of Notary Public]

(c) The Director of the implementing agency will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(d) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

§ 280.104 Substitution of financial assurance mechanisms by owner or operator.

(a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subpart, provided that at all times he maintains an effective financial assurance mechanism or combination of

mechanisms that satisfies the requirements of § 280.93.

(b) After obtaining alternate financial assurance as specified in this subpart, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

§ 280.105 Cancellation or nonrenewal by a provider of financial assurance.

(a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(1) Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance, risk retention group coverage, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in §280.106, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the Director of the implementing agency of such failure and submit:

(1) The name and address of the provider of financial assurance;

(2) The effective date of termination; and

(3) The evidence of the financial assistance mechanism subject to the termination maintained in accordance with § 280.107(b).

§ 280.106 Reporting by owner or operator.

(a) An owner or operator must submit the appropriate forms listed in § 280.107(b) documenting current evidence of financial responsibility to the Director of the implementing agency:

(1) Within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under § 280.53 or § 280.61;

(2) If the owner or operator fails to obtain alternate coverage as required by this subpart, within 30 days after the owner or operator receives notice of:

(i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bakruptcy), U.S. Code, naming a provider of financial assurance as a debtor,

(ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(iii) Failure of a guarantor to meet the requirements of the financial test,

(iv) Other incapacity of a provider of financial assurance; or

(3) As required by § 280.95(g) and § 280.105(b).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this part as specified in the new tank notification form when notifying the appropriate state or local agency of the installation of a new underground storage tank under § 280.22.

(c) The Director of the Implementing Agency may require an owner or operator to submit evidence of financial assurance as described in § 280.107(b) or other information relevant to compliance with this subpart at any time.

(The information requirements in this section have been approved by the Office of Management and Budget and assigned OMB control number 2050–0066.)

§ 280.107 Recordkeeping.

(a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart for an underground storage tank until released from the requirements of this subpart under § 208.109. An owner or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site must be made available upon request of the implementing agency.

(b) An owner or operator must maintain the following types of evidence of financial responsibility:

(1) An owner or operator using an assurance mechanism specified in §§ 280.95 through 280.100 or § 280.102 must maintain a copy of the instrument worded as specified.

(2) An owner or operator using a financial test or guarantee must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

(3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(5) An owner or operator covered by a state fund or other state assurance must maintain on file a copy of any evidence of coverage supplied by or required by the State under § 280.101(d).

(6) An owner or operator using an assurance mechanism specified in §§ 280.95 through 280.102 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the rquirements of Subpart H of 40 CFR Part 280.

The financial assurance mechanism[s] used to demonstrate financial responsiblity under Subpart H of 40 CFR Part 280 is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidential releases" or "nonsudden accidential releases" or "accidental releases."]

[Signature of owner or operator]
[Name of owner or operator]
[Title]
[Date]

[Signature of witness or notary]
[Name of witness or notary]
[Date]

The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

(The information requirements in this section have been approved by the Office of Management and Budget and assigned OMB control number 2050–0066.)

§ 280.108 Drawing on financial assurance mechanisms.

(a) The Director of the implementing agency shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(1)(i) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(ii) The Director determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the Director pursuant to Subparts E or F of a release from an underground storage tank covered by the mechanism; or

(2) The conditions of paragraph (b)(1) or (b)(2)(i) or (ii) of this section are satisfied.

(b) The Director of the implementing agency may draw on a standby trust fund when:

(1) The Director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrrective action as required under 40 CFR Part 280, Subpart F; or

(2) The Director has received either:

(i) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of $[_____].

[Signatures]
Owner or Operator
Attorney for Owner or Operator
(Notary) Date
[Signature(s)]
Claimant(s)
Attorney(s) for Claimant(s)
(Notary) Date

or (ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this subpart and the Director determines that the owner or operator has not satisfied the judgment.

(c) If the Director of the implementing agency determines that the amount of corrective action costs and third-party liability claims eligible for payment under paragraph (b) of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The Director shall pay third-party liability claims in the order in which the Director receives certifications under paragraph (b)(2)(i) of this section, and valid court orders under paragraph (b)(2)(ii) of this section.

§ 280.109 Release from the requirements.

An owner or operator is no longer required to maintain financial responsibility under this subpart for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by 40 CFR Part 280, Subpart G.

§ 280.110 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.

(a) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the Director of the implementing agency by certified mail of such commencement and submit the appropriate forms listed in § 280.107(b) documenting current financial responsibility.

(b) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in § 280.96.

(c) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this subpart within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he must notify the Director of the implementing agency.

(d) Within 30 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

§ 280.111 Replenishment of guarantees, letters of credit, or surety bonds.

(a) If at any time after a standby trust is funded upon the instruction of the Director of the implementing agency with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(1) Replenish the value of financial assurance to equal the full amount of coverage required, *or*

(2) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by § 280.93 of this subpart. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

§ 280.112 Suspension of enforcement. [Reserved]

PART 281—APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS

4. The authority citation for Part 281 continues to read as follows:

Authority: Secs. 2002, 9004, 9005, 9006 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6991 (c), (d), (e)).

5. 40 CFR Part 281 is amended to add § 281.37 as follows:

§ 281.37 Financial responsibility for UST systems containing petroleum.

(a) In order to be considered no less stringent than the federal requirements for financial responsibility for UST systems containing petroleum, the state requirements for financial responsibility

for petroleum UST systems must ensure that:

(1) Owners and operators have $1 million per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment;

(2) Owners and operators not engaged in petroleum production, refining, and marketing and who handle a throughput of 10,000 gallons of petroleum per month or less have $500,000 per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment;

(3) Owners and operators of 1 to 100 petroleum USTs must have an annual aggregate of $1 million; and

(4) Owners and operators of 101 or more petroleum USTs must have an annual aggregate of $2 million.

(b) Phase-in of requirements. Financial responsibility requirements for petroleum UST systems must, at a minimum, be scheduled to be applied at all UST systems on an orderly schedule that completes a phase-in of the financial responsibility requirements within 18 months after the effective date of the federal regulations.

(c) States may allow the use of a wide variety of financial assurance mechanisms to meet this requirement. Each financial mechanism must meet the following criteria in order to be no less stringent than the federal requirements. The mechanism must: Be valid and enforceable; be issued by a provider that is qualified or licensed in the state; not permit cancellation without allowing the state to draw funds; ensure that funds will only and directly be used for corrective action and third party liability costs; and require that the provider notify the owner or operator of any circumstances that would impair or suspend coverage.

(d) States must require owners and operators to maintain records that demonstrate compliance with the state financial responsibility requirements, and these records must be made readily available when requested by the implementing agency.

[FR Doc. 88-24395 Filed 10-25-88; 8:45 am]
BILLING CODE 6560-50-M

federal register

Wednesday
October 26, 1988

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 4 et al.

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 5, 8, 9, 13, 14, 15, 19, 25, 28, 33, 36, 37, 45, 52, and 53

[Federal Acquisition Circular 84-40]

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

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

ACTION: Interim rule with request for comments and final rules.

SUMMARY: Federal Acquisition Circular (FAC) 84-40 amends the Federal Acquisition Regulation (FAR) with respect to the following: Taxpayer Identification Number; Revised Federal Procurement Data System (FPDS) Forms; Sources Sought Synopsis for R&D; Restrictions on Competitive Procurement of Electric Service; Revision to OMB Circular A-120, Organizational Conflicts of Interest; Blanket Purchase Agreement Review Procedures; Signed Confirmation of Telegraphic Bids; Small Business Size Standards; Small Business Set-Asides (Sec. 921, DoD Authorization Act); Excess and Near Excess Foreign Currency; Service of Protest Clause; GAO Bid Protest Rules; Accountability for Government Property in the Possession of Contractors; Amendment of Solicitations; and Computer-Generation of Standard Forms.

DATES:

Effective Date: November 25, 1988.

Comment Date: Comments on the interim rule, Subpart 4.9 and Section 52.204-3, should be submitted to the FAR Secretariat on or before December 27, 1988, to be considered in the formulation of a final rule. Please cite Item I, FAC 84-40, in all correspondence on this subject.

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

SUPPLEMENTARY INFORMATION:

A. Background.

FAC 84-40, Item I. (Interim Rule)

In order for Federal agencies to comply with the Internal Revenue Service (IRS) reporting requirements, the Federal Acquisition Regulation (FAR) Subpart 4.9, Information Reporting to the IRS, and corresponding coverage in Part 52 have been developed to provide for contractors to submit their taxpayer identification number (TIN) and certain related information to the appropriate contracting office.

26 U.S.C. 6041 and 6041A, in part, as implemented in 26 CFR, require payors, including the Federal Government, to report to the IRS certain payments made to contractors. Information required to be reported includes company name, address, TIN, and corporate status. Failure or refusal to furnish the TIN may result in a 20 percent reduction of payments otherwise due under the contract.

26 U.S.C. 6050M, as implemented in 26 CFR, requires head of Federal Executive agencies to report certain contract information to the IRS. The information required to be reported for certain contract actions over $25,000 includes name, address, and TIN of contractor; name and TIN of common parent (if any); date of contract action; amount obligated on the contract; and estimated contract completion date.

B. Determination to Issue an Interim Rule

FAC 84-40, Item I

A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in Item I of FAC 84-40 as an interim rule. This action is necessary because—

(a) The Internal Revenue Service (IRS), on July 29, 1988, published in the **Federal Register** (53 FR 28669) a proposed rule, with a 30-day comment period, implementing the requirements of 26 U.S.C. 6050M;

(b) It is anticipated that the IRS final rule will be published in the near future; and

(c) In order for Federal Executive agencies to be prepared to comply with the statutory requirements to be implemented in the anticipated IRS final rule, it is necessary to establish procedures for collection of the required taxpayer identification information in advance of the IRS final rule.

DoD, GSA, and NASA have determined that compelling reasons exist to promulgate an interim rule without prior opportunity for public comment. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating a final rule.

C. Paperwork Reduction act

FAC 84-40, Item I

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the interim rule contains an information collection requirement. Accordingly, a request for approval of a new information collection requirement concerning Information Reporting to the Internal Revenue Service has been submitted to the Office of Management and budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this OMB clearance request were invited through a October 5, 1988, **Federal Register** notice (53 FR 39128).

FAC 84-40, Items II through XVII

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these final rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Regulatory Flexibility Act

FAC 84-40, Item I

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because all taxpayers are required to have a Taxpayer Identification Number (TIN) and this rule merely requests contractors to provide that number. Contractors should have immediate knowledge of this information item, making any significant additional effort unnecessary. An Initial Regulatory Flexibility analysis has, therefore, not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88-610 in correspondence.

FAC 84-40, Items II, V, VI, VII, VIII, IX, XI, XIII, XV, XVI, and XVII

The Regulatory Flexibility Act (Pub. L. 96-354) does not apply because each revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 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 on the revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply.

FAC 84-40, Item III

DoD, GSA, and NASA certify that the final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility act of 1980, 5 U.S.C. 601, *et seq.* The rule does not change current FAR requirements regarding synopsizing solicitations for R&D requirements. It merely clarifies and makes optional the synopsizing of advance notices of interest in R&D fields.

FAC 84-40, Item IV

DoD, GSA, and NASA certify that this final rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). However, a Final Regulatory Flexibility Analysis has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration.

FAC 84-40, Item X

It is expected that this final rule will have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). A Final Regulatory Flexibility Analysis has been prepared and will be submitted to the chief Counsel for Advocacy of the Small Business Administration.

FAC 84-40, Item XII

DoD, GSA, and NASA certify that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule does not impose any new requirements on contractors, large or small, and serves only to clarify existing regulatory coverage concerning protest procedures.

FAC 84-40, Item XIV

This rule will apply to all small businesses performing under Government contracts that provide for the furnishing of Government property. Approximately fifty thousand small businesses hold Government contracts. While the number of small businesses being furnished Government property under these contracts is unknown, the ultimate impact on small businesses should be minimal. The problem with dual property systems exists primarily with large contractors. Small businesses normally maintain only one property control system for their own and Government property. Comments regarding the Initial Regulatory Flexibility Act Analysis were solicited in the **Federal Register** on October 7, 1987 (52 FR 37595). No public comments were received. A Final Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy for the Small Business Administration.

E. Public Comments

FAC 84-40, Item III

On November 5, 1987, a proposed rule was published in the **Federal Register** (52 FR 42519). The comments that were received were considered by the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council in the development of this final rule.

FAC 84-40, Item X

On October 14, 1987, an interim rule was published in the **Federal Register** (52 FR 38188). Over 35 public comments were received addressing a number of issues including Subcontracting Limitations, Fair Proportion by Industry, and Fair Market Price. The comments that were received were considered by the Councils in the development of this final rule.

FAC 84-40, Item XII

On November 25, 1986, a proposed rule was published in the **Federal Register** (51 FR 42805). The Comments that were received were considered by the Councils in the development of this final rule.

FAC 84-40, Item XIV

On October 7, 1987, a proposed rule was published in the **Federal Register** (52 FR 37595). The comments that were received were considered by the Councils in the development of this final rule and the change made to FAR 45.505(c) was made for clarification only.

List of Subjects in 48 CFR Parts 4, 5, 8, 9, 13, 14, 15, 19, 25, 28, 33, 36, 37, 45, 52, and 53

Government procurement.

Dated: October 19, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

Number 84-40

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-40 is effective November 25, 1988.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement.

Richard G. Austin,

Acting Administrator, GSA.

October 17, 1988.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-40 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Taxpayer Identification Number

FAR Subpart 4.9 and a clause at 52.204-3 are added for the purpose of implementing statutory and regulatory requirements pertaining to taxpayer identification and reporting.

Item II—Revised FPDS Forms

FAR 4.601 and 53.204-2 are revised to prescribe revised Standard Forms 279 and 281 for reporting contract actions to the Federal Procurement Data System.

Item III—Sources Sought Synopsis For R&D

FAR 5.205 is revised to clarify ambiguities in the existing FAR text and to make optional the synopsizing of advance notices of contracting officers' interest in Research and Development fields.

Item IV—Restriction on Competitive Procurement of Electric Service

FAR Subpart 8.3 is revised to incorporate the provisions of Sec. 8093 of the Department of Defense (DoD) Appropriations Act, FY 1988, contained in Pub. L. 100-202, permanently restricting the use of appropriated funds by any agency of the United States Government for competitive procurement of electric service, except as spelled out in the Act.

Item V—Revision to OMB Circular A-120

FAR 9.505-3, 37.000, 37.101, and Subpart 37.2 are revised to incorporate the changes called for in the revised OMB Circular. On January 12, 1988, OMB revised Circular A-120, "Guidelines for the Use of Consulting Services," in an effort to provide for greater control over the contracting for Advisory and Assistance Services.

Item VI—Organizational Conflicts of Interest

FAR 9.507 is revised to require the Chief of the Contracting Office (unless the agency designates a higher level official) to approve the contracting officer's plan for dealing with potential organizational conflicts of interest.

Item VII—Blanket Purchase Agreement Review Procedures

FAR 13.205(a) is revised to allow annual review of BPA files by the ordering officer on a random sample basis to ensure procedural compliance with the FAR. Currently, the FAR requires a semiannual review of all BPA files.

Item VIII—Telegraphic Bids/Proposals

FAR 14.201–6(g), 15.407(e), and the clauses at 52.214–13 and 52.215–17 are revised to allow procurements of perishable subsistence to be exempt from the requirement for submission of signed and completed copies of bids/proposals subsequent to submission of telegraphic offers.

Item IX—Small Business Size Standards

FAR 19.102 is revised to incorporate changes made to the size standards regulations as published in the **Federal Register** by the Small Business Administration. The modified size standard in the SIC Code 1629 of Major Group 16 pertaining to Dredging and Surface Cleanup Activities was effective September 15, 1988, by issuance of a final rule on August 25, 1988 (53 FR 32370), and the addition of Major Group 62 was effective September 8, 1988, by issuance of an emergency interim rule on August 9, 1988 (53 FR 29876).

Item X—Small Business Set-Asides (Sec. 921, DoD Authorization Act)

Section 921 of the National Defense Authorization Act for Fiscal year 1987 (Pub. L. 99–661), entitled "Small Business Set-Asides," amended sections 8 and 15 of the Small Business Act (15 U.S.C. 637; 15 U.S.C. 644) in order to increase participation by small business and small disadvantaged business concerns in the Federal procurement process. Identical amendments to the Small Business Act were contained in the Department of Defense Appropriations Act, 1987 (Pub. L. 99–591). At a later date, technical corrections to the amendments were made by the Defense Technical Corrections Act of 1987 (Pub. L. 100–26). This final rule revises certain sections of FAR Parts 14, 19, and 52 in order to conform FAR procurement procedures with the statutory amendments. Other provisions of Section 921 which require rulemaking by the Small Business Administration (e.g., size determination program) are addressed in separate issuances by that Agency (see **Federal Register**, March 17, 1987 (52 FR 8261) and August 31, 1987 (52 FR 32870)).

Item XI—Excess and Near Excess Foreign Currency

FAR 25.304 is revised to expedite transmittal of changes in the lists of excess and near-excess currencies.

Item XII—Service of Protest Clause

FAR 33.101 is revised to conform the definition of "Interested Party" to General Accounting Office regulations governing consideration of protests. The clause at 52.233–2 is revised to clarify service of protest requirements.

Item XIII—GAO Bid Protest Rule

FAR 33.104 is revised to allow the protestor to file a request for documents it believes relevant to the protest, and to provide for two types of conferences, one on the merits of the protest and a fact finding conference. This revision is in accordance with the General Accounting Office (GAO) final rule changes to the regulations governing consideration of bid protests by the GAO and published in the **Federal Register** on December 8, 1987 (52 FR 46445).

Item XIV—Accountability for Government Property in the Possession of Contractors

FAR 45.505(c) is amended to clarify the requirements for records and reports of Government property in the possession of contractors. Under the revised coverage, contractors' systems for maintaining Government property records must be, as a minimum, equivalent to their own systems for maintaining records of contractor-owned property.

Item XV—Amendment of Solicitations

FAR at 52.214–3 and 52.215–8 are revised to clarify that when a solicitation amendment changes one aspect of a solicitation and does not mention other aspects of the solicitation, then those other aspects remain unchanged. This revision is necessary because of an inconsistency in interpretation of the FAR by the General Accounting Office (GAO) and the General Services Administration Board of Contract Appeals (GSBCA).

Item XVI—Computer-Generation of Standard Forms

FAR 53.103 and 53.105 are revised to allow for the computer generation of standard and optional forms.

Item XVII—Changes to Standard Form (SF) 1415, Consent of Surety

Standard Form 1415, Consent of Surety and Increase of Penalty, is revised to provide a place for the entry of the dollar figure amount the penalty of the payment bond or bonds are increased due to contract modification. FAR 28.106–3 and 53.228(1) are revised to show the date of the edition to be used and to state that local reproduction is authorized. SF 1415 is illustrated. As the SF 1415 is authorized for local reproduction, a copy is provided in the looseleaf edition of the FAR for the user to reproduce copies as required.

Therefore, 48 CFR parts 4, 5, 8, 9, 13, 14, 15, 19, 25, 28, 33, 36, 37, 45, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 5, 8, 9, 13, 14, 15, 19, 25, 28, 33, 36, 37, 45, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Section 4.602 is amended by revising paragraph (c) to read as follows:

4.602 Federal Procurement Data System.

* * * * *

(c) Data collection points in each agency report data on SF 279, Federal Procurement Data System (FPDS) Individual Contract Action Report, and SF 281, Federal Procurement Data System (FPDS) Summary Contract Action Report ($25,000 or Less), or computer-generated equivalent.

4.703 [Amended]

3. Section 4.703 is amended in paragraph (a)(2) by removing the words "4.705 and 4.704" and inserting in their place the words "4.705 through 4.705–3".

4. Subpart 4.9, consisting of sections 4.900 through 4.904, is added to read as follows:

Subpart 4.9—Information Reporting to the Internal Revenue Service

Sec.
4.900 Scope of subpart.
4.901 Definitions.
4.902 General.
4.903 Procedures.
4.904 Solicitation provision.

Subpart 4.9—Information Reporting To The Internal Revenue Service

4.900 Scope of subpart.

This subpart provides policies and procedures applicable to contract and payment information reporting to the Internal Revenue Service (IRS).

4.901 Definitions.

"Common parent," as used in this subpart, means an offeror that is a member of an affiliated group of corporations that files its Federal income tax returns on a consolidated basis.

"Corporate status," as used in this subpart, means a designation as to whether the offeror is a corporate entity, an unincorporated entity, (e.g., sole proprietorship or partnership), or a corporation providing medical and health care services.

"Taxpayer Identification Number (TIN)," as used in this subpart, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

4.902 General.

(a) 26 U.S.C. 6041 and 6041A, as implemented in 26 CFR, in part, require payors, including Federal Government agencies, to report to the IRS payments made to certain contractors.

(1) The following payments are exempt from this reporting requirement:

(i) Payments to corporations. However, payments to corporations providing medical and health care services or engaged in the billing and collecting of payments for such services are not exempted.

(ii) Payments for bills for merchandise, telegrams, telephone, freight, storage, and similar charges.

(iii) Payments of income required to be reported on an IRS Form W–2 (e.g., contracts for personal services).

(iv) Payments to a hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(v) Payments to a hospital or extended care facility owned and operated by the United States, a state, the District of Columbia, a possession of the United States, or a political subdivision, agency, or instrumentality of any of the foregoing.

(vi) Payments for any contract with a state, the District of Columbia, a possession of the United States, or a political subdivision, agency, or instrumentality of any of the foregoing.

(2) The following information is required to provide report to IRS:

(i) Name, address, and TIN of contractor.

(ii) Corporate status (see 4.901).

(b) 26 U.S.C. 605M, as implemented in 26 CFR, requires heads of Federal Executive agencies to report to the IRS the following information for certain contracts in excess of $25,000:

(1) Name, address, and TIN of contractor.

(2) Name and TIN of common parent (if any).

(3) Date of the contract action.

(4) Amount obligated on the contract action.

(5) Estimated contract completion date.

4.903 Procedures.

The information reported to the IRS under 4.902(b) will be transmitted using the Federal Procurement Data System (see Subpart 4.6 and implementing instructions).

4.904 Solicitation provision.

The contracting officer shall insert the provision at 52.204–3, Taxpayer Identification, in all solicitations, unless the TIN of each offeror has previously been obtained and is known.

PART 5—PUBLICIZING CONTRACT ACTIONS

5. Section 5.205 is amended by revising paragraph (a) to read as follows:

5.205 Special situations.

(a) *Research and development (R&D) advance notice.* Contracting officers may publish in the CBD, advance notices of their interest in potential R&D programs whenever existing solicitation mailing lists do not include a sufficient number of concerns to obtain adequate competition. Advance notices shall not be used where security considerations prohibit such publication. Advance notices will enable potential sources to learn of R&D programs and provide their sources with an opportunity to submit information which will permit evaluation of their R&D capabilities. Potential sources which respond to advance notices shall be added to the appropriate solicitation mailing list for subsequent solicitation. Advance notices shall be titled "Research and Development Sources Sought," cite the appropriate Numbered Note, and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained. This will enable sources to submit information for evaluation of their R&D capabilities. Contracting officers shall synopsize all subsequent solicitations for R&D contracts, including those resulting from a previously synopsized advance notice, unless one of the exceptions in 5.202 applies.

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

6. Section 8.302 is amended by adding paragraph (d) to read as follows:

8.302 Applicability.

* * * * *

(d)(1) Section 8093 of the Department of Defense Appropriations Act, 1988, contained in Pub. L. 100–202, provides that none of the funds appropriated by that Act or any other Act with respect to any fiscal year by any Department, agency, or instrumentality of the United States, may be used for the purchase of electricity by the Government in any manner that is inconsistent with the state law governing the providing of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements.

(2) The Act does not preclude—

(i) The head of a Federal agency from entering into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings);

(ii) The Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2394 (which pertains to contracts for energy or fuel for military installations); or

(iii) The Secretary of a military department from purchasing electricity from any provider when the utility or utilities having applicable state-owned franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.

PART 9—CONTRACTOR QUALIFICATIONS

7. Section 9.505–3 is amended by revising the section title; by removing in the first sentence the word "consulting" and inserting in its place "advisory and assistance"; and by removing in the second sentence in the title of the OMB Circular the word "Consulting" and inserting in its place the words, "Advisory and Assistance," to read as follows:

9.505–3 Providing technical evaluation or advisory and assistance services.

* * * * *

8. Section 9.507 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

9.507 Procedures.

(a) If the contracting officer initially decides that a particular acquisition involves a significant potential organizational conflict of interest, before issuing the solicitation the contracting officer shall submit for approval to the chief of the contracting office (unless a higher level official is designated by the agency)—

* * * * *

(b) The approving official shall—

* * * * *

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

13.203-1 [Amended]

9. Section 13.203–1 is amended in paragraph (f) by removing the acronym "ADTS"; and inserting in its place the words "GSA Nonmandatory ADP".

10. Section 13.205 is amended by revising paragraph (a) to read as follows:

13.205 Review procedures.

(a) The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.

* * * * *

PART 14—SEALED BIDDING

11. Section 14.201–6 is amended by redesignating paragraph (g) as (g)(1) and by adding a new (g)(2) to read as follows:

14.201-6 Solicitation provisions.

* * * * *

(g) * * *

(2) The contracting officer shall insert the basic provision with its Alternate I in invitations for bids that are for perishable subsistence, and when the contracting officer considers that offerors will be unwilling to provide acceptance periods long enough to allow written confirmation.

* * * * *

14.205-5 [Amended]

12. Section 14.205–5 is amended by removing in paragraph (a) the parenthetical reference "(see also 19.501(k))".

PART 15—CONTRACTING BY NEGOTIATION

13. Section 15.407 is amended by redesignating paragraph (e) as (e)(1) and by adding a new (e)(2) to read as follows:

15.407 Solicitation provisions.

* * * * *

(e) * * *

(2) The contracting officer shall insert the basic provision with its Alternate 1 in solicitations that are for perishable subsistence and when the contracting officer considers that offerors will be unwilling to provide acceptance periods long enough to allow written confirmation.

* * * * *

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

14. Section 19.102 is amended in Major Group 16 by removing in the second SIC Code 1629 the figure "$9.5" and inserting in its place the figure "$13.5"; and by adding Major Group 62 to Division H after Major Group 60 to read as follows:

19.102 Size standards.

* * * * *

MAJOR GROUP 62—SECURITY AND COMMODITY BROKERS, DEALERS, EXCHANGES, AND SERVICES

SIC	Description	Size
6221	Commodity Contracts, Brokers, and Dealers.	$3.5

15. Section 19.202–6 is amended by revising paragraph (a) to read as follows:

19.202-6 Determination of fair market price.

* * * * *

(a) For total and partial small business set-aside contracts, the fair market price shall be the price achieved in accordance with the reasonable price guidelines in 15.805–2.

* * * * *

16. Section 19.501 is amended by revising paragraph (g)(2) to read as follows:

19.501 General.

* * * * *

(g) * * *

(2) Awards will be made at fair market prices. Withdrawal of a repetitive set-aside will be in accordance with 19.506.

* * * * *

19.502-2 [Amended]

17. Section 19.502–2 is amended by removing in paragraph (b) the words "reasonable prices" and inserting in their place the words "fair market prices".

19.502-3 [Amended]

18. Section 19.502–3 is amended by removing in paragraph (a)(3) the words "reasonable price" and inserting in their place the words "fair market price".

19.503 [Amended]

19. Section 19.503 is amended in the second sentence of paragraph (d) by removing the words "an unreasonable price" and inserting in their place the words "more than a fair market price".

19.506 [Amended]

20. Section 19.506 is amended in the first sentence of paragraph (a) by removing the words "because of unreasonable price" and inserting in their place the words "payment of more than a fair market price".

21. Section 19.508 is amended by revising paragraph (e) to read as follows:

19.508 Solicitation provisions and contract clauses.

* * * * *

(e) The contracting officer shall insert the clause at 52.219–14, Limitations on Subcontracting, in solicitations and contracts, except those awarded using small purchase procedures in Part 13, for supplies, services, and construction, if any portion of the requirement is to be set aside for small business, or if the contract is to be awarded under Subpart 19.8.

22. Section 19.806–1 is amended by adding a new pararaph (a) and redesignating existing paragraphs (a) and (b) as (b) and (c) to read as follows:

19.806-1 General.

(a) The contracting officer shall estimate the current fair market price of the work to be performed by the SBA's contractor.

* * * * *

PART 25—FOREIGN ACQUISITION

23. Section 25.304 is amended by revising paragraph (a) and by removing pararaphs (e) and (f) to read as follows:

25.304 Excess and near-excess foreign currencies.

(a) The United States holds currencies of certain countries in amounts determined annually by the Secretary of the Treasury to be excess to the normal, or above the immediate (near-excess) requirements of the Government. These countries are identified in Bulletins issued by the Office of Management and Budget which will be distributed through agency procedures on an expedited basis. Additional information may also be obtained from the Department of the

Treasury, Office of the Assistant Secretary for International Affairs, Office of Development Policy. Acquisitions of foreign end products, services, or construction paid for in excess of near-excess foreign currencies are an exception to the balance of payments restrictions in this subpart (see 25.302(b)(8)).

* * * * *

(e) [Removed]

(f) [Removed]

PART 28—BONDS AND INSURANCE

24. Section 28.106–3 is amended in paragraph (a) to add a second sentence to read as follows:

28.106–3 Additional bond.

(a) * * * Standard Form 1415 is authorized for local reproduction, and a copy of the form is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

PART 33—PROTESTS, DISPUTES, AND APPEALS

25. Section 33.101 is amended by revising the definition "Interested Party" to read as follows:

33.101 Definitions.

"Interested Party for the purpose of filing a protest," as used in this subpart, means an actual or prospective offeror whose direct economic interest could be affected by the award of a contract or by the failure to award a contract.

* * * * *

26. Section 33.104 is amended by revising paragraph (a); by redesignating existing paragraphs (e), (f), and (g) as (f), (g), and (h); and by adding a new paragraph (e) to read as follows:

33.104 Protests to GAO.

(a) *General.* (1) A protestor shall furnish a copy of its complete protest to the official or location designated in the solicitation or, in the absence of such a designation, to the contracting officer, no later than 1 day after the protest is filed with the GAO. Failure to furnish a complete copy of the protest within 1 day may result in dismissal of the protest by GAO.

(2)(i) If the protestor files a request for documents with a protest, the agency shall furnish copies of those requested documents, and the documents described in 33.104(a)(6), along with the copy of the agency report to the protestor, unless the protestor is not otherwise authorized by law to receive the requested documents or the documents—

(A) Are not relevant to the protest;

(B) Would give the protestor a competitive advantage; or

(C) Have been previously provided to the protestor.

(ii) Documents referred to in subdivision (a)(2)(i) of this section not furnished to the protestor shall be identified, and the reason for not furnishing them stated in the agency report described in subparagraph (a)(3) of this section.

(iii) If the protestor, after receipt of the agency report, requests additional documents, the agency must respond to the GAO within 5 days by filing the requested documents or by identifying any documents which will not be furnished to the protestor, and stating the reason for not furnishing them.

(3) When a protest, before or after award, has been lodged with the GAO, the agency shall prepare a report. The report should include a copy of—

(i) The protest;

(ii) The offer submitted by the protesting offeror and a copy of the offer which is being considered for award or which is being protested;

(iii) The solicitation, including the specifications or portions relevant to the protest;

(iv) The abstract of offers or relevant portions;

(v) Any other documents that are relevant to the protest; and

(vi) The contracting officer's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the contract action or contract performance continues after receipt of the protest, the report will include the determination(s) prescribed in paragraphs (b) or (c) of this section.

(vii) In addition to subdivisions (a)(3)(i) through (vi) of this section, the copy of the report forwarded to the GAO shall also identify the other parties who are being furnished copies of the report.

(4) Other persons, including offerors, involved in or affected by the protest shall be given notice of the protest and its basis in appropriate cases, within 1 work day after its receipt by the agency. The agency shall give immediate notice of the protest to the contractor if the award has been made or, if no award has been made, to all parties who appear to have a reasonable prospect of receiving an award if the protest is denied. These persons shall also be advised that they may submit their views and relevant information directly to the GAO with a copy to the contracting officer and to other participating interested parties within a specified period of time. Normally, the time specified will be 1 week.

(5) The agency shall submit a complete report (see subparagraph (a)(3) of this section) to GAO within 25 work days after receipt from GAO of the telephonic notice of such protest, or within 10 work days after receipt from GAO of a determination to use the express option, unless—

(i) The GAO advises the agency that the protest has been dismissed; or

(ii) The agency advises GAO in writing that the specific circumstances of the protest require a longer period and GAO establishes a new date. Any new date shall be documented in the agency's protest file.

(6)(i) Timely action on protests is essential. Upon notice that a protest has been lodged with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. To further expedite processing, when furnishing a copy of the report including relevant documents to the GAO, the agency shall simultaneously furnish a copy of the report including relevant documents to the protestor and the awardee or offeror who appears to have a substantial prospect of receiving an award if the protest is denied, and a copy of the report without relevant documents to other interested parties who have responded to the notice in subparagraph (a)(4) of this section, unless the protestor or other interested party is not otherwise authorized by law to receive those documents, or subdivisions (6)(i) (A) and (B) are applicable. Upon request, the agency shall also provide to any interested party a relevant document contained in the report.

(A) Documents previously furnished to or prepared by a party (e.g., the solicitation or the party's own proposal) need not be furnished to that party.

(B) Classified or privileged information or information that would give a party a competitive advantage and other information that the Government determines under appropriate authority to withhold should be deleted from the copy of the report or relevant documents furnished to that party.

(C) If documents are withheld from any of the parties, the agency must include in the report and in the copies of the report provided to the protestor and the interested parties, a list of the withheld documents.

(ii) The protestor and other interested parties shall be requested to furnish a copy of any comments on the report

directly to the GAO, as well as to the contracting officer and to other participating interested parties.

(7) Agencies shall furnish the GAO with the name, title, and telephone number of one or more officials (in both field and headquarters offices, if desired) whom the GAO may contact who are knowledgeable about the subject matter of the protest. Each agency shall be responsible for promptly advising the GAO of any change in the designated officials.

* * * * *

(e) *Conferences.* (1) A conference on the merits of the protest may, at the sole discretion of the GAO, be held at the request of the protestor, the agency, or any interested party.

(2) A fact finding conference may, at the sole discretion of the GAO, be held at the request of any protestor, agency or interested party, or on the initiative of the GAO. The fact finding conference is intended to resolve specific factual disputes essential to the resolution of the protest which cannot otherwise be resolved from the record. Witnesses may be called to testify under oath and each party may question witnesses. A transcript will be made of the proceeding, and copies are available from the GAO for a fee. Written comments on the transcript may be submitted to the GAO within 3 days of receipt.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

27. Section 36.501 is amended by revising paragraph (b) to read as follows:

36.501 Performance of work by the contractor.

* * * * *

(b) The contracting officer shall insert the clause at 52.236–1, Performance of Work by the Contractor, in solicitations and contracts, except those awarded pursuant to Subparts 19.5 or 19.8, when a fixed-price construction contract is contemplated and the contract amount is expected to exceed $1,000,000. The contracting officer may insert the clause on solicitations and contracts when a fixed-price construction contract is contemplated and the contract amount is expected to be $1,000,000 or less.

PART 37—SERVICE CONTRACTING

37.000 [Amended]

28. Section 37.000 is amended by removing in the second sentence the word "consulting" and inserting in its place the words "advisory and assistance".

37.101 [Amended]

29. Section 37.101 is amended by removing in paragraph (d) the word "consulting" and inserting in its place the words "advisory and assistance"; by removing paragraph (e); and by redesignating existing paragraphs (f) through (j) as (e) through (i).

30. Subpart 37.2, consisting of sections 37.200 through 37.207 is revised to read as follows:

Subpart 37.2—Advisory and Assistance Services

Sec.

Authority: 40 U.S.C. 486(c); 10 U.S.C Ch. 137; and 42 U.S.C. 2473(c).

37.200 Scope of subpart.

This subpart prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart regulates these contracts with individuals and organizations for both personal and nonpersonal services.

37.201 Definition.

"Advisory and assistance services" means services, other than those excluded or exempted in this subpart, to support or improve agency policy development, decision-making, management, and administration, or to support or improve the operation of management systems.

37.202 Policy.

(a) The acquisition of advisory and assistance services is a legitimate way to improve Government services and operations. Accordingly, advisory and assistance services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

(b) Subject to 37.205, agencies may contract for advisory and assistance services, when essential to the agency's mission, to—

(1) Obtain outside points of view to avoid too limited judgment on critical issues;

(2) Obtain advice regarding developments in industry, university, or foundation research;

(3) Obtain the opinions, special knowledge, or skills of noted experts;

(4) Enhance the understanding or, and develop alternative solutions to, complex issues;

(5) Support and improve the operation of organizations;

(6) Ensure the more efficient or effective operation of managerial or hardware systems.

(c) Advisory and assistance services shall not be—

(1) Used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials;

(2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) Contracted for on a preferential basis to former Government employees;

(4) Used under any circumstances specifically to aid in influencing or enacing legislation;

(5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency.

37.203 Types of advisory and assistance services.

Advisory and assistance services may take the form of information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance. These services consist of—

(a) *Individual experts and consultants.* Individual experts and consultants are persons possessing special, current knowledge or skill that may be combined with extensive operational experience. This enables them to provide information, opinions, advice, or recommendations to enhance understanding of complex issues or to improve the quality and timeliness of policy development or decision-making.

(b) *Studies, analyses, and evaluations.* Studies, analyses, and evaluations are organized, analytic assessments needed to provide the insights necessary for understanding complex issues or improving policy development or decision-making. These analytic efforts result in formal, structured documents containing data or leading to conclusions and/or recommendations. This summary description is operationally defined by the following criteria:

(1) *Objective.* To enhance understanding of complex issues or to improve the quality and timeliness of agency policy development or decision-making by providing new insights into, understanding of, alternative solutions to, or recommendations on agency policy and program issues, through the applications of fact finding, analysis, and evaluation.

(2) *Areas of application.* All subjects, issues, or problems involving policy development of decision-making in the agency. These may involve concepts, organization, programs and other systems, and the application of such systems.

(3) *Outputs.* Outputs are formal structured documents containing or leading to conclusions and/or recommendations. Data bases, models, methodologies, and related software created in support of a study, analysis, or evaluation are to be considered part of the overall study effort.

(c) *Management and professional support services.* Management and professional support services take the form of advice, training, or direct assistance for organizations to ensure more efficient or effective operations of managerial, administrative, or related systems. This summary description is operationally defined in terms of the following criteria:

(1) *Objective.* To ensure more efficient or effective operation of management support or related systems by providing advice, training, or direct assistance associated with the design or operation of such systems.

(2) *Areas of application.* Management support or related systems such as program management, project monitoring and reporting, data collection, logisitics management, budgeting, accounting, auditing, personnel management, paperwork management, records management, space management, and public relations.

(3) *Outputs.* Services in the form of information, opinions, advice, training, or direct assistance that lead to the improved design or operation of managerial, administrative, or related systems. This does not include training which maintains skills necessary for normal operations. Written reports are normally incidental to the performance of the service.

(d) *Engineering and technical service.* Engineering and technical services (technical representatives) take the form of advice, training, or, under unusual circumstances, direct assistance to ensure more efficient or effective operation or maintenance of existing platforms, weapon systems, related systems, and associated software. All engineering and technical services provided prior to final Government acceptance of a complete hardware system are part of the normal development, production, and procurement processes and do not fall in this category. Engineering and technical services provided after final Government acceptance of a complete hardware system are in this category except where they are procured to increase the original design performance capabilities of existing or new systems or where they are integral to the operational support of a deployed system and have been formally reviewed and approved in the acquisition planning process.

37.204 Exclusions.

The following activities and programs are excluded or exempted from the definition of advisory or assistance services:

(a) Activities that are reviewed in accordance with the OMB Circular A–76, Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government.

(b) Architectural and engineering services as defined in Part 36.

(c) ADP/Telecommunications functions and related services that are controlled in accordance with 41 CFR Part 201, the Federal Information Resources Management Regulation.

(d) Research on theoretical mathematics and basic medical, biological, physical, social, psychological, or other phenomena.

(e) Engineering studies related to specific physical or performance characteristics of existing or proposed systems.

(f) The day-to-day operation of facilities (e.g., the Johnson Space Center and related facilities) and functions (e.g., ADP operations and building maintenance).

(g) Government-owned, contractor-operated (GOCO) facilities. However, any contract for advisory and assistance services other than the basic contract for operation and management of a GOCO shall come under the definition of advisory or assistance services.

(h) Clinical medicine.

(i) Those support services of a managerial or administrative nature performed as a simultaneous part of, and nonseparable from specific development, production, or operational suppport activities. In this context, nonseparable means that the managerial or administrative systems in question (e.g., subcontractor monitoring or configuration control) cannot reasonably be operated by anyone other than the designer or producer of the end-item hardware.

(j) Contracts entered into in furtherance of statutorily mandated advisory committees.

(k) Initial training, training aids, and technical documentation acquired as an integral part of the lease or purchase of equipment.

(l) Routine maintenance of equipment, routine administrative services (e.g., mail, reproduction, telephone), printing services, and direct advertising (media) costs.

(m) Auctioneers, realty-brokers, appraisers, and surveyors.

(n) The National Foreign Intelligence Program (NFIP).

(o) The General Defense Intelligence Program (GDIP).

(p) Tactical Intelligence and Related Activities (TIARA).

(q) Foreign Military Sales.

(r) Engineering and technical services as set forth in 37.203(d).

37.205 Management controls.

OMB Circular A–120 requires each agency to establish procedures for a written evaluation at the conclusion of the contract to assess the utility of the deliverables to the agency and the performance of the contractor.

37.206 Requesting activity responsibilities.

Requests for advisory and assistance services shall include—

(a) A statement certifying that the requirement is for advisory and assistance services as defined in this subpart.

(b) Written justification of need and certification that such services do not unnecessarily duplicate and previously performed work or services.

(c) Written approval for such services by an official at a level above the requesting office. However, in the case of requirements received by the contracting officer during the fourth quarter of the fiscal year, for award during the same fiscal year, the approval at the second level, or higher level if required by agency procedures, above the requesting office shall accompany the request for contract action.

(d) Properly chargeable funds certified by the cognizant fiscal/budget office.

37.207 Contracting officer responsibilities.

The contracting officer is responsible for determining whether any requested contractual action, regardless of dollar value, constitutes advisory and assistance services as described in this subpart. The contracting officer's determination shall be final. Before processing any contractual action for advisory and assistance services, the contracting officer shall verify that—

(a) Action is taken to avoid conflicts of interest in accordance with Subpart 9.5.

(b) The applicable requirements of this subpart and 37.103 and 37.104 are met;

(c) The services being contracted for consist only of the types of services defined as 37.203;

(d) The request includes a statement of need and certification by the requesting official (see 37.206(a) and (b)); and

(e) Written approval for the requirement, including requests for contract modifications beyond the scope of the acquisition originally approved, has been obtained from the appropriate level(s) (see 37.206(c)).

PART 45—GOVERNMENT PROPERTY

31. Section 45.505 is amended by revising paragraph (c) to read as follows:

45.505 Records and reports of Government property.

* * * * *

(c) Official Government property records must identify all Government property and provide a complete, current, auditable record of all transactions. The contractor's system of records maintenance shall be sufficient to adequately control Government property as required by this section. The contractor's system of records maintenance, as a minimum, shall be equivalent to and maintained in the same manner as the contractor's system for maintaining records of contractor-owned property, but need not exceed the requirements of this subpart. The records shall be safeguarded from tampering or destruction. Records shall be accessible to authorized Government personnel.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

32. Section 52.204–3 is added to read as follows:

52.204–3 Taxpayer Identification.

As prescribed in 4.904, insert the following provision:

TAXPAYER IDENTIFICATION (NOV 1988)

(a) *Definitions.*

"Common parent," as used in the solicitation provision, means an offeror that is a member of an affiliated group of corporations that files its Federal income tax returns on a consolidated basis.

"Corporate status," as used in this solicitation provision, means a designation as to whether the offeror is a corporate entity, an unincorporated entity (e.g., sole proprietorship or partnership), or a corporation providing medical and health care services.

"Taxpayer Identification Number (TIN)," as used in this solicitation provision, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

(b) The offeror is required to submit the information required in paragraphs (c) through (e) of this solicitation provision in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the Internal Revenue Service (IRS). If the resulting contract is subject to reporting requirements described in 4.902(a), the failure or refusal by the offeror to furnish the information may result in a 20 percent reduction of payments otherwise due under the contract.

(c) *Taxpayer Identification Number (TIN).*

( ) TIN: _____.

( ) TIN has been applied for.

( ) TIN is not required because:

( ) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

( ) Offeror is an agency or instrumentality of a foreign government;

( ) Offeror is an agency or instrumentality of a state or local government;

( ) Other. State basis. _____.

(d) *Corporate Status.*

( ) Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

( ) Other corporate entity;

( ) Not a corporate entity;

( ) Sole proprietorship

( ) Partnership

( ) Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(e) *Common Parent.*

( ) Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this clause.

( ) Name and TIN of common parent:

Name _____

TIN _____

(End of provision)

33. Section 52.214–3 is revised to read as follows:

52.214–3 Amendments to Invitations for Bids.

As prescribed in 14.201–6(b)(3), insert the following provision:

AMENDMENTS TO INVITATIONS FOR BIDS (NOV 1988)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, or (3) by letter or telegram. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

34. Section 52.214–13 is amended by revising the introductory text and by adding Alternate I to read as follows.

52.214–13 Telegraphic Bids.

As prescribed in 14.201–6(g)(1), insert the following provision:

* * * * *

Alternate I (NOV 1988). As prescribed in 14.201–6(g)(2), substitute the following for paragraph (d) of the basic clause:

(d) Written confirmation of telegraphic bids is not required.

35. Section 52.215–8 is revised to read as follows:

52.215–8 Amendments to Solicitations.

As prescribed in 15.407(c)(4), insert the following provision:

AMENDMENTS TO SOLICITATIONS (NOV 1988)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment; (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer; or (3) by letter or telegram. The Government must receive the acknowledgment by the time specified for receipt of offers.

(End of proivision)

36. Section 52.215–17 is amended by revising the introductory text and by adding Alternate I to read as follows:

52.215–17 Telegraphic Proposals.

As prescribed in 15.407(e)(1) insert the following provision:

Alternate I (NOV 1988). As prescribed in 15.407(e)(2), substitute the following for paragraph (d) of the basic provision:

(d) Written confirmation of telegraphic proposals is not required.

37. Section 52.233–2 is revised to read as follows:

52.233–2 Service of Protest.

As prescribed in 33.106, insert the following provision:

SERVICE OF PROTEST (NOV 1988)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from _____

(Contracting Officer designate the official and location where a protest may be served on the Contracting Officer.)

(b) The copy of any protest shall be received in the office designated above on the same day a protest is filed with the GSBCA or within one day of filing a protest with the GAO.

(End of provision)

52.236-13 [Amended]

38. Section 52.236-13 is amended by removing in paragraph (b) the date "April 1981" and inserting in its place the date "October 1984".

PART 53—FORMS

39. Section 53.103 is revised to read as follows:

53.103 Exceptions.

Agencies shall not (a) alter a standard form prescribed by this regulation, or (b) use for the same purpose any form other than the standard form prescribed by this regulation without receiving in advance an exception to the form (see 41 CFR 201-45.510).

40. Section 53.105 is revised to read as follows:

53.105 Computer generation.

Agencies may computer-generate the standard and optional forms prescribed in the FAR without exception approval (see 53.103), providing there is no change to the name, content, or sequence of the data elements, and the form carries the standard or optional form number and edition date. Agencies shall notify the FAR Secretariat of their decisions to computer-generate forms prescribed by the FAR.

41. Section 53.204-2 is revised to read as follows:

53.204-2 Contract reporting (SF's 279, 281).

The following forms are prescribed for use by executive agencies in reporting contract actions, as specified in 4.602(c):

(a) *SF 279 (REV. 10/88), Federal Procurement Data System (FPDS) Individual Contract Action Report* (See 4.602(c).)

(b) *SF 281 (REV. 10/88), Federal Procurement Data System (FPDS) Summary Contract Action Report ($25,000 or Less).* (See 4.602(c).)

42. Section 53.228 is amended by revising paragraph (l) to read as follows:

53.228 Bonds and insurance (SF's 24, 25, 25-A, 25-B, 28, 34, 35, 273, 274, 275, 1414, 1415, 1416).

* * * * *

(l) *SF 1415 (REV. 11/87), Consent of Surety and Increase of Penalty.* (See 28.106-1(l).) SF 1415 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

43. Section 53.301-279 is revised to read as follows:

BILLING CODE 6820-61-M

53.301-279 Standard Form 279, FDDS-Individual Contract Action Report (over $10,000).

FEDERAL PROCUREMENT DATA SYSTEM (FPDS) INDIVIDUAL CONTRACT ACTION REPORT

INTERAGENCY REPORT CONTROL NUMBER
0206 - GSA - QU

1. REPORTING AGENCY (FIPS 95) — 1 2 3 4
2. CONTRACT NUMBER (Left justified) — 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19
3. MODIFICATION NUMBER (Left justified) — 20 21 22 23
4. CONTRACTING OFFICE ORDER NUMBER (Left justified) — 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38
5. CONTRACTING OFFICE — Code — 39 40 41 42 43
6. ACTION DATE — CY MO — 44 45 46 47
7. TYPE OF DATA ENTRY — A - Original; B - Deleting; C - Correcting — 48
8. REPORT PERIOD — FY Q — 49 50 51
9. KIND OF CONTRACT ACTION — 52
A. Initial Letter Contract
B. Definitive Contract
Superseding Letter Contract
C. New Definitive Contract
D. Small Purchase Procedure
E. Order Under Indef Delivery Contract (IDC)
F. Order Under BOA
G. Order/Modification Under Federal Schedule
H. Modification
J. Termination for Default
K. Termination for Convenience
Z. Initial Load of Federal Schedule Contract
10. DOLLARS OBLIGATED OR DEOBLIGATED THIS ACTION (Round to nearest 1000, right justified) (Use lead zeros) — 0 0 0 — 53 54 55 56 57 58 59 60
11. TYPE OF OBLIGATION — A - Obligated; B - Deobligated — 61
12. PRINCIPAL PRODUCT OR SERVICE (FPDS Product/Service Code Manual) — Code — 62 63 64 65
13. PRINCIPAL STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE (OMB SIC Manual) — Code — 66 67 68 69
14. ADVISORY/ ASSISTANCE SERVICES AWARD — Y - Yes; N - No — 70
15. CONTRACTOR NAME — 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
16. CONTRACTOR ESTABLISHMENT CODE — 101 102 103 104 105 106 107 108 109
17. PRINCIPAL PLACE OF PERFORMANCE (State or U.S. outlying area, city or place - FIPS 55) — State City — 110 111 112 113 114 115 116
OR FOREIGN COUNTRY (FIPS 10-3) — 117 118
18. CONTRACT FOR FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION — Y - Yes; N - No — 119
19. TARIFF OR REGULATED (Pre-CICA) — Y - Yes; N - No — 120

FOREIGN TRADE DATA

20. NO. OF BIDDERS OFFERING FOREIGN ITEM — 121
21. BUY AMERICAN ACT PERCENT DIFFERENCE — 122 123
22. COUNTRY OF MANUFACTURE (FIPS 10-3) — 124 125
23. SYNOPSIS OF PROCUREMENT PRIOR TO AWARD — 126
A. Synopsized prior to award
B. Not synopsized due to Urgency
C. Not synopsized for other reason
24. TYPE OF CONTRACT OR MODIFICATION — 127
A. Fixed-Price Redetermination
J. Firm Fixed-Price
K. Fixed-Price with Economic Price Adjustment
L. Fixed-Price Incentive
R. Cost-Plus Award-Fee
S. Cost - No Fee
T. Cost-Sharing
U. Cost-Plus - Fixed-Fee
V. Cost-Plus Incentive-Fee
Y. Time and Materials
Z. Labor Hour
25. CICA APPLICABILITY — 128
A. CICA Applicable
B. Small Purchase Procedure
C. Subject to Statute other than CICA
D. Pre-CICA
26. SOLICITATION PROCEDURES (Complete only if Item 25 = A) — 129
A. Full and Open Competition - Sealed Bid
B. Full and Open Competition - Competitive Proposal
C. Full and Open Competition - Combination
D. Architect - Engineer
E. Basic Research
F. Multiple Award Schedule
G. Alternate Source - Reduced Cost
H. Alternate Source - Mobilization
J. Alternate Source - Eng/R & D Capability
K. Set-Aside (Exclude 8(a) Awards)
L. Other than Full and Open Competition
27. AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION (Complete only if Item 26 = L) — 130
A. Unique Source
B. Follow-on Contract
C. Unsolicited Research Proposal
D. Patent / Data Rights
E. Utilities
F. Standardization
G. Only One Source - Other
H. Urgency
J. Mobilization
K. Essential R & D Capability
L. International Agreement
M. Authorized by Statute
N. Authorized Resale
P. National Security
Q. Public Interest
28. NUMBER OF OFFERS RECEIVED (Complete only if Item 25 = A) — 131
A. One
B. More than one
29. EXTENT COMPETED — 132
A. Competed Action
B. Not Available for Competition
C. Follow-on to Competed Action
D. Not Competed
30. TYPE OF CONTRACTOR — 133
A. Small Disadvantaged Business
B. Other Small Business
C. Large Business
D. Sheltered Workshop
E. Nonprofit Educational Organization
F. Nonprofit Hospital
G. Other Nonprofit Organization
H. State/Local Govt - Educational
J. State/Local Govt - Hospital
K. Other State/Local Government
L. Foreign Contractor
M. Domestic Contractor Performing Outside U.S.
31. WOMAN - OWNED SMALL BUSINESS — Y - Yes; N - No — 134
32. PREFERENCE PROGRAM — 135
A. Directed to Sheltered Workshops
B. 8(a) Program
C. Combined Labor Surplus Area / Small Business Set-Aside
D. Small Business Set-Aside
E. Labor Surplus Area Set-Aside
F. Tie Bid Preference
G. Buy Indian/Self-Determination Act
H. No Preference Program or Not Listed
33. SUBCONTRACTING PLAN (Small and Small Disadvantaged Business) — 136
A. Required
B. Not Required
34. SUBJECT TO LABOR STATUTES — 137
A. Walsh-Healey Act, Manufacturer
B. Walsh-Healey Act, Regular Dealer
C. Service Contract Act
D. Davis-Bacon Act
E. Not Subject to Walsh-Healey, Service Contract, or Davis-Bacon Act
35. ESTIMATED CONTRACT COMPLETION DATE — CY MO — 138 139 140 141
36. CONTRACTOR'S TIN — 142 143 144 145 146 147 148 149 150
37. COMMON PARENT'S NAME — 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180
38. COMMON PARENT'S TIN — 181 182 183 184 185 186 187 188 189
39. RESERVED FOR FPDS — 190 191 192 193 194 195 196 197 198 199
40. OPTIONAL REPORTED DATA ELEMENTS — 200 -
41. FOR AGENCY INTERNAL USE

42. CONTRACTING OFFICER OR REPRESENTATIVE			
a. TYPED NAME	b. SIGNATURE	c. TELEPHONE NO.	d. DATE SUBMITTED (YYMMDD)

NSN 7540-01-074-7031
Previous edition not usable

279 - 105

Standard Form 279, (REV. 10-88)
FAR (48 CFR) 53.204-2(a)

44. Section 53–301–281 is revised to read as follows:

53.301–281 Standard Form 281, FDDS–Summary of Contract Actions of $10,000 or Less.

FEDERAL PROCUREMENT DATA SYSTEM (FPDS)
SUMMARY CONTRACT ACTION REPORT ($25,000 or Less)
(Dollars in thousands, rounded to the nearest thousand)

INTERAGENCY REPORT CONTROL NUMBER
0208-GSA-QU

CIVILIAN AGENCIES	DEPARTMENT OF DEFENSE
Net dollars and number of actions where anticipated value of instrument is $25,000 or less.	Net dollars and number of actions where amount obligated on action is $25,000 or less.

A. REPORT PERIOD		B. REPORT TYPE *(X one)*			C. REPORTING AGENCY CODE *(FIPS 95)*
FY	QTR		ORIGINAL	REVISION	

D. REPORTING AGENCY NAME	E. CONTRACTING OFFICE CODE	F. CONTRACTING OFFICE NAME

PART I - PRIME CONTRACT ACTIONS OF $25,000 OR LESS

	PROCUREMENT METHOD	Number of Actions (a)	NET DOLLAR AMOUNTS: Small Business Concerns (b)	Large Business Concerns (c)	Domestic Outside U.S. / Foreign (d)	Other Entities (e)	Total Dollars (f)
NEW AWARDS AND MODIFICATIONS	1. Tariff or Regulated Acquisitions						
	2. Contract for Foreign Government or International Organization						
	3. Small Purchases *(FAR Part 13)*						
	4. Delivery Orders - GSA Schedules Only						
	5. Delivery Orders - Other Federal Schedules						
	6. Delivery Orders - All Other						
	7. Other Procurement Methods						
	8. TOTAL NEW AWARDS AND MODIFICATIONS						
COMPETITION	9. Competed						
	10. Not Competed						
	11. Not Available for Competition						
MODIFICATIONS	12. TOTAL MODIFICATIONS *(Excluding Line 3)*						

PART II - SELECTED SOCIOECONOMIC STATISTICS
(Includes both new awards and modifications)

PREFERENCE PROGRAMS			TYPE OF CONTRACTOR		
CATEGORY	Number of Actions (a)	Total Net Dollars (b)	CATEGORY	Number of Actions (a)	Total Net Dollars (b)
13. Small Business - Small Purchase Set-Aside			18. Small Disadvantaged Business		
14. Small Business Set-Aside			19. Woman - Owned Small Business		
15. Labor Surplus Area Set-Aside			20. Sheltered Workshop		
16. Combined Labor Surplus/ Small Business Set-Aside					
17. 8(a) Awards					

G. PERSON SUBMITTING REPORT			
NAME	SIGNATURE	TELEPHONE NUMBER *(include area code)*	DATE SUBMITTED

NSN 7540-01-091-9674
Previous edition not usable

281-104

Standard Form 281, (REV. 10-88)
FAR (48 CFR) 53.204-2(b)

BILLING CODE 6820-61-C

45. Section 53–301–1415 is revised to read as follows:

53.301–1415 Standard Form 1415, Consent of Surety and Increase of Penalty.

CONSENT OF SURETY AND INCREASE OF PENALTY	1. CONTRACT NO.	2. MODIFICATION NO.	3. DATED

4. The surety (co-sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as modified or amended. The principal and surety (co-sureties) further agree that on or after the execution of this consent, the penalty of the performance bond or bonds is increased by _____ dollars ($_____) and the penalty of the payment bond or bonds is increased by _____ dollars ($_____). However, the increase of the liability of each co-surety resulting from this consent shall not exceed the sums shown below.

	5. NAME OF SURETY(IES)	6. INCREASE IN LIABILITY LIMIT UNDER PERFORMANCE BOND	7. INCREASE IN LIABILITY LIMIT UNDER PAYMENT BOND
a.		$	$
b.			
c.			

	a. BUSINESS ADDRESS	b. DATE THIS CONSENT EXECUTED c. SIGNATURE * d. TYPED NAME	
8. INDIVIDUAL PRINCIPAL			*(Seal)*

	a. CORPORATE NAME AND BUSINESS ADDRESS	b. DATE THIS CONSENT EXECUTED c. PERSON EXECUTING CONSENT *(Signature)* * BY d. TYPED NAME AND TITLE OF ABOVE PERSON	
9. CORPORATE PRINCIPAL			*(Affix Corporate Seal)*

* The Principal or authorized representative shall execute this Consent of Surety and Increase of Penalty with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, a Power-of-Attorney or a Certificate of Corporate Principal must accompany the consent.

10. CORPORATE SURETY(IES)

	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE OF ABOVE PERSON	
A			*(Affix Corporate Seal)*
B			*(Affix Corporate Seal)*
C			*(Affix Corporate Seal)*

Add similar signature blocks on the back of this form if necessary for additional co-sureties.

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1415 (REV. 11-87)
Prescribed by GSA
FAR (48 CFR) 53.228(l)

[FR Doc. 88–24605 Filed 10–25–88; 8:45 am]

BILLING CODE 6820–61–C

federal register

Wednesday
October 26, 1988

Part IV

Environmental Protection Agency

40 CFR Part 148

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Additional Effective Dates; First Third Wastes; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 148

[FRL-3392-3]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Additional Effective Dates; First Third Wastes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing rules implementing the Congressionally mandated prohibitions on the underground injection of selected hazardous wastes. This proposed action is being taken in response to amendments to the Resource Conservation and Recovery Act (RCRA) enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA).

Today's notice proposes effective dates for certain wastes prohibited under section 3004(g) of RCRA. It also solicits comment on the appropriateness of certain treatment standards promulgated pursuant to section 3004(m) of RCRA as they relate to injected waste. The general framework for implementing the land disposal restrictions for injection of hazardous wastes was promulgated on July 26, 1988 (53 FR 28118 *et seq.*). That rule should be consulted for a more thorough explanation of the Agency's rationale concerning the implementation of the land disposal restrictions for hazardous waste injection.

DATES: Comments must be received on or before December 27, 1988; the public hearing will be held from 1:00 p.m. until 4:00 p.m. on December 19, 1988; requests to present oral testimony should be received on or before November 25, 1988.

ADDRESSES: Comments (in triplicate), requests to testify, and inquiries concerning the Public Docket should be addressed to Bruce Kobelski, EPA, Office of Drinking Water (WH-550), 401 M Street SW., Washington, DC 20460. The hearing will be held in the Auditorium of the EPA Training Center, Waterside Mall, 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Atcheson, Office of Drinking Water, EPA, (202) 382-5508.

SUPPLEMENTARY INFORMATION

Preamble Outline

I. Background

A. Statutory Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste. The amendments prohibit the continued land disposal of hazardous waste beyond specified dates unless the waste meets or is treated to meet levels established pursuant to RCRA section 3004(m) *or* the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the wastes remain hazardous (RCRA section 3004(d)(1), (e)(1), (f)(2), (g)(5)). Congress established a separate schedule in section 3004(f) for making determinations regarding the injection of dioxins and solvents and the list of wastes specified in section 3004(d)(2), termed the "California list."

Wastes meeting the treatment standards set by EPA under section 3004(m) of RCRA may be land disposed. The statute requires EPA to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1)).

Land disposal prohibitions are effective immediately upon the statutory deadlines unless the Agency sets another effective date based on the earliest date that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment will be available (RCRA section 3004(h) (1) and (2)). However, these effective date variances may not exceed 2 years beyond the otherwise applicable statutory effective date. In addition, two 1-year, case-by-case extensions of the effective date may be granted under certain circumstances (RCRA section 3004(h)(3)).

For the purposes of the land disposal restrictions program, the statute specifically defines land disposal to include, but not be limited to, any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave (RCRA section 3004(k)). The statute also sets forth a series of deadlines for Agency action.

The land disposal prohibitions apply to all hazardous wastes identified or listed under RCRA section 3001 as of November 8, 1984, the date of enactment of HSWA. For any hazardous waste identified or listed under RCRA section 3001 after November 8, 1984, EPA is required to make land disposal restriction determinations within 6 months of the date of identification or listing (RCRA section 3004(g)(4)). However, the statute does not impose an automatic prohibition on land disposal if EPA misses a deadline for any newly listed or newly identified waste.

1. Section 3004(f)

Section 3004(f) addresses the disposal by injection of solvents, dioxins, and California list wastes. Specifically, this section requires the Administrator to

promulgate rules prohibiting the disposal of such wastes into wells if it may "reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remains hazardous * * *". On July 26, 1988, the Agency established effective dates for the ban against the underground injection of solvents and dioxins (53 *FR* 28118 *et seq.*). On August 16, 1988, the Agency established effective dates for the ban against the underground injection of California list wastes (53 *FR* 30908 *et seq.*).

2. Section 3004(g)

Section 3004(g) of RCRA applies to all methods of land disposal. It requires the Agency to set a schedule for making land disposal restriction decisions for all hazardous wastes listed in 40 CFR Part 261 under RCRA section 3001(c) as of November 8, 1984, other than the wastes referred to in section 3004 (d) and (e). EPA promulgated this schedule on May 28, 1986 (51 *FR* 19300 *et seq.*). A final rule setting effective dates for the ban against the underground injection of certain section 3004(g) wastes was promulgated on August 16, 1988 (53 FR 30908 *et seq.*).

Section 3004(g)(5) provides that the regulations promulgated by the Administrator must prohibit methods of land disposal except for methods "which the Administrator determines will be protective of human health and the environment for as long as the wastes remain hazardous * * *".

Furthermore, the section provides that, except for wastes which comply with the standards expressed in section 3004(m), a method of land disposal may not be determined to be protective of human health and the environment, "unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous."

3. Proposed Standard for Demonstrating Protection of Human Health and the Environment

On July 26, 1988 (53 *FR* 28118 *et seq.*), the Agency applied an identical standard to injection of hazardous waste, regardless of whether the waste was covered under section 3004(f) or section 3004(g). A brief summary of that framework follows.

As noted in that rule, section 3004 (f) and (g) do not use the same language, but both require a demonstration that injection is protective of human health and the environment. Under section 3004(g) it is clear that such a demonstration must include a showing of "no migration" from the injection zone for as long as the wastes remain hazardous. EPA believes that the "no migration" standard of section 3004(g) helps define what is protective of human health and the environment under section 3004(f). Section 3004(g), by its terms, restricts the injection of certain hazardous wastes into injection wells. Since the wastes covered under section 3004(f) are just as hazardous to human health and the environment as those under section 3004(g), EPA believes that injection of either set of wastes should be subject to the same standard. Thus, the Agency believes that the "no migration" demonstration should be similar for all injection wells regardless of the type of injected waste, and that the "no migration" standard should apply to all facilities injecting hazardous waste regardless of which section of the statute they are subject to.

B. Effect on State UIC Primacy

States need not seek authorization to administer the land disposal restrictions program codified in Part 148 to maintain Underground Injection Control (UIC) primacy. These provisions are in effect in all states as a matter of federal law. However, the Agency expects that State agencies which have primacy for the UIC program will wish to implement Part 148, and receive authorization to grant "no migration" exemptions from land disposal restrictions as well as case-by-case extensions under section 3004(h)(3). However, before such authorization can be granted, the State would have to demonstrate that it has the authority to implement section 3004(f), (g), and (h)(3) of RCRA, and receive authorization to do so. A thorough discussion of the conditions under which such authorization can take place can be found in 50 *FR* 28728 *et seq.*, July 15, 1985, 51 *FR* 40618 *et seq.*, Nov. 7, 1986, and 52 *FR* 25783 *et seq.*, July 8, 1987. In addition, where jurisdiction for UIC and RCRA do not reside in the same State agency, EPA will require a Memorandum of Understanding between the two entities, clearly outlining responsibility for granting exemptions.

C. Summary of the Land Disposal Restrictions Framework

1. Regulatory Framework

On November 7, 1986, EPA promulgated a final rule (51 *FR* 40572) establishing the regulatory framework for implementing the land disposal restrictions. Corrections to the November 7, 1986, final rule were included in a June 4, 1987, **Federal Register** notice (52 *FR* 21010) to clarify the Agency's approach to regulating restricted wastes. Some changes to the framework were also made in the July 8, 1987, rulemaking on the California list wastes (52 *FR* 25760). An August 17, 1988, promulgation set effective dates for the ban against the surface disposal of certain RCRA section 3004(g) ("First Third") wastes (53 *FR* 31138 *et seq.*). Rules which specifically address disposal of hazardous waste through injection wells were promulgated on July 26, 1988 (53 FR 28118), and August 16, 1988 (53 *FR* 30908 *et seq.*).

By each deadline, according to a schedule established in the statute under section 3004(d), (e), or (f) (or promulgated on May 28, 1986 (51 *FR* 19300), for section 3004(g) wastes), the Agency has promulgated or intends to promulgate the applicable treatment standards for each hazardous waste. Restricted wastes may be land disposed in a Subtitle C facility if they meet the applicable treatment standards.

After the effective dates of the prohibitions, wastes that do not comply with the applicable treatment standards will be prohibited from continued disposal in injection wells unless a petition has been approved under Subpart C of Part 148 demonstrating that continued management of those hazardous wastes in the injection well is protective of human health and the environment for as long as the waste remains hazardous. Also, section 148.4 provides that EPA may, on a case-by-case basis, grant an extension to the effective date according to the procedures outlined in § 268.5. An extension may not exceed one year, and the Administrator may not renew an extension more than once.

2. Applicability

Land disposal is defined as including, but not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave.

The land disposal restrictions apply prospectively to the affected wastes. In other words, hazardous wastes placed into land disposal units after the effective date of a statutory or regulatory prohibition are subject to the restrictions, but wastes land disposed prior to the applicable effective date are not required to be removed or exhumed for treatment. Similarly, the restrictions on storage of affected hazardous wastes apply only to wastes placed in storage after the effective date of an applicable

land disposal restriction. If, however, wastes subject to the land disposal restrictions are removed from either a storage unit or land disposal unit after the effective date, such wastes would be subject to the restrictions and treatment standards.

The provisions of the land disposal restrictions apply to wastes produced by all generators of over 100 kilograms of hazardous waste (or greater than 1 kg of acute hazardous waste) in a calendar month; however, wastes produced by small quantity generators of less than or equal to 100 kilograms of hazardous waste (or less than or equal to 1 kg of acute hazardous waste) per calendar month are conditionally exempt from the land disposal prohibitions.

The land disposal restrictions apply to both interim status and permitted facilities. All permitted facilities are subject to the restrictions regardless of existing permit conditions. The regulations at 40 CFR 270.4(a) have been amended so that compliance with a RCRA permit (including permits-by-rule under Section 270.60(b)) no longer constitutes compliance with Subtitle C as a whole.

3. Development of RCRA Section 3004(m) Treatment Standards

In the November 7, 1986, rulemaking, EPA promulgated a technology-based approach to setting treatment standards under Section 3004(m). These treatment standards are based on the performance of the best demonstrated available technology (BDAT) identified for the hazardous constituents.

In developing the treatment standards, EPA first characterizes the wastes and establishes treatability groups for wastes having similar physical and chemical properties, and thus, similar treatability characteristics. Once the treatability groups are established, EPA collects and analyzes data on identified technologies used to treat the wastes in each treatability group.

EPA identifies those technologies that are "demonstrated" by full-scale operations. The demonstrated technologies are then evaluated to determine whether they may be considered "available." Under the land disposal restrictions framework initially used, to be considered "available", the Agency determined whether the demonstrated technologies: (1) Are commercially available, and (2) substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.

As explained in the August 17, 1988, promulgation, the Agency is reevaluating the role of risk in making capacity determinations. A thorough description of this issue can be found at 53 FR 31190 *et seq.*, August 17, 1988.

The performance data on the demonstrated available technologies are evaluated to determine whether the data are representative of well-designed and well-operated treatment systems. Only data from well-designed and well-operated systems are included in determining BDAT. Such performance data are then statistically analyzed to determine the performance level representative of treatment by the candidate technology. EPA may set the treatment standards as either a specific technology or as a performance level of treatment monitored by measuring the concentration level of the hazardous constituents in the waste or treatment residual, or an extract of the waste or treatment residual. When possible, EPA would prefer to set a treatment standard as a performance level, allowing the regulated community greatest flexibility in meeting the treatment standard. When treatment standards are set as performance levels, the regulated community may use any technology (not otherwise prohibited, e.g., impermissible dilution) to treat the waste to meet the treatment standard, and is not limited to only those technologies which have been considered in determining BDAT.

In the final rule prohibiting land disposal of solvents and dioxins by means other than injection (see 52 FR 40593, November 7, 1986), EPA promulgated regulations requiring the regulated community to use the Toxicity Characteristic Leaching Procedure (TCLP) (Part 268 Appendix I) when developing an extract from the waste or treatment residual. This extract must be analyzed to determined whether the concentrations of hazardous constituents meet the applicable treatment standards (which are expressed in Table CCWE at § 268.41 as constituent levels in the TCLP extract). The TCLP has only been promulgated for monitoring compliance with the treatment standards established for the F001–F005 spent solvent wastes and the F020–F023 and F026–F028 dioxin-contaminated wastes treatment standards, and will only be used when the treatment standards are expressed as concentration of hazardous constituents in a waste (or treatment residual) extract.

4. Determination of Alternative Capacity and Ban Effective Dates

a. Establishing Effective Dates. The manner in which effective dates are established differs according to what sections of the statute govern particular wastes. Solvents, dioxins, and California list wastes, which are covered under Sections 3004 (d), (e), and (f), are subject to the so-called "hard hammer." Under this statutory scheme, the waste is automatically banned upon the statutory deadline, regardless of whether the Agency acts to set BDAT or fails to prohibit disposal of such wastes (although the Agency may, under Section 3004(h)(2), establish a different effective date (in effect provide variances) for up to 2 years based on lack of alternate protective treatment, recovery, or disposal capacity). The statutory deadline prohibiting land disposal of these wastes by injection is August 8, 1988.

Pursuant to Section 3004(g), the Agency must establish a schedule by which any hazardous wastes not covered under Sections 3004 (d), (e), or (f) are banned. The statute mandates that these scheduled wastes be addressed in three stages: August 8, 1988; June 8, 1989; and May 8, 1990. It further states that the wastes should be placed in one of these "thirds" based on their intrinsic hazard and volume. High-volume, highly hazardous wastes are placed in the first third; wastes with relatively lower hazards or which are produced in lower volumes are placed in the later thirds. Unlike the wastes subject to the "hard hammer," there is no immediate statutory ban on all forms of land disposal in cases where the Agency fails to take action. If EPA fails to set BDAT or otherwise establish prohibition dates for the first two "thirds" by the August 8, 1988 or June 8, 1989 deadlines, respectively, the wastes in the first two "thirds" are not banned by the statute from land disposal until May 8, 1990, unless EPA issues regulations establishing an earlier effective date for the ban. If these wastes were to be managed in a landfill or surface impoundment, the units would have to comply with the requirements of Section 3004(o) during the period the facilities were not subject to a ban.

On August 16, 1988 (53 FR 30908 *et seq.*), the Agency promulgated regulations setting effective dates for the ban against the underground injection of certain "First Third" wastes. Today's rulemaking proposes effective dates for the prohibition against the underground injection of the remaining "First Third"

wastes with established BDAT. Pursuant to section 3004(g), until EPA promulgates regulations setting effective dates that prohibit this method of land disposal for these wastes, the wastes are subject to the "soft hammer" requirements of section 3004(g)(6), which do not prohibit disposal in underground injection wells until May 8, 1990.

b. Effective Dates Based on National Capacity Determinations. The agency has the authority to grant national variances (for up to a 2-year maximum) from the statutory effective date based upon a lack of adequate alternative capacity. To make this determination, EPA considers, on a nationwide basis, both the physical capacity of alternative treatment technologies (permitted and interim status facilities that are expected to be on-line by the effective date) and the quantity of restricted wastes generated. If adequate capacity is available, the restriction on land disposal of that waste goes into effect upon the statutory deadline, or sooner if EPA establishes an earlier date. If there is a significant shortage of national capacity, EPA may set an alternative effective date based on the earliest date on which adequate capacity for treatment that is protective of human health and the environment will be available. During the period of the national variance, the waste may be land disposed in compliance with § 268.5(h)(2).

c. Case-by-Case Extensions. The Agency will consider granting up to a one-year extension (renewable only once) of a ban effective date on a case-by-case basis to an applicant who applies for such an extension. The applicant must demonstrate (among other things stated in § 268.5) that a good faith effort has been made to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his wastes, and that he has entered into a binding contractual commitment to construct or otherwise provide alternative capacity that cannot reasonably be made avaialble by the applicable effective date due to circumstances beyond his control. During the period of the extension, the waste may be land disposed in compliance with § 268.5(h)(2).

5. Exemption for Treatment in Surface Impoundments.

Wastes that would otherwise be prohibited from one or more methods of land disposal may be treated in a surface impoundment that meets certain technological requirements (§ 268.4(a)(3)) as long as treatment residuals that fail to meet the applicable treatment standard or prohibition level are removed within one year of entry into the impoundment and are not placed into any other surface impoundment. The owner or operator of such an impoundment must certify to the Regional Administrator that the technical requirements have been met and must also submit a copy of the waste analysis plan that has been modified to provide for testing treatment residuals in accordance with § 268.4.

As promulgated in the California list final rule for surface disposed wastes (52 FR 25760), evaporation of hazardous constituents as the principal means of treatment is not considered treatment for the purposes of this exemption (§ 268.4(b)).

6. Dilution Prohibition

As established in the November 7, 1986, rule, and modified in the July 8, 1987, rule, dilution is prohibited as a substitute for adequate treatment. This includes dilution to achieve compliance with a treatment standard or compliance level, as well as dilution to circumvent the effective date of a prohibition, or to otherwise avoid or circumvent a land disposal prohibition (§ 268.3). However, dilution is permitted only if it is a necessary part of the treatment process.

7. Storage Prohibition

Storage of prohibited wastes is banned except where storage is solely for the purpose of accumulating such quantities of wastes as are necessary to facilitate proper treatment, recovery, or disposal (§ 268.50). RCRA-permitted treatment, storage, and disposal facilities may store restricted wastes for as long as needed, provided such storage is solely for this purpose. However, if the facility stores a prohibited waste for more than one year, it bears the burden of proof that such storage was solely for this purpose (no notification of storage exceeding one year is requried). For storage of less than one year, EPA bears the burden of proof that such storage was not for the sole purpose of accumulating such quantities of wastes as are necessary to facilitate proper treatment, recovery, or disposal. This statutory prohibition on storage does not apply to RCRA wastes which meet the treatment standard, wastes which have been granted a variance or an extension to the effective date, and stored wastes which are the subject of a "no migration" exemption under § 148.20.

8. Variance from the Treatment Standard

EPA established the variance from the treatment standard to account for those wastes which are unable to meet the applicable treatment standards, even if well-designed and well-operated systems are used (§ 268.44). Petitions must demonstrate (among other things) that the waste is significantly different from the wastes evaluated by EPA in setting the treatment standard and that the waste cannot be treated in compliance with the applicable treatment standard. This variance procedure could establish a new waste treatability group and corresponding BDAT treatment standard that would apply to all wastes meeting the criteria of the new waste treatability group.

9. "No Migration" Exemption

Section 148.20 as published (53 FR 28118 *et seq.*) outlines in detail the Agency's plan for implementing the "no migration" provisions of RCRA with respect to injected wastes. Briefly, a petitioner is required, through modeling, to demonstrate that there is no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This demonstration can be made in one of two ways. The operator may demonstrate, using flow and transport models, that the site conditions are such that injected fluids will not migrate vertically out of the injection zone or migrate within the injection zone to a point of discharge from the injection zone for a period of ten thousand years. Alternatively, an owner or operator may show that the waste is transformed, due to geochemical processes, for example, in such a manner that it will become nonhazardous at the edge of the injection zone. In keeping with existing policy, the Agency used health-based standards, such as Maximum Contaminant Levels (MCLs), to define hazardous levels. A demonstration based on geochemical modeling cannot rely on attenuative mechanisms occurring outside the injection zone.

Also, the operator must demonstrate that the well was in compliance with the substantive area of review, corrective action, and mechanical integrity requirements of Part 146 as promulgated on July 26, 1988 (53 FR 28118 *et seq.*).

II. Summary of Today's Proposal—Remainder of First Third of Scheduled Wastes

A. Background

Historically, hazardous waste disposal has been regulated through two programs: surface disposal through 40 CFR Parts 264, 265, and new Part 268, and underground injection through the UIC Program (40 CFR Parts 144 through

147). On July 26, 1988 (53 FR 28118 *et seq.*), the Agency promulgated Part 148 which established the framework for implementing the HSWA prohibitions for injected wastes, and set effective dates for the ban against the injection of solvents and dioxins. On April 26, 1988 (53 FR 14892 *et seq.*), EPA proposed effective dates for the ban against the underground injection of California list wastes as well as certain of the "First Third" wastes for which BDAT had been proposed. That proposal was promulgated on August 16, 1988 (53 FR 30908 *et seq.*), with the exception of three waste codes. The Agency is today reproposing the effective dates for those waste codes in light of more complete data on the available treatment capacity and the quantities of wastes generated (Refs. 1 and 2).

In addition to reassessing the April 26, 1988, proposal for three waste codes, EPA is today proposing effective dates for the ban against the underground injection of the remaining "First Third" wastes for which BDAT has been identified.

The subset of injected wastes being addressed in today's proposal will be subject to the "soft hammer" provisions of section 3004(g)(6) until promulgation of this rule. The Agency will move as expeditiously as possible to finalize these regulations at the earliest possible date.

Although EPA's information on waste generated and treatment capacity available is, in general, reasonably accurate, the amount and characteristics of waste generated as a result of ongoing and future cleanups conducted pursuant to RCRA section 3004 and CERCLA is less clear. The Agency, however, recognizes that such wastes are subject to the land ban provisions of RCRA, and recognizes further, that they will likely place a substantial demand on both onsite and commercial treatment over the next few years. Today's proposal incorporates a framework for addressing the projected volumes of these wastes in the capacity determinations which follow (see 53 FR 30911, August 16, 1988).

B. "First Third" Wastes for Which EPA has not Set Treatment Standards (Including all Chemical Specific "P" and "U" Wastes)

The Agency has not set treatment standards at this time for the "First Third" wastes outlined in Table 1 below. EPA is moving as expeditiously as possible to conduct the testing and analysis of alternative treatments for those wastes for which it is required to set BDAT, but on which it has not yet acted. Until that research is complete and effective dates are established, these wastes are subject to the "soft hammer" and as such are not prohibited from land disposal until the Agency sets an effective date or until May 8, 1990, whichever comes first (see Section (I)(C)(4)(a) of this preamble).

Table. 1—"First Third" Wastes for Which No BDAT has been Established

F006 wastewaters—The wastewater component of treatment sludges from certain electroplating operations.

(**NOTE:** The Agency has established BDAT for the nonwastewater component of the F006 waste category. See Section (II)(C) of today's preamble.)

F007—Spent cyanide plating bath solutions from electroplating operations.

F008—Plating bath sludges from the bottom of plating baths from the electroplating operations where cyanides are used in the process.

F009—Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.

F019—Wastewater treatment sludges from the chemical conversion coating of aluminum.

K004 wastewaters—The wastewater component of treatment sludge from the production of zinc yellow pigments.

(**Note:** The Agency has established BDAT for the nonwastewater component of the K004 waste category. See Section (II)(C) of today's preamble.)

K008 wastewaters—The wastewater component of oven residue from the production of chrome oxide green pigments.

(**Note:** The Agency has established BDAT for the nonwastewater component of the K008 waste category. See Section (II)(C) of today's preamble.)

K011—Bottom stream from the wastewater stripper in the production of acrylonitrile.

K013—Bottom stream from the acetonitrile column in the production of acrylonitrile.

K014—Bottoms from the acetonitrile purification column in the production of acrylonitrile.

K017—Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.

K021—wastewaters—The wastewater component of aqueous spent antimony catalyst waste from fluoromethanes production.

(**Note:** The Agency has established BDAT for the nonwastewater component of the K021 waste category. See Section (II)(C) of today's preamble.)

K022 wastewaters—The wastewater component of distillation bottom tars from the production of phenol/acetone from cumane.

(**Note:** The Agency has established BDAT for the nonwastewater component of the K022 waste category. See Section (II)(C) of today's preamble.)

K031—By-product salts generated in the production of MSMA (monosodium methanearsenate and cacodylic acid).

K035—Wastewater treatment sludges generated in the production of creosote.

K036 wastewaters—The wastewater component of still bottoms from toluene reclamation distillation in the production of disulfoton.

(**Note:** The Agency has established BDAT for the nonwastewater component of the K036 waste category. See Section (II)(C) of today's preamble.)

K046 wastewaters and explosive nonwastewaters—Both the explosive nonwastewater component and all wastewater components of treatment sludges from the manufacturing, formulation, and loading of lead-based initiating compounds.

(**Note:** The Agency has established BDAT for the nonexplosive nonwastewater component of the K046 waste category. See Section (II)(C) of today's preamble.

K060 wastewaters—The wastewater component of ammonia still lime sludge from coking operations.

(**Note:** The Agency has established BDAT for the nonwastewater component of the K060 waste catgegory. See Section (II)(C) of today's preamble.)

K061 Wastewaters—The wastewater component of emission control dust/sludge from the primary production of steel in electric furnaces.

(**Note:** The Agency has established BDAT for the nonwastewater component of the K061 waste category. See Section (II)(C) of today's preamble.)

K069 wastewaters and calcium sulfate nonwastewater—All wastewaters and the calcium sulfate nonwastewater component of emission control dust/sludge from secondary lead smelting.

(**Note:** The Agency has established BDAT for the noncalcium sulfate nonwastewater component of the K069 waste category. See Section (II)(C) of today's preamble.)

K073—Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes.

K083 wastewaters and ash nonwastewaters—All wastewaters and the ash nonwastewater

component of distillation bottoms from aniline production.

(Note: The Agency has established BDAT for the no ash nonwastewater component of the K083 waste category. See Section (II)(C) of today's preamble.)

K084—Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.

K085—Distillation of fractionation column bottoms from the production of chlorobenzenes.

K086—Solvent sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.

(Note: The Agency has established BDAT for K086 solvent washes. See Section (II)(C) of today's preamble.)

K106—Wastewater treatment sludge from the mercury cell process in chlorine production.

P and U wastes—All remaining "First Third" chemical specific wastes originally listed under § 261.33 (e) and (f) (i.e., those beginning with a "U" or a "P").

C. "First Third" Wastes With Established BDAT Which Current Data Indicate Are Not Being Injected

The RCRA section 3004(g) "First Third" wastes listed in Table 2 below are "First Third" wastes with BDAT standards which current data indicates are not being injected.

(Note: Included in Table 2 are K025 nonwastewaters and K100 nonwastewaters. Originally "Second Third" and "Third Third" wastes, respectively, these wastes have established BDAT and as such are being addressed along with the "First Third" wastes.)

Restricting the injection of these waste would have a negligible effect on the availability of treatment capacity. Therefore, EPA is proposing that these wastes be banned from underground injection upon the date of final promulgation of this rule. The Agency requests comment on whether any of these wastes are being injected, and if so, at what quantities and with what characteristics.

Table 2.—"First Third" Wastes With Established BDAT Which Current Data Indicate Are Not Being Injected

F006 nonwastewaters—The nonwastewater component of treatment sludges from certain electroplating operations.

(Note: The Agency has not established BDAT for F006 wastewaters. See Section (II)(B) of today's preamble.)

K001—Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.

K004 nonwastewaters—The nonwastewater component of treatment sludge from the production of zinc yellow pigments.

(Note: The Agency has not established BDAT for K004 wastewaters. See Section (II)(B) of today's preamble.)

K008 nonwastewaters—The nonwastewater component of oven residue from the production of chrome oxide green pigments.

(Note: The Agency has not established BDAT for K008 wastewaters. See Section (II)(B) of today's preamble.)

K015—Still bottoms from the distillation of benzyl chloride.

K018—Heavy ends from the fractionation column in ethyl chloride production.

K020—Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.

K021 nonwastewaters—The nonwastewater component of aqueous spent antimony catalyst waste from fluoromethanes production.

(Note: The Agency has not established BDAT for K021 wastewaters. See Section (II)(B) of today's preamble.)

K022 nonwastewaters—The nonwastewater component of distillation bottom tars from the production of phenol/acetone from cumane.

(Note: The Agency has not established BDAT for K022 wastewaters. See Section (II)(B) of today's preamble.)

K024—Distillation bottoms from the production of phthalic anhydride from naphthalene.

K025 nonwastewaters—The nonwastewater component of distillation bottoms from the production of nitrobenzene by the nitration of benzene.

(Note: The Agency established BDAT for K025 nonwastewaters, originally listed with the "Second Third" wastes, on August 17, 1988. The Agency has not established BDAT for K025 wastewaters. As such, K025 wastewaters remain a "Second Third" waste, and will be addressed at a later date.)

K036 nonwastewaters—The nonwastewater component of still bottoms from toluene reclamation distillation in the production of disulfoton.

(Note: The Agency has not established BDAT for K036 wastewaters. See Section (II)(B) of today's preamble.)

K037—Wastewater treatment sludge from the production of disulfoton.

K044—Wastewater treatment sludges from the manufacturing and processing of explosives.

K045—Spent carbon from the treatment of wastewater containing explosives.

K046 nonexplosive nonwastewaters—The nonexplosive nonwastewater component of treatment sludges from the manufacturing, formulation, and loading of lead-based initiating compounds.

(Note: The Agency has not established BDAT for K046 wastewaters and the explosives nonwastewater component of the K046 waste category. See Section (II)(B) of today's preamble.)

K047—Pink/red water from TNT operations.

K048—Dissolved air flotation (DAF) float from the petroleum refining industry.

K060 nonwastewaters—The nonwastewater component of ammonia still lime sludge from coking operations.

(Note: The Agency has not established BDAT for K060 wastewaters. See Section (II)(B) of today's preamble.)

K061 nonwastewaters—The nonwastewater component of emission control dust/sludge from the primary production of steel in electric furnaces.

(Note: The Agency has not established BDAT for K061 wastewaters. See Section (II)((B) of today's preamble.)

K069 noncalcium sulfate nonwastewaters—The noncalcium sulfate nonwastewater component of emission control dust/sludge from secondary lead smelting.

(Note: The Agency has not established BDAT for K069 wastewaters and the calcium sulfate nonwastewater component of the K069 waste category. See Section (II)(B) of today's preamble.)

K083 no ash nonwastewaters—The no ash nonwastewater component of distillation bottoms from aniline production.

(Note: The Agency has not established BDAT for K083 wastewaters and the ash nonwastewater component of the K083 waste category. See Section (II)(B) of today's preamble.)

K086 solvent washes—Solvent washes from cleaning tubs and equipment used in the formulation of ink from

pigments, driers, soaps, and stabilizers containing chromium and lead.

(Note: The Agency has not established BDAT for KO86 solvent sludges, caustic washes and sludges, or water washes and sludges. See Section (II)(B) of today's preamble.)

KO87—Decanter tar sludge from coking operations.

KO99—Untreated wastewater from the production of 2,4–D.

K100 nonwastewaters—The nonwastewater component of waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.

(Note: The Agency established BDAT for K100 nonwastewaters, originlly listed with the "Third Third" wastes, on August 17, 1988. The Agency has not established BDAT for K100 wastewaters. As such, K100 wastewaters remain a "Third Third" waste, and will be addressed at a later date.)

K101—Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.

K102—Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.

The Agency is aware that leachate gathered from leachate collection systems is frequently injected. Moreover, some impoundments may elect to close rather than meet minimum technology standards by November 8, 1988, as required by section 3005(j). Both the leachate and any wastes injected as a result of impoundments closing may contain wastes which have established BDATs, but for which the Agency has no data indicating whether the waste is injected, and therefore has not evaluated whether a capacity variance is warranted. The Agency specifically requests comment on whether such wastes are injected, and on the quantities and characteristics of this waste. Based on this data, the Agency may elect to allow the prohibition dates for injected wastes proposed today to stand, or establish new dates for all or some of the wastes.

D. Determination of Available Capacity and Effective Dates for Injected "First Third" Wastes (With Established BDAT) Not Addressed on August 16, 1988

1. *Allocating Limited Treatment Capacity.* Often, several waste streams will share a common form of BDAT and, thus, form a treatability group. Wastewater treatment, for example, is BDAT for several waste codes. Where there is sufficient available treatment capacity in a given treatability group, EPA will not grant national capacity variances. Where there is insufficient capacity EPA must allocate or dedicate certain waste streams to the available capacity and may grant capacity variances for the others.

The allocation decisions may have the short term effect of delaying an effective prohibition date for underground injection of certain waste streams for up to two years. At the end of that time, all waste streams will be subject to the land disposal prohibitions.

The Agency does believe that it is possible to set out certain decision rules which are consistent with statutory concerns under RCRA and with initial Agency analysis concerning the relative risks posed by waste streams and certain disposal methods. Based on these considerations, the Agency has adopted the following framework regarding allocation of available treatment capacity. EPA used this framework for its allocation decisions regarding injected waste in the proposed rule setting effective dates for solvents and dioxins (see 52 *FR* 32450) as well as the final rule setting effective dates for California list wastes and certian of the "First Third" wastes (see 53 *FR* 30908 *et seq.).*

One of the strongest congressional concerns leading to the land disposal restrictions was disposal in surface impoundments and landfills. Indeed, in establishing a presumption against land disposal the statute singles out these specific disposal practices as the least favored mode of hazardous waste management (See Section 1002(b)(7) of RCRA). Similarly, Section 3004(f) addresses the same wastes as section 3004(d) and (e) but applies a later deadline for wastes disposed by underground injection.

Moreover, preliminary Agency analysis suggests that injection wells generally pose less risk than surface disposal units. In addition, the Agency has been reviewing petitions from several injection facilities, and believes on the basis of preliminary data, that many operators may successfully demonstrate that their facilities meet the "no migration" standard as required by section 3004(f) and (g) of RCRA (*See generally,* 53 *FR* 28118 *et seq.,* July 26, 1988). The number of similar variances likely to be granted to surface disposal units, on the other hand, appears limited. Accordingly, directing wastes from surface disposal to available treatment capacity is likely to be a permanent requirement. Forcing wastes away from wells which may meet the recently promulgated standards for demonstrating "no migration" under section 3004(f) and (g)—i.e., are protective—to limited treatment capacity is a significant short-term dislocation. In view of these factors, the Agency believes that apportioning available treatment capacity first to waste disposed in surface land disposal units is most consistent with Congressional intent, protective of human health and the environment, and the most rational way to avoid short-duration dislocations in environmentally protective treatment or disposal practices.

A second decision rule EPA is using is to allocate to available treatment capacity the substantial quantities of wastes resulting from both CERCLA removal and remedial actions as well as corrective actions under section 3004(u) of RCRA before allocating injected waste streams. Preliminary studies indicate that approximately 18.3 to 38.5 *billion* gallons of ground water containing "First Third" wastes may be extracted from sites between 1988 and 1990 (Ref. 3). Since these wastes are generated at sites where EPA has determined that clean-up action is needed to protect human health or the environment, the Agency believes it should administer the capacity variances in a manner which preserves the ability to treat these wastes from clean ups.

Similarly, the Agency has observed that as facilities contemplate complying with the requirements of Section 3005(j) of RCRA, some are electing to close down existing surface impoundments, in many cases displacing huge volumes of waste. The Agency believes that treatment capacity will be further limited as these waters are processed through the system, and treated or otherwise managed. Again, EPA believes that these wastes should be applied against available capacity before those which are rejected.

The Agency has received substantial comment on prior capacity variance proposals on limitations to the practical availability of treatment for high volume waste streams. In particular, commenters have stated that availability of transportation and related facilities needed to transport waste to commercial treatment facilities, the difficulty of installing on-site tanks for large volume waste streams, and the limits of options for managing residues from treatment all serve to limit access to or delay the availability of treatment. With respect to transportation, truck

and rail capacity, and the facilities necessary to handle the transfers of high volume wastes are not now, and cannot shortly be developed (Refs. 4 and 5). Compounding this, much of the available wastewater treatment capacity is located in the northeast, while injection wells are located primarily in the Gulf Coast region (Ref. 5). To the extent that the trucks and tank cars are tied up in travelling long distances, their availability would be further limited.

The above decision rules and factors are used in the capacity analyses below.

Table 3 summarizes the proposed effective dates for the ban against the underground injection of certain "First Third" wastes. This table lists only those "First Third" wastes with established BDAT for which underground injection effective ban dates were not promulgated on August 16, 1988, and which the Agency believes are, or might be, injected. This table includes three waste codes for which effective dates were first proposed on April 26, 1988. These effective dates are being reproposed in light of new data received from the Agency's ongoing Treatment, Storage, Disposal, and Recycling (TSDR) Survey. Discussions of all wastes addressed in Table 3 follow.

TABLE 3.—INJECTED "FIRST THIRD" WASTES (WITH ESTABLISHED BDAT) NOT ADDRESSED ON AUSUST 16

RCRA Waste Code	Previously Proposed Effective Date, if applicable	Proposed effective date based on new data
K016	Variance until 8/8/90	Dilute K016 (<1%)—variance until 8/8/90; concentrated K016 (>1%)—date of final promulgation of this rule
K019	Variance until 8/8/90	Date of final promulgation of this rule
K030	Variance until 8/8/90	Date of final promulgation of this rule
K103	Being proposed for the first time today	Date of final promulgation of this rule

2. *K016.* Wastes categorized as K016 consist of heavy ends or distillation residues from the production of certain halogenated hydrocarbons. The TSDR Survey identified 118 million gallons of injected, dilute (<1%) K016 wastes with an identified BDAT of wastewater treatment consisting of biological treatment followed by wet air oxidation. The survey also indicated that 170,000 gallons of K016 may be injected at concentrations equal to or greater than 1%. BDAT for these K016 wastes would be liquid combustion (Ref. 2). There are approximately 20 million more gallons of injected K016 than was identified on April 26, 1988.

The Agency has determined that there is 72 million gallos of available capacity for the treatment train applicable to injected, dilute K016 waste. Similarly 246 million gallons of available capacity have been identified for injected wastes utilizing liquid combustion as treatment. Based on this information, the Agency is revising the 2-year treatment variance proposed for K016 wastes on April 26, 1988. At the time of the proposal, the Agency assumed that all injected K016 wastes were concentrated, and consequently subject to a BDAT of incineration. The variance proposed on April 26, 1988, was based on a lack of available incineration capacity. The TSDR Survey changed these assumptions in two ways. First, the majority of injected K016 wastes were found to be dilute; second, the amount of incineration capacity available has increased dramatically. Accordingly, EPA is today proposing to grant a variance for dilute K016, and ban its injection on August 8, 1990. EPA is proposing to prohibit, upon final promulgation of this rule, the injection of concentrated K016 unless it is treated to meet the BDAT treatment standards.

3. *K019.* This waste stream is composed of heavy ends and distillation residues generated in the production of ethylene dichloride. The new survey has identified only 65,000 gallons of this relatively dilute waste that are being injected. The most appropriate treatment for this waste would be wastewater treatment based on biological degradation (Ref. 2). As mentioned above, the survey shows an alternative capacity of 72 million gallons for injected wastes amenable to this type of treatment. Because the Agency has identified adequate capacity for this particular waste stream, EPA is today proposing to revise the proposal of April 26, 1988, which proposed a 2-year variance from the prohibition date. Based on the TSDR Survey data, the Agency is no longer proposing a variance and is proposing to prohibit, upon final promulgation of this rule, the injection of K019 wastes unless it is treated to meet the BDAT treatment standards.

4. *K030.* This waste is generated in the production of trichloroethylene and perchloroethylene and consists of column bottoms and heavy ends. As with K019, the injected waste is dilute and is best treated by wastewater treatment based on biological degradation. As noted above, EPA has identified 72 million gallons of such treatment capacity for injected wastes. The survey shows less than 30,000 gallons of this waste being injected. The Agency believes that the information gathered from the survey shows sufficient capacity to treat this waste, and is therefore changing the position outlined in the April 26, 1988, proposal. Today's proposal would prohibit, upon the final promulgation of this rule, the injection of K030 waste unless it is treated to meet the BDAT treatment standards.

5. *K103.* This waste stream consists of residues from the production of analine. The best information available to the Agency at this time indicates that 31,560 gallons of K103 are being injected each year (Ref. 2). The Agency believes that this waste is relatively concentrated. The specified BDAT for K103 is liquid combustion, which shows an available capacity of 246 million gallons for injected wastes. Based on this information, the Agency is not proposing to grant a variance for K103 wastes which do not meet the BDAT treatment standards, and will ban the underground injection of such wastes upon the final promulgation of this rule. The Agency believes the excess capacity is sufficiently large to assure that there will be treatment for K103 wastewaters resulting from remedial actions pursuant to either CERCLA or section 3004(u) of RCRA.

III. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order 12291 requires EPA to assess the effect of contemplated Agency actions during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order 12291 requires that regulatory agencies prepare an analysis of the regulatory impact of

major rules. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or

2. A major increase in costs or prices for consumers or individual industries; or

3. Significant adverse effects on competition, employment, investment, innovation or international trade.

The Agency had previously performed an analysis of the proposed regulation to assess the economic effect of associated compliance costs for the entire "First Third" list wastes (Ref. 6). Total compliance costs of the entire "First Third" list regulations (i.e., those being proposed today, those finalized on August 16, 1988, and those for which BDAT has not yet been defined) are estimated at $28.5 million, or $6.2 million annualized. Alternate treatment costs are estimated to total $25.75 million ($6.0 million annualized), and petition costs are estimated to be $2.75 million ($0.20 million annualized). These costs indicate that this proposal does not constitute a major rule under Executive Order 12291.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have significant economic effect on a substantial number of small entities.

Owners and operators of hazardous waste injection wells are generally major chemical, petrochemical and other manufacturing companies. The Agency is not aware of any small entities that would be affected by this rule. Section 148.1(c)(3) of the regulatory framework for this rule exempts any small quantity generator, as defined in § 261.5, from the underground injection prohibitions established in that framework. The Administrator certifies that this rule will not have significant economic effects on a substantial number of small entities. As a result of this finding EPA has not prepared a formal Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 0370.05), and was approved by OMB (Control No. 2040–0042). We are inviting further comments on this ICR, as the wastes regulated under this proposal have not been noticed before. A copy may be obtained from Information Policy Branch; EPA; 401 M Street, SW. (PM–223); Washington, DC 20460. Submit comments on these requirements to EPA at the above address. The final rule will respond to any comments on the information collection requirements.

IV. References

(1) Findings on Class I Hazardous Wells Affected by the Land Ban Rules; Temple, Barker and Sloane, December, 1987.

(2) Background Document for First Third wastes to Support 40 CFR Part 268 Land Disposal Restrictions, First Third waste Volumes, Characteristics, and Required and Available Treatment Capacity—Part II; U.S. EPA, OSW, May 1988.

(3) Estimated Quantity of Extracted Ground Water—RCRA Facilities and CERCLA Sites: 1988–1990; Report to U.S. EPA, ICF Incorporated, July 1988.

(4) Comments of the Chemical Manufacturers Association on EPA's Proposed Rule Regarding Hazardous Waste Disposal Injection Restrictions; Chemical Manufacturers Association, October 1987.

(5) Evaluation of Availability of Alternate Treatment and Disposal Capacity for Injected Hazardous wastes; Tischler/Kocurek for the Chemical Manufacturers Association, October 1987.

(6) Regulatory Impact Analysis of Proposed Hazardous waste Disposal Restrictions for Class I Injection of First Thirds List Waste; EPA Report, Contract No. 68–03–3348, Cadmus Group, Inc., October 1987.

List of Subjects in 40 CFR Part 148

Administrative practice and procedure, Confidential business information, Hazardous materials, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal, Water supply, Water pollution control.

Dated: September 30, 1988.

Lee M. Thomas,

Administrator.

Therefore it is proposed that Chapter I, Part 148 of Title 40 be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for Part 148 continues to read as follows:

Authority: Sec. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.14 is revised to read as follows:

§ 148.14 Waste Specific Prohibitions—First Third Wastes.

(a) Effective [insert the effective date of this rule], the wastes specified in 40 CFR 261.32 as EPA Hazardous waste numbers F006 (nonwastewaters), K001, K004 (nonwastewaters), K008 (nonwastewaters), K015, K016 (at concentrations greater than or equal to 1%), K018, K019, K020, K021 (nonwastewaters), K022 (nonwastewaters), K024, K025 (nonwastewaters), K030, K036 (nonwastewaters), K037, K044, K045, nonexplosive K046 (nonwastewaters), K047, K048, K060 (nonwastewaters), K061 (nonwastewaters), non $CaSO_4$ K069 (nonwastewaters), no ash K083 (nonwastewaters), K086 solvent washes, K087, K099, K100 (nonwastewaters), K101, K102, and K103 are prohibited from underground injection.

(b) Effective August 8, 1990, the waste specified in 40 CFR 261.32 as EPA Hazardous waste numbers K016 (at concentrations less than 1%), K049, K050, K051, K052, K062, K071, and K104 are prohibited from undergound injection.

(c) The requirements of paragraphs (a) and (b) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension is granted under § 148.4 of this part.

[FR Doc. 88–24593 Filed 10–25–88; 8:45 am]

BILLING CODE 6560–50–M

federal register

Wednesday
October 26, 1988

Part V

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Actions under NIH guidelines for research involving recombinant DNA molecules.

SUMMARY: This notice sets forth four actions to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958, May 7, 1986).

EFFECTIVE DATE: October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Ms. Rachel Levinson, Office of Recombinant DNA Activities, National Institutes of Health, 12441 Parklawn Drive, Suite 58, Rockville, Maryland, (301) 770–0131.

SUPPLEMENTARY INFORMATION: Today four actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. These four proposed actions were published for comment in the **Federal Register** of April 18, 1988 (53 FR 12752), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on June 3, 1988. A transcript and minutes of that meeting are available from the Office of Recombinant DNA Activities at the address given above.

In accordance with section IV–C–1–b of the NIH Guidelines, these actions have been found to comply with the NIH Guidelines and to present no significant risk to health or to the environment.

Part I of this announcement provides background information on the actions. Part II provides a summary of the actions of the Director, NIH.

I. Decisions on Actions Under NIH Guidelines

A. Proposed Amendment Regarding Certain Large-Scale Fermentation Experiments

In a letter dated March 24, 1988, Dr. Joseph R. Fordham of Novo Laboratories, Inc., Danbury, Connecticut, requested that Section III–B–5, Experiments Involving More Than 10 Liters of Culture, be amended by adding the following paragraph:

"For large-scale (LS) fermentation experiments, involving non-pathogenic and non-toxicogenic recombinant strains of host organisms having an extended history of safe industrial use the appropriate physical containment conditions need be no greater than those for the host organisms unmodified by recombinant DNA techniques; the IBC can specify higher containment if it deems it necessary."

Justification for the proposed change was included in the submission.

This proposal was published for comment in the **Federal Register** of April 18, 1988 (53 FR 12752).

Three letters were received with comments on this proposal. All of the letters provided unqualified support for the proposal.

The RAC considered this proposal at the June 3, 1988, meeting. The RAC supported the proposal but felt that it should be incorporated into Appendix K, "Physical Containment for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules," rather than in Section III–B–5. Accordingly, the RAC recommended that Appendix K–I be modified to read as follows:

Appendix K–I—Selection of Physical Containment Levels

The selection of the physical containment level required for recombinant DNA research or production involving more than 10 liters of culture is based on the containment guidelines established in Part III of the Guidelines. For purposes of large-scale research or production, three physical containment levels are established. These are referred to as BL1–LS, BL2–LS, and BL3–LS. The BL1–LS level of physical containment is recommended for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL1 containment at the laboratory scale. For large-scale fermentation experiments involving non-pathogenic and non-toxigenic recombinant strains of host organisms having an extended history of safe industrial use, the IBC may set large-scale containment conditions at those appropriate for the host organism unmodified by recombinant DNA techniques and consistent with good industrial large-scale practices. The BL2–LS level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL2 containment at the laboratory-scale. The BL3–LS level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL3 containment at the laboratory-scale. No provisions are made for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL4 containment at the laboratory scale. If necessary, these requirements will be established by NIH on an individual basis.

The RAC then voted 17 in favor, none opposed, and one abstention to recommend approval of the proposal as amended.

I accept this recommendation and Appendix K–I has been modified accordingly.

B. Large-Scale Production Involving Cephalosporium Acremonium Strain LU4–79–6

In a letter dated December 4, 1987, Dr. Mark A. Fogelsong of Eli Lilly and Company, Indianapolis, Indiana, requested approval to conduct large-scale experiments and production involving *Cephalosporium acremonium* strain LU4–79–6 under less than Biosafety Level 1-Large Scale (BL1–LS) conditions. Information on *C. acremonium* and construction of strain LU4–79–6 was provided in the submission.

This proposal was published for comment in the **Federal Register** of April 18, 1988 (53 FR 12752).

Four letters were received with comments of support for the proposal.

The RAC considered this proposal at the June 3, 1988, meeting. By a vote of twelve in favor, none opposed, and three abstentions, the RAC recommended approval of the proposal.

I accept this recommendation and Appendix D has been modified accordingly.

C. Proposed Amendment of Appendix A To Include Pseudomonas Mendocina

In a letter dated March 28, 1988, Dr. Burt D. Ensley of AMGen, Thousand Oaks, California, requested that *Pseudomonas mendocina* be included in Sublist A of Appendix A of the NIH Guidelines. Data in support of the request were included in the submission.

This proposal was published for comment in the **Federal Register** of April 18, 1988 (53 FR 12752), for public comment. No comments on the proposal were received.

The RAC considered this proposal at the June 3, 1988, meeting. By a vote of fourteen in favor, none opposed, and no abstentions, RAC recommended approval of the proposal.

I accept this recommendation and Appendix A has been modified accordingly.

D. Proposed Amendment of Appendix C–IV To Include Bacillus Licheniformis

In a letter dated March 30, 1988, Dr. Joseph R. Fordham of Novo Laboratories, Inc., Danbury, Connecticut, requested that *Bacillus licheniformis* be added to the title and to the first sentence of Appendix C–IV of the NIH Guidelines. This section would be amended to read as follows:

Appendix C–IV—Experiments Involving Bacillus Subtilis or Bacillus Licheniformis Host-Vector Systems

Any asporogenic *Bacillus subtilis* or *Bacillus licheniformis* strain * * *

Data in support of the request were included in the submission.

This proposal was published in the April 18, 1988, **Federal Register** (53 FR 12752) for public comment. One letter of support for this proposal was received.

The RAC considered this proposal at the June 3, 1988, meeting. The RAC recommended that "asporogenic" be added before "*Bacillus licheniformis*" for emphasis. By a vote of fourteen in favor, none opposed, and no abstentions, RAC recommended approval of the proposal.

I accept this recommendation and Appendix C–IV has been modified accordingly.

II. Summary of Actions

A. Revision of Appendix K–I

Appendix K–I is modified to read as follows:

Appendix K–I—Selection of Physical Containment Levels

The selection of the physical containment level required for recombinant DNA research or production involving more than 10 liters of culture is based on the containment guidelines established in Part III of the Guidelines. For purposes of large-scale research or production, three physical containment levels are established. These are referred to as BL1–LS, BL2–LS, and BL3–LS. The BL1–LS level of physical containment is recommended for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL1 containment at the laboratory scale. For large-scale fermentation experiments involving non-pathogenic and non-toxigenic recombinant strains of host organisms having an extended history of safe industrial use, the IBC may set large-scale containment conditions at those appropriate for the host organism unmodified by recombinant DNA techniques and consistent with good industrial large-scale practices. The BL2–LS level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules which requires BL2 containment at the laboratory-scale. The BL3–LS level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL3 containment at the laboratory scale. No provisions are made for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL4 containment at the laboratory-scale. If necessary, these requirements will be established by NIH on an individual basis.

B. Revision of Appendix D

The following section is added to Appendix D:

Appendix D–XII

"Eli Lilly and Company of Indianapolis, Indiana, may conduct large-scale experiments and production involving *Cephalosporium acremonium* strain LU4–79–6 under less than Biosafety Level 1-Large Scale (BL1–LS) conditions.

C. Revision of Sublist A of Appendix A

Sublist A of Appendix A is modified by the addition of *Pseudomonas mendocina* to the list of organisms.

D. Revision of Appendix C–IV

Appendix C–IV is modified to read as follows:

Appendix C–IV—Experiments Involving Bacillus subtilis or Bacillus licheniformis Host-Vector Systems

Any asporogenic *Bacillus subtilis* strain which does not revert to a sporeformer with a frequency greater than 10^{-7} can be used for cloning DNA with the exception of those experiments listed below.

For these exempt laboratory experiments, BL1 physical containment conditions are recommended.

For large-scale fermentation experiments BL1–LS physical containment conditions are recommended. However, following review by the IBC of appropriate data for a particular host-vector system, some latitude in the application of BL1–LS requirements as outlined in Appendix K–II–A through K–II–F is permitted.

Exceptions. Experiments described in Section III–A which require specific RAC review and approval before initiation of the experiment.

Experiments involving Class 3, 4, or 5 organisms [1] or cells known to be infected with these agents may be conducted under containment conditions specified by Section III–B–2 with prior IBC review and approval.

Large-scale experiments (e.g., more than 10 liters of culture) require prior IBC review and approval (see Section III–B–5).

Experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F).

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 88–24704 Filed 10–25–88; 8:45 am]

BILLING CODE 4140–01–M

Reader Aids

Federal Register

Vol. 53, No. 207

Wednesday, October 26, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

38687-38938.....3
38939-39072.....4
39073-39224.....5
39225-39432.....6
39433-39582.....7
39583-39738.....11
39739-40012.....12
40013-40200.....13
40201-40394.....14
40395-40714.....17
40715-40864.....18
40865-41148.....19
41149-41304.....20
41305-41550.....21
41551-42930.....24
42931-43184.....25
43185-43412.....26

CFR PARTS AFFECTED DURING OCTOBER

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.

1 CFR

305.....39585

3 CFR

Proclamations:
5867.....38687
5868.....38689
5869.....38691
5870.....38693
5871.....38695
5872.....38697
5873.....38699
5874.....38705
5875.....39071
5876.....39073
5877.....39075
5878.....39077
5879.....39888
5880.....40201
5881.....40395
5882.....40863
5883.....41305
5884.....41307
5885.....41551
5886.....42931
5887.....43185

Executive Orders:
11183 (Amended by EO 12653).....38703
12653.....38703
12654.....38890

Administrative Orders:
Memorandums:
Sept. 29, 1988.....38701
Orders:
Oct. 15, 1988.....40696
Presidential Determinations:
No. 88-24 of Sept. 13, 1988.....39583
No. 88-25 of Sept. 29, 1988.....40013

5 CFR

630.....42933
831.....42933
842.....42933
870.....40715
890.....40203, 40715
1201.....40015
1253.....41149
1260.....41149

Proposed Rules:
300.....40546
430.....38954
432.....38954
870.....40232

7 CFR

16.....40716
271.....39433
272.....39433
273.....39433
275.....39433
277.....39433
301.....40865
401.....38707, 40717
729.....40203
906.....40397, 41559, 43319
910.....38707, 39444, 40205, 41560, 41561
987.....39225
1126.....39444
1137.....39446
1475.....40206
1478.....40015
1479.....41309
1610.....39014, 42938
1710.....40718
1736.....39226
1951.....39014, 39739
1980.....40399

Proposed Rules:
1d.....41339, 41603
29.....40069
68.....43213
250.....41172
301.....41538
319.....41604
906.....43319
966.....39305
984.....39306
1001.....38963
1002.....38727, 38963
1004.....38963
1007.....38730
1036.....40733
1098.....38730
1099.....39839
1124.....39581
1125.....39581
1750.....40896
1751.....40734
1772.....38965
1930.....40430
1944.....40430

8 CFR

212.....40866
274.....43187

Proposed Rules:
214.....43217

9 CFR

11.....41561
71.....40378
78.....40378, 40403, 41312
85.....40378
91.....40406
94.....39447
309.....40378
310.....40378
320.....40378

Proposed Rules:
318.....39307

319.....39307
381.....39307

10 CFR

2.....40019
50.....42939
600.....38939
1035.....38939

Proposed Rules:

15.....39480
20.....41342
35.....39745
50.....40432, 41178, 41607
52.....41609
140.....40233
430.....39403

11 CFR

Proposed Rules:

106.....40070
109.....40070
114.....40070

12 CFR

32.....40720
611.....39079
614.....32609
615.....39229, 40033
618.....39229, 40867
620.....39609
621.....39609
624.....40049
704.....42942

Proposed Rules:

Ch. V.....41343
303.....41180
330.....39746
346.....41180
509.....40432
512.....40432
522.....40449
541.....40449
542.....40449
543.....40449
544.....40449
545.....40449
547.....40449
548.....40449
549.....40449
569a.....40449
569b.....40449
569c.....40449
615.....39099
701.....41609-41613, 42953, 42955
711.....41614
790.....42955
792.....42955
796.....42955

13 CFR

105.....38941
115.....41149

Proposed Rules:

108.....38737, 41351

14 CFR

13.....39404
21.....39448
23.....39448
39.....39250, 39449, 39450, 39839, 40051, 41149-41157, 41313, 41314
61.....40318
71.....39252-39254, 39451, 40052-40054, 40318, 40408, 40409, 41158
73.....39254, 40410
91.....40318, 43320
95.....41315
97.....39452
99.....39842
121.....40316
135.....40316
139.....40842
156.....41302
1203.....41318

Proposed Rules:

Ch. I.....39611, 40449, 40738
39.....40071, 40072, 40450, 41186-41196
71.....39312-39314, 40073, 41198, 41352, 41512
73.....40452
75.....40452, 40825
99.....39846
119.....39852
121.....39852
125.....39852
127.....39852
135.....39852
157.....39062
399.....41353

15 CFR

15.....41318
15a.....41318
379.....38835
399.....38835
773.....41321
785.....40410
799.....40410
801.....39452, 41562

Proposed Rules:

303.....39486, 39612
768.....40074
770.....40074
771.....40074
772.....40074
773.....40074
774.....40074
775.....40074
776.....40074
777.....40074
778.....40074
779.....40074
785.....40074
786.....40074
790.....40074
799.....40074

16 CFR

2.....40867
13.....38941
304.....38942
305.....39741
1700.....41159

Proposed Rules:

240.....43233
419.....39103
1700.....41199-41202

17 CFR

150.....41563
200.....42944
240.....38967, 40721

Proposed Rules:

15.....39103
240.....41204-41206

18 CFR

4.....40722
37.....40869
141.....40875
260.....40875
271.....43192
292.....40722
357.....40875
1300.....40217
1301.....40217
1307.....39081

Proposed Rules:

154.....40235
157.....40235
260.....40235
284.....40235
385.....40235
388.....40235

19 CFR

4.....43197
19.....40218
112.....40218
146.....40218
178.....43197

Proposed Rules:

211.....40453

20 CFR

205.....39255
404.....38943, 39014
416.....39014
614.....40550
626.....41572
627.....41572
628.....41572
629.....41572
630.....41572
631.....41572

Proposed Rules:

Ch. V.....39403
217.....40901
235.....39315
404.....39487
416.....39487

21 CFR

5.....40055
73.....41322-41324
74.....41649
81.....41649
82.....41649
172.....40878, 41325
173.....39455, 43319
177.....39083
312.....41516
314.....41516
436.....39839
444.....40725
446.....39839
510.....39256, 39839, 40055-40057, 40726-40729
520.....40055, 40058, 40726
522.....39839, 40056, 40057, 40726-40728
524.....39084, 39256, 39839, 40726
540.....40058, 40729
546.....40726
555.....40726
556.....40059
558.....38708, 39257, 40059, 40729
573.....40060
886.....38946, 40825
1308.....40061

Proposed Rules:

1308.....40390

22 CFR

7.....39588
20.....39456
204.....39015
1507.....40411

24 CFR

200.....40220
203.....40220
204.....40220
213.....40220
220.....40220
221.....40220
222.....40220
232.....40220
234.....40220
235.....40220
240.....40220
251.....40220
252.....40220
255.....40220
511.....40220
570.....40220, 41329, 41330
813.....40220
882.....40220
887.....40220
888.....40220
904.....40220, 41597
905.....40220
913.....40220
941.....41597
960.....40220
964.....40220
966.....40220
970.....40220

Proposed Rules:

200.....40624, 41038, 43156
201.....39613, 40624
203.....38844, 40624
205.....40624
206.....43156
207.....40624
213.....38844, 40624
215.....40624, 41038
220.....38844
221.....38844, 40624
222.....38844
226.....38844
232.....40624
233.....38844
234.....38844, 40624
235.....38844, 40624, 41038
236.....40624, 41038
241.....40624
242.....40624
244.....40624
247.....40624, 41038
250.....40624
251.....40624
255.....40624
290.....40624
390.....40458
501.....40624
510.....40624
570.....40624
590.....40624, 41026
750.....40624
812.....41038
813.....40624
850.....41038
880.....40624, 41038
881.....40624, 41038
882.....40624, 41038
883.....40624, 41038
884.....40624, 41038
885.....40624

886.....40624, 41038
900.....40624, 41038
904.....40624, 41038
905.....40256, 40624, 41038
906.....40246
912.....41038
913.....40624
960.....40624, 41038
968.....40903

26 CFR

1.....38708, 39015, 39589, 40879, 41013
602.....38708, 39015, 39589

27 CFR

Proposed Rules:
4.....40907
12.....40907
19.....40908

28 CFR

16.....41160
541.....40686
550.....40687

29 CFR

801.....41494, 43320
2610.....39258, 40222
2619.....40222
2622.....39258
2676.....40224

Proposed Rules:
1910.....38738, 39581
1915.....38738, 39581
1917.....38738, 39581
1918.....38738, 39581
1926.....38738, 39581
2560.....40674
2570.....40677
2610.....39200, 39613, 39718

30 CFR

56.....41600
57.....41600
206.....39459
218.....43200
773.....38868
785.....40828, 43320
823.....40828, 43320
913.....43112
916.....39085, 39467
917.....39259, 39470
934.....39261

Proposed Rules:
256.....38739
281.....38739
282.....38739
906.....39105
913.....42973
935.....41208
938.....39316, 39489
946.....42974
951.....42976

31 CFR

103.....40062
321.....39581
330.....39404

32 CFR

173.....42945
199.....38947, 41331
276.....39262
277.....39262
351b.....43201
351c.....43201
706.....40880
1285.....38716

33 CFR

100.....38716, 39273, 39274, 40880, 41161
117.....38717
165.....38718, 39604, 40414, 41161–41164

34 CFR

219.....39018
222.....39018
330.....41084
331.....41084
500.....39218
501.....39218
524.....39218
525.....39218
526.....39218
548.....39218
561.....39218
562.....39218
573.....39218
574.....39218
581.....39218

Proposed Rules:
75.....41466
76.....41466
78.....41466
200.....41466
204.....41466
212.....43178
263.....39876
668.....39317
682.....39317
785.....39406
786.....39406
787.....39406

36 CFR

211.....40729
1150.....39473

Proposed Rules:
251.....40739
1270.....39747

37 CFR

10.....41278

Proposed Rules:
1.....39420
10.....38740, 38948
100.....39734
501.....39734

38 CFR

Proposed Rules:
3.....40544
8.....39750
21.....39490
36.....40742

39 CFR

111.....43201
232.....39087

Proposed Rules:
111.....40097

40 CFR

51.....40656
52.....38719, 38722, 39087, 39742, 40415, 40656, 40881, 41600
60.....38892, 39412, 41333, 41649
81.....38724
122.....40562
147.....39088, 43080–43096
148.....41601
180.....39090, 43202
228.....41013
233.....41649
264.....39720
270.....41649
271.....41164
272.....38950
280.....43322
281.....43322
372.....39472
403.....40562
700.....40882
704.....41335
761.....40882
799.....38952

Proposed Rules:
52.....40460, 40745, 40746, 42977, 42979
61.....39058
145.....38741
148.....43400
177.....41126
178.....41126
179.....41126
180.....39106–39109, 40824, 41126, 41209, 42981
185.....40824
186.....40824
256.....40243
257.....41210, 41615
258.....41210, 41615
261.....40316, 41288
300.....40908–40910
311.....40692
435.....41356
763.....38868
799.....40244

41 CFR

101–7.....41165, 41166
105–54.....40224
201–1.....40066
201–30.....40066
201–32.....40066

42 CFR

405.....38835
412.....38835
413.....38835
424.....40231
489.....38835

Proposed Rules:
435.....43320
436.....43320

43 CFR

3450.....39015
3590.....39459

Public Land Orders:
6687.....39274

Proposed Rules:
2810.....39403
5450.....39491
9230.....39403

44 CFR

62.....39091
64.....40426
65.....40730
67.....40731

Proposed Rules:
67.....38741, 40098, 40911, 42982

45 CFR

Proposed Rules:
302.....39110
303.....39110
304.....39110
305.....39110
613.....42950
1304.....41088
1305.....41088
1308.....41088
1626.....40914, 41649

46 CFR

67.....41166

Proposed Rules:
67.....41211
580.....38742, 38969
586.....39317

47 CFR

0.....39092, 40884
1.....40884, 41169
36.....39095
73.....39095, 39605, 40890–40894, 41169–41171, 42952, 43202–43204
80.....41169
90.....40894
94.....38725
300.....39095

Proposed Rules:
1.....40918
2.....41213
73.....38743, 38747, 39614–39617, 40919, 41213, 42983, 42984, 43245, 43246
76.....40920
80.....41213
90.....39114

48 CFR

4.....43386
5.....43386
8.....43386
9.....43386
13.....43386
14.....43386
15.....43386
19.....43386
25.....43386
28.....43386
33.....43386
36.....43386
37.....43386
45.....43386
52.....43386
53.....43386
204.....43205
301.....43205
302.....43205
304.....43205
305.....43205
306.....43205
307.....43205
315.....43205
317.....43205
319.....43205
332.....43205
339.....43205
342.....43205
352.....43205
519.....39096
807.....43209

852.....43209

Proposed Rules:

14.....41535
15.....41535
31.....41527, 41530
214.....41390
215.....41390
222.....38749
247.....38753
252.....38753

49 CFR

383.....39044
390.....39044
391.....39044
392.....39044
531.....39275
1185.....39096, 40068
1207.....40428
1249.....40428

Proposed Rules:

177.....39114
531.....39115
571.....39751, 40462, 40463, 40921
663.....40850
1152.....43246
1207.....39119
1249.....39119
1312.....40922

50 CFR

216.....39743
601.....39303
611.....39475
625.....39475, 43319
640.....39581
642.....39097, 40231
663.....39606
675.....38725, 39097, 39479, 39718, 39744, 40894

Proposed Rules:

17.....38969, 39617-39626, 40479
23.....38755
216.....40246
651.....39627
646.....42985
661.....41214
663.....41214

LIST OF PUBLIC LAWS

Last List October 25, 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. 5186/Pub. L. 100-508

To designate the Federal building and United States courthouse located at 109 South Highland, Jackson, Tennessee, as the "Ed Jones Federal Building and United States Courthouse." (Oct. 20, 1988; 102 Stat. 2542; 1 page) Price: $1.00

S. 2393/Pub. L. 100-509

Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988. (Oct. 20, 1988; 102 Stat. 2543; 4 pages) Price: $1.00

H.R. 2985/Pub. L. 100-510

To designate the facility of the United States Postal Service located at 850 Newark Turnpike in Kearny, New Jersey, ad the "Dominick V. Daniels Postal Facility." (Oct. 20, 1988; 102 Stat. 2547; 1 page) Price: $1.00

H.R. 3029/Pub. L. 100-511

To designate the new Post Office Building in Gretna, Louisiana, as the "William W. Pares, Jr., Post Office Building." (Oct. 20, 1988; 102 Stat. 2548; 1 page) Price: $1.00

H.R. 4102/Pub. L. 100-512

Salt River Pima-Maricipa Indian Community Water Rights Settlement Act of 1988. (Oct. 20, 1988; 102 Stat. 2549; 12 pages) Price: $1.00

H.R. 4529/Pub. L. 100-513

Extending permission for the President's Commission on White House Fellows to accept certain donations. (Oct. 20, 1988; 102 Stat. 2561; 1 page) Price: $1.00

H.R. Res. 488/Pub. L. 100-514

Designating November 6-12, 1988, as "National Women Veterans Recognition Week." (Oct. 20, 1988; 102 Stat. 2562; 1 page) Price: $1.00

S. 2057/Pub. L. 100-515

To provide for the establishment of the Coastal Heritage Trail Route in the State of New Jersey, and for other purposes. (Oct. 20, 1988; 102 Stat. 2563; 3 pages) Price: $1.00